

North Coast Rail Trail

Final Certified Environmental Impact Report

State Clearinghouse #2017092034

Volume 1: Comments and Responses

prepared by

**Santa Cruz County
Regional Transportation Commission**

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Preface

This document is a project-specific environmental impact report (EIR) for the proposed North Coast Rail Trail Project (Project). The Project is a 7.5-mile multi-use bicycle and pedestrian trail proposed by the Santa Cruz County Regional Transportation Commission (RTC) to extend along the RTC-owned railroad corridor from Wilder Ranch State Park on the south to Davenport on the north in unincorporated Santa Cruz County.

The RTC is the lead agency responsible for preparing this document in compliance with the California Environmental Quality Act (CEQA). As the federal partner to RTC, the Federal Highway Administration's Central Federal Lands (CFL) Division is responsible for Project design and compliance with federal requirements, including the preparation of a separate future environmental document satisfying the National Environmental Policy Act (NEPA), planned to occur in 2019.

This CEQA document is the Final Environmental Impact Report (Final EIR) for the Project and contains comments submitted by agencies, organizations, and individuals concerning the 2018 Draft Environmental Impact Report (Draft EIR) for the Project, responses to those comments, and appropriate revisions to the Draft EIR and Appendices. In the revised Draft EIR, additions are shown with underline, and deletions are shown with ~~strikeout~~.

The Draft EIR was made available to the public and regulatory agencies for review and comment during a 45-day comment period between August 9, 2018, and September 24, 2018.

Section 15088 of the Guidelines implementing CEQA require that written responses be prepared for all significant environmental issues raised in written comments received on a Draft EIR during the public review period. Per CEQA Guidelines section 15132, the Final EIR shall consist of:

1. The Draft EIR or a revision of that draft.
2. Comments and recommendations received on the Draft EIR either verbatim or in a summary.
3. A list of persons, organizations, and public agencies commenting on the Draft EIR.
4. The response of the Lead Agency to significant environmental points raised in the review and consultation process.
5. Any other information added by the Lead Agency.

This Final EIR has been prepared in compliance with these Guidelines and includes the following volumes (bound separately). This is Volume 1.

- Volume 1: Comments and Responses on the Draft Environmental Impact Report
- Volume 2: Draft Environmental Impact Report, August 2018 (Revised January 2019)
 - Executive Summary
 - Chapter 1. Introduction
 - Chapter 2. Project Description
 - Chapter 3. Environmental Impact Analysis
 - Chapter 4. Other CEQA Required Sections

Chapter 5. Project Alternatives

Chapter 6. List of Preparers and References

- Volume 3: Draft EIR Appendices, August 2018 (Revised January 2019)
 - Appendix A. Alignment Exhibits
 - Appendix B. Notice of Preparation and Responses
 - Appendix C. RTC Staff Reports
 - Appendix D. MBSST Master Plan EIR Executive Summary
 - Appendix C. Transportation Impact Report
 - Appendix D. Air Quality and Greenhouse Gas Analysis Details
 - Appendix E. Pesticide Use Records
 - Appendix F. Air Quality/GHG Modeling Data
 - Appendix G. Biological Resources Supporting Documentation
 - Appendix H. Historic Resources Evaluation
 - Appendix I. Geotechnical Study and Peer Review
 - Appendix J. Hazardous Materials Records Search
 - Appendix K. Transportation Impact Analysis
 - Appendix L. AB 52 Consultation
 - Appendix M. Agricultural Water Demand Calculations
 - Appendix N. Noise Data Sheet

Comments and Responses on the Draft EIR

This section includes a list of the agencies, organizations and individuals who commented on the Draft Environmental Impact Report (Draft EIR) prepared for the North Coast Rail Trail Project (Project); the actual comments; and responses to the comments in accordance with CEQA Guidelines section 15088.

As the state lead agency, Santa Cruz County Regional Transportation Commission (RTC), in coordination with its federal teaming partner Central Federal Lands Highway Division (CFL), circulated the Draft EIR for a 45-day public review period that began on August 9, 2018 and ended on September 24, 2018. The RTC also held public meetings on August 22 and 23, 2018, and accepted oral comments which were transcribed by a certified stenographer. All the comments received in writing, via email, and verbally transcribed are referenced as *comment letters*.

The comment letters are identified and numbered in **Table 1**; and the page number where the comment letter can be found is identified in the last column. The individual comments or issues raised within each comment letter have been numbered in the right margin of the comment letter.

The responses immediately follow each comment letter, and there is a response for each individual comment identified within the letter. Each response begins with a brief summary of the comment, responds to the comment, and then discloses whether any revisions to the Draft EIR have been made.

Many comments are similar or address the same issue. For these comments, *master responses* have been developed. These are presented first and, when appropriate, responses to individual comments will reference the master response.

Table 1 List of Commenters and Location of Comment Letters and Responses

Letter No.	Commenter	Affiliation	Date	Page No.
Public Agencies				
1	Scott Morgan, Director	Governor’s Office of Planning and Research, State Clearinghouse	9-25-18	17
2	Ryan Moroney, Central Coast District Supervisor	California Coastal Commission	9-24-18	25
3	Tom Gandesbery, Project Manager	California Coastal Conservancy	9-21-18	63
4	Gregg Erickson, Regional Manager, Bay Delta Region	California Department of Fish and Wildlife	9-18-18	68
5	Chris Spohrer, District Superintendent	California State Parks	9-19-18	76
6	John Olejnik, Senior Transportation Planner, Sustainability and Intergovernmental Review	California Department of Transportation	9-14-18	84
7	Alan Romero, Air Quality Planner III	Monterey Bay Air Resources District	9-21-18	87
8	Juan Hidalgo, Agricultural Commissioner	County of Santa Cruz, Office of the Agricultural Commissioner	9-24-18	91
9	Rebecca Supplee, Program Manager	County of Santa Cruz Health Services Agency, Environmental Health Division	no date	94

Letter No.	Commenter	Affiliation	Date	Page No.
10	Zeke Bean, Water Resources Supervisor, Watershed Section	City of Santa Cruz Water District	8-16-18	96
Organizations and Businesses				
11	Janneke Strause, Executive Director	Bike Santa Cruz County	9-24-18	98
12	Noel Bock	Davenport/North Coast Association	9-22-18	100
13	Piet Canin, VP Transportation	Ecology Action	9-24-18	123
14	Mark Mesiti-Miller, Board Chair	Friends of Rail Trail	9-24-18	126
15	Bonny Hawley, Executive Director	Friends of Santa Cruz State	9-24-18	131
16	Pamela Silkwood, Attorney	Horan Lloyd	9-24-18	133
17	Bryan Largay, Conservation Director	Land Trust of Santa Cruz County	9-19-18	317
18	Stephen Slade, Executive Director	Land Trust of Santa Cruz County	9-04-18	320
19	Gail McNulty, Executive Director	Santa Cruz County Greenway	9-24-18	323
20	Gillian Greensite, Chair	Sierra Club	9-24-18	325
21	Brian Peoples, Executive Director	Trail Now	9-24-18	336
Public				
22	Oscar Allan	Public	9-24-18	352
23	Jennifer and Buzz Anderson	Public	8-15-18	354
24	Jeri Bodemar	Public	8-11-18	356
25	Chante Boller	Public	9-24-18	358
26	Greg Buzzard	Public	9-5-18	361
27	John Carothers	Public	8-13-18	363
28	Jim Cochran	Public	9-24-18	365
29	Val Cole	Public	9-18-18	367
30	Brian and Diana Conner	Public	9-13-18	369
31	Nanda Currant	Public	8-18-18	373
32	David Date	Public	9-24-18	375
33	Mark Davidson	Public	9-14-18	377
34	Marty Demare	Public	9-24-18	379
35	Bruce Duncan	Public	9-24-18	383
36	Allison Edwards	Public	8-22-18	389
37	Roland Edwards	Public	9-24-18	393
38	Nitai Farmer	Public	9-07-18	395
39	Bob Fifield	Public	9-24-18	397
40	Erik Hansen	Public	9-24-18	399
41	Grey Hayes	Public	9-24-18	401
42	Daniel Heppner	Public	8-30-18	422
43	Paul Iverson	Public	8-16-18	424
44	Dave Jensen	Public	9-16-18	426
45	Ryan Judson	Public	8-22-18	428
46	Philip and Yamindira Kanagasundaram-Branum	Public	9-15-18	430

Letter No.	Commenter	Affiliation	Date	Page No.
47	Neal Langholz	Public	9-22-18	433
48	Mary Lee	Public	9-08-18	435
49	Geri Lieby	Public	8-24-18	437
50	David Lieby	Public	8-28-18	440
51	Carol Long	Public	8-10-18	442
52	Pall Marten	Public	8-23-18	505
53	Christy Martin	Public	9-05-18	507
54	Ellen Martinez	Public	8-12-18	509
55	Joe Martinez	Public	8-20-18	511
56	Brian McElroy	Public	9-21-18	513
57	Jack Nelson	Public	9-24-18	521
58	Nancy Nichols	Public	9-09-18	523
59	Ron Record	Public	8-16-18	526
60	Joanne Reiter	Public	8-09-18	528
61	Linda Rosewood	Public	8-24-18	530
62	Eric Stanford	Public	8-09-18	532
63	Barry Scott	Public	8-22-18	534
64	Barry Scott	Public	9-25-18	536
65	Pauline Seales	Public	9-12-18	538
66	Jane Sioto	Public	9-24-18	540
67	Perry Whitney	Public	8-22-18	542
68	Various	Public Meeting, Santa Cruz	8-22-18	545
69	Various	Public Meeting, Davenport	8-23-18	552

Master Responses

Many comments are similar or concern the same issue, including the following presented in alphabetical order.

- A. CEQA Compliance and Adequacy of EIR
- B. Ownership/Right-of-Way
- C. Parking Evaluation, Gates, Hours and Closures
- D. Project Schedule/Timeframe
- E. Rail Use and Project Segmenting
- F. Maintenance and Funding

For these comments, *master responses* have been developed. When appropriate, responses to individual comments will reference the master response.

Master Response A: CEQA Compliance and Adequacy of EIR

Some commenters made broad general statements questioning the general adequacy of the Draft EIR, in addition to offering specific criticisms on specific portions of the document. Although the RTC appreciates all of the input it has received on the Draft EIR from other agencies, various organizations, and individual members of the public, and although the RTC has made modifications and additions to the Draft EIR for clarification in response to such input, the RTC does not agree with general statements claiming that the EIR is legally deficient under CEQA. The RTC expended great effort to fully comply with CEQA in preparing and issuing the Draft EIR, and continues to believe that the document is legally adequate under CEQA.

The general principles relating to EIR adequacy are explained in section 15151 of the CEQA Guidelines, which states:

“[a]n EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.”

CEQA Guidelines section 15204 adds:

“the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters.”

This language echoes the California Supreme Court’s statement in *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 415, that “[a] project opponent ... can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR. That further study ... might be helpful does not make it necessary.”

The vast majority of specific assertions that the Draft EIR is not legally adequate are examples of (i) disagreement with factual assumptions or conclusions in the document and (ii) suggestions of how additional tests, research, study, or experimentation might be helpful to RTC decisionmakers. Although these contentions reflect sincere concerns which the RTC has carefully considered, the contentions do not demonstrate that the Draft EIR has failed to comply with any of the express legal requirements found in the CEQA statutes, the CEQA Guidelines, or CEQA case law. Other specific contentions take the form of legal arguments supported by citations to case law. The RTC and its legal counsel have considered these arguments, but do not find them to be persuasive. Specific responses to specific comments are provided below.

Master Response B: Ownership/Right-of-Way

Several comments were received expressing concern regarding property ownership and RTC’s rights to the location of the various alignments. The comments suggest that, in light of such concerns, the proposed project may not be feasible, and that the Draft EIR was deficient for failing to include an extensive analysis of the feasibility of the proposed project.

Although the RTC is confident that, once a project alternative is approved, the RTC will be able to implement the proposed project or chosen alternative with varying degrees of difficulty, CEQA does not require EIRs to include detailed analyses of the feasibility of proposed projects. Rather, EIRs are prepared on the assumption that proposed projects and EIR alternatives are, at a minimum, potentially feasible.

CEQA review is required to occur “as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.” (CEQA Guidelines, § 15004[b].) Under this approach, which requires environmental analysis early in the planning process, environmental review typically precedes the development of detailed design and engineering specifications. (See, e.g., *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 400–401 [after project approval, a lead agency “may leave the details to engineers”; “[i]n such a context, the design may change many times without requiring further environmental review”]; and *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 28 [CEQA only requires “a ‘general description’ of a project’s technical characteristics”]; see also CEQA Guidelines, § 15124 “[t]he description of a project ... should not supply extensive detail beyond that needed for evaluation and review of the environmental impact”).) Among the details of project implementation that typically follows rather than precedes environmental review are agency actions relating to the physical acquisition of property interests necessary for project construction and operation.

CEQA documents appropriately focus on the physical environmental consequences of proposed actions. Indeed, “CEQA Guidelines section 15131 provides that economic data is not required to be included in an EIR.” (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1401 (AIR).) “As is self-evident from its name, an EIR is an *environmental* impact report. As such, it is an informational document, not one that must include ultimate determinations of economic feasibility.” (*San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 691 (*San Franciscans*) [original italics].) “While economic information about a given project may be included in an EIR, it is not required.” (*Ibid.*) Indeed, the courts have repeatedly rejected contentions to the effect that EIRs must include analysis of the potential feasibility of proposed alternatives. (See *San Franciscans, supra*, 102 Cal.App.4th at p. 691; *AIR, supra*, 107 Cal.App.4th at p. 1401; *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1503-1506; and *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 618.) The same logic applies to proposed projects. These decisions holding that EIRs need not address feasibility issues are consistent with very early CEQA case law indicating that, similarly, CEQA is not concerned with economic consequences such as the effects of proposed projects on property values. (See *Hecton v. People ex rel. Dept. of Transportation* (1976) 58 Cal.App.3d 653, 656.)

Even so, the RTC responds to the above-mentioned concerns as follows.

The railroad right-of-way has a long, complex history. RTC technical experts are investigating all of the complexities to obtain an accurate understanding of the right-of-way boundary lines and extent of RTC’s property rights. Most of the parcels comprising the Santa Cruz Branch Rail Line are owned by the RTC in fee (i.e., owned outright by RTC), but a few are easements as described in the Santa Cruz Branch Rail Line Title Report (First American Title 2009)¹. The RTC obtained additional

¹ First American Title Insurance Company. 2009. Preliminary Title Report, Santa Cruz branch line, Watsonville to Davenport, CA ((Main Track and Spurs). Letter report to Madeline Miller, Miller, Owen, & Trost from Kimberleigh Toci, Escrow Officer. National Commercial Services. San Francisco, CA. September 1, 2009.

information about the boundaries of the property purchased from Union Pacific. The additional information relates to the property alignment in the project vicinity and the extent of RTC's ownership, which may be greater than what was included in the Title Report (First American Title 2009). In respect to any additional property needed for the proposed project should it be selected as the preferred project, the RTC is confident it can obtain those property rights after CEQA is completed, which is typical for government projects.

Master Response C: Parking Evaluation, Gates, Hours and Closures

Parking Evaluation and Conclusion

Several comments question the adequacy of the parking evaluation and conclusions that there would be sufficient parking.

The proposed parking area improvements, layouts, and number of parking spaces were designed and determined based on a range of physical, legal, environmental, and design constraints: the existing footprint of parking areas, drainage and grading, the extent of public rights-of-way, protection of environmental resources, safety review, and applicable design standards. To meet these constraints, the Project would decrease the number of parking spaces from 54 to 43 at the Davenport Beach Lot (North), from 55 to 48 at the Bonny Doon Beach Lot, and from 160 to 48 at the Panther/Yellowbank Beach Lot.

These reductions in parking capacity would be necessary primarily to formalize the parking lots in accordance with the safety standards of the American Association of State Highway and Transportation Officials (AASHTO) and requirements of the Americans with Disabilities Act (ADA), within the constraints of right-of-way and topography. Unpaved informal parking spaces at the Panther/Yellowbank Beach Lot would be removed to accommodate an accessible route to the proposed trail, designed with an acceptable slope and width in accordance with the ADA. If this proposed accessible route were moved from the Panther/Yellowbank Beach Lot design to retain additional parking spaces, the Project could have more severe environmental impacts associated with greater vegetation removal and grading activity. Therefore, the decrease in parking spaces within parking lots included in the project represents a necessary tradeoff in order to meet the Project objectives of improving accessibility to coastal resources and maximizing safety.

The proposed parking improvements would be limited to publicly owned parking areas. As described in Section 2.4 of the Draft EIR under *Davenport Beach Lot and Highway 1 Crossing*, the parking improvements are proposed for the northern portion of the Davenport Beach Lot, which is publicly owned and under Caltrans jurisdiction. The privately-owned southern portion of the existing parking area would remain unpaved and available for informal parking, as allowed by the land owner. The RTC does not intend to propose or evaluate improvement of the privately-owned southern lot for parking, passive park uses, or other uses.

Parking count data from October 2017 and January 2018 indicates that the three affected parking lots along the Project corridor would retain a sufficient supply of parking space to meet public demand on average non-summer days. Although it is expected that parking demand in these lots would continue to exceed supply during busy summer days, it should be noted that parking facilities are typically designed to meet average demand, rather than peak demand. Furthermore, it is anticipated that during operation of the proposed trail, visitors would continue to park at adjacent informal lots and unpaved shoulders of Highway 1 when the paved parking lots are full. As discussed under Impact T-4 (Increased demand for parking...) in Draft EIR Section 3.14,

Transportation/Circulation, sufficient overflow parking would be available in informal lots and unpaved shoulders of Highway 1, at times when the parking lots are full. (The analysis on which this conclusion is based is included as Appendix K of the Draft EIR.)

Parking Lot Gates, Hours and Closures

The lead agency received several comments about temporal and physical restrictions to accessing parking areas. One comment recommends keeping parking areas open at night, for the purpose of maximizing public access to coastal resources, unless restrictions on nighttime access are narrowly tailored to solve identified problems. However, other comments recommend access gates at parking areas to enable restriction of night time parking. State Parks recommends including a gate at the Panther/Yellowbank Beach Lot (Comment 5.5). The Davenport North Coast Association recommends three things: a gate at the Davenport Beach Lot, an ordinance prohibiting night time parking, and a space outside the gate for bus parking (Comment 12.5).

As stated in Section 2.5 of the Draft EIR under the heading *Hours and Closures*: Signs would be installed to indicate that the trail is closed at night, it is anticipated the parking lots providing access to the trail would be closed from 12:00 a.m. to 5:00 a.m., and no gates are proposed as part of the Project. The text has been revised as follows to acknowledge State Parks hours and to clarify that the hours of these facilities would be determined in coordination with relevant entities.

Signs would be installed to indicate that the trail is closed at night to support existing agriculture adjacent to the trail and protect the public from pesticide spraying necessary for the continued viability of agricultural use, and to discourage illegal camping. It is anticipated the restrooms and parking lots providing access to the trail would also be closed at night, possibly from 12:00 a.m. to 5:00 a.m. or from sunset to 8:00 a.m. consistent with State Parks hours. No gates are proposed as part of the Project. The exact hours of parking lot, restroom, and trail closure would be determined through coordination with State Parks, the Coastal Commission, and Caltrans, as well as through consultation with other affected property owners.

Supporting documentation for existing, ongoing public safety problems associated with nighttime use of the parking lots and along the rail corridor will be provided when the lead agency applies for a federal consistency determination from the California Coastal Commission. Nighttime closure of the parking lots also would be consistent with existing parking restrictions in the area. California State Parks, which manages land on part of the Project corridor and some intersecting coastal trails, requires closure of trails from sunset to 8:00 a.m.

The RTC/CLF project partners considered placing gates at the Davenport Beach and Yellow Bank/Panther Beach parking areas during design development and scoping. Through discussions with the California Coastal Commission, however, the RTC/CLF team learned that gating the parking areas would be inconsistent with California Coastal Act requiring public access to the coast be maximized, and that obtaining a permit to gate the parking lots would be extremely difficult. Caltrans specifically stated that gates would not be allowed at the Panther/Yellowbank Beach lot. Refer to Comment 2.5 from the Coastal Commission and Comment 6.3 from Caltrans in this Final EIR. Given these constraints, gates at the parking areas will not be considered further.

The RTC/CLF does not have authority to create and enforce an ordinance to prohibit night time parking located within Caltrans or State Parks right-of-way and under Coastal Commission jurisdiction. As stated previously, RTC/CFL would work with the Coastal Commission to identify parking restrictions that solve clearly identified problems while maximizing public access to the

coast, and RTC would also work with Caltrans and State Parks to implement restrictions to parking located with their right-of-way.

There may be room between the parking lot and Highway 1 travel lanes to add a bus turn-out. CFL would consider this during final design in coordination with Caltrans.

The Draft EIR has been revised to clarify that the trail is closed at night to support existing agriculture adjacent to the trail and to protect the public from pesticide spraying necessary for the continued viability of agricultural use. The exact hours of trail closure would be determined through coordination with State Parks, the Coastal Commission, and property owners. However, no other text revisions are required to respond to these comments.

Master Response D: Project Schedule/Timeframe

Several comments concern the Project schedule and timeframe for construction. Some commenters claim the Proposed Project would not be ready to construct by 2020 (e.g., comment 21.4) because of ownership/ROW issues and legal litigation. Some commenters claim Alternatives 1 and 3, which both involve rail removal, would be ready sooner than 2028 because the process shouldn't take an additional 10 years (e.g., comment 21.3).

Proposed Project

CFL has provided an updated timeline for implementation of the Proposed Project, whereby project construction may begin in 2021 instead of 2020, and would take approximately 12 months. This would require an extension of project funds for one year, which CFL indicates is an available option.

CFL determined that additional time is required due to the RTC's decision to conduct a full EIR, and CFL's subsequent need to complete the NEPA analysis and obtain required permits/approvals. These actions cannot be initiated until the RTC makes a determination as to its preferred project under CEQA, which is estimated to occur in March 2019.

Therefore, the Draft EIR has been revised to reflect the updated timing. Section 1.2.4 under *FHWA FLAP Funding* has been revised to state that all work associated with the agreement needs to be completed no later than December 31, 2020, unless the agreement is amended.

In Sections 2.3 and 5.1, project objective # 11 has been modified to read as follows:

Complete project construction by 2021 ~~2020~~ to maximize funding for the Project, and meet current funding obligations (Master Plan objective 4.6, policy 4.6.2 speak to maximizing funding).

Section 2.6 under *Timing and Duration* has been revised to state that construction is estimated to begin in 2021.

The assertion that the Proposed Project would be delayed due to litigation is speculative. To the extent that commenters who raised the possibility of litigation were intending to threaten RTC with litigation, the threat is noted. The RTC additionally notes, however, that the mere filing of litigation does not have the effect either of halting permitting activities or of precluding construction. Rather, a petitioner would have to persuade a reviewing court to grant a preliminary injunction to halt either type of activity. To obtain such an injunction, a petitioner would have to try to persuade the court that a challenge to the EIR on its merits was likely to succeed. Based on its belief in the adequacy of this EIR, the RTC believes that a petitioner would not be able to make such a showing. If attempts were made to enjoin permitting, the absence of imminent environmental harm would

likely cause a court to balk at issuing an injunction. Moreover, with respect to permitting, the Legislature has essentially commanded responsible agencies to treat EIRs challenged in court as though they were fully valid unless and until there is a final judicial determination to the contrary. (See Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1179-1181.)

Alternatives 1 and 3

As stated in Section 2.6 under *Timing and Duration*, RTC estimates that Alternatives 1 and 3 would not begin construction until 2028 because of the amount of work needed to undo contractual and regulatory obligations related to the rail right-of-way. Provided the RTC's contractual agreement with its rail operator is terminated or expires, no termination is effective until the Surface Transportation Board (STB) approves transfer or abandonment of freight service. Obtaining approval from the STB to abandon freight may be challenged, causing a lengthy, costly and uncertain outcome. Abandoning rail uses required by the California Transportation Commission (CTC) would require paying the CTC and the state \$11 million, or potentially up to \$29 million. The only funding that is currently available to the RTC to pay for this process is from Measure D, which provides approximately \$1.6 million per year for rail purposes. Therefore, RTC expects it would take several years to amass the funds necessary to repay the CTC and thus, due to these regulatory and fiscal challenges, anticipated construction would not begin until approximately 2028.

Additionally, the farther in the future project delivery is, the higher the risk that currently secured funding will not be available.

Master Response E: Rail Use and Project Segmenting

Several comments concern rail operation. Comment 16.3 contends the RTC is biased in favor of the Proposed Project because the RTC signed an agreement for rail operation, because the discussion of the Farmers' Alternative is perfunctory and prejudicial, and because the RTC failed to comply with the basic substantive requirements of CEQA. The RTC disagrees with all of these contentions.

As described in Section 2.5 under *Rail Operation and Maintenance* of the Draft EIR, no rail service is proposed as part of the Project, and there would be no other changes in the existing rail corridor as a result of the Project, other than those described in Chapter 2, *Project Description*, as they relate to project implementation.

Several comments claim the RTC is segmenting the project. Comments 16.4 and 16.13 state that the Project was inappropriately divided into small pieces by entering into a 10-year agreement with a rail operator to avoid the responsibility for considering the environmental impacts of the project as a whole, including rail improvements and expanded operation. Additionally, Comment 21.7 states that the RTC said train operation is not considered in the future for the corridor, and that the Farmers Plan meets project objective 3 (develop the trail so future rail use is not precluded). Finally, rail banking is suggested by some, and there are differing opinions on whether rail banking effectively protects a rail corridor for future rail use if the tracks are removed.

No segmentation or piecemealing has occurred because the Proposed Project and RTC's agreement with the operator each has independent utility and logical termini. Each could legitimately proceed as a separate and distinct project even in the absence of the other. Neither project depends on the other. Findings of exemption were made for the approval of the operator agreement in 2018.

The Proposed Project, with the trail on the coastal side of the rail and retention of the rail, is implementing a previous planning decision - the approved and certified MBSST Network Master Plan and EIR in 2013. The Master Plan divided the rail corridor into 20 logical segments for implementation, and the Project represents Segment 5.

The Project is being proposed and analyzed as one continuous 7.5-mile long trail, is not divided into smaller pieces, and is not dependent on rail operation. The RTC considers the existing Davenport Beach parking area located at the Highway 1/Ocean Street intersection to be a logical north end terminus, which in conjunction with the south end terminus at the Wilder Ranch parking lot, provides the project with independent functionality compared with other planned segments of the MBSST Network.

In addition, as stated in Section 1.2.2 of the Draft EIR, the federal Surface Transportation Board (STB) requires freight rail service on the Santa Cruz Branch Rail Line. In addition, the STB does not permit unreasonable interference with such freight service, whether the Proposed Project or other planned segments of the trail are constructed or not. Initially, the RTC contracted with Iowa Pacific Holdings (known locally as Santa Cruz and Monterey Bay Railway) to provide common carrier freight service. When that operator failed to meet contractual obligations, the RTC was legally obligated to remedy the situation, which it did by entering into an agreement with new operator Saint Paul and Pacific Railroad (a company of Progressive Rail) in July 2018 for freight service on the Santa Cruz Branch Rail Line (referred to as Phase I of the agreement with Progressive Rail). This action was taken pursuant to the legal obligation to provide freight service and does not represent any favoritism, bias or “de facto approval” of the Proposed Project by the RTC.

The RTC is also required, under conditions of receipt of funds from the California Transportation Commission (CTC) for the acquisition of the line, to initiate passenger rail service on the line. The agreement between RTC and Saint Paul and Pacific Railroad stipulates that 120 days after completion of the Unified Corridor Study (considered to be November 15, 2018), the RTC will take action on Phase II of the agreement, which would grant Progressive Rail a license to provide excursion services (in addition to freight services) on the line.

On January 17, 2019, following acceptance of the Unified Corridor Study, the RTC approved Phase II of the agreement with Saint Paul and Pacific Railroad. Phase II of the agreement consists of a non-exclusive license to provide excursion rail transportation service on the rail line. Before the Saint Paul and Pacific Railroad may provide excursion rail transportation service, it must produce an operating plan for such service, and such plan must be approved by the RTC. The transportation service is not permitted to conflict with and is subject and subordinate to freight service, which is regulated by the STB. This subordinate classification of transportation service to freight services is based on the regulatory requirements of the STB, which further demonstrates no bias by the RTC in determining the Proposed Project.

As described in Section 2.5 under *Rail Operation and Maintenance*, the RTC is not proposing rail service or track improvements as part of the Project. Although the rail is not currently in use, the current rail operator may begin operating freight and/or passenger service between Santa Cruz and Davenport within the next 3 to 5 years, or sooner, independent of the proposed project.

The agreement between the RTC and Saint Paul and Pacific Railroad expires in July 2028. Upon expiration of the agreement, Saint Paul and Pacific Railroad is required to cooperate with the transfer or abandonment of freight service by RTC, provided that no termination shall be effective unless and until the STB has approved the transfer or abandonment. A future potential abandonment of rail service on the line demonstrates the potential feasibility of the two “trail only”

scenarios, Alternatives 1 and 3. However, as stated in Section 2.6 under *Timing and Duration*, RTC estimates that Alternatives 1 and 3 would not begin construction until 2028 because of the amount of work needed to undo contractual and regulatory obligations related to the rail right-of-way. Obtaining approval from the STB to abandon freight may be challenged, causing a lengthy, costly and uncertain outcome. Abandoning rail uses required by the STB would require paying the CTC \$11 million or potentially up to \$29 million. The only funding that is currently available to the RTC to pay for this process is from Measure D, which provides approximately \$1.6 million per year for rail purposes. Therefore, RTC expects it would take several years to amass the funds necessary to repay the CTC funds.

Prior to closure of the CEMEX plant in Davenport in 2010, the tracks had been in continuous use for over 100 years, and the potential for use is clearly acknowledged in the project description, which is why the Proposed Project includes safety fencing between the trail and tracks and improvements at the trail crossings. Details on future rail use are speculative at this time, but occasional use was considered in the analyses. The Monterey Bay Sanctuary Scenic Trail Network Master Plan also describes a rail-with-trail project.

Moreover, tentative support for a proposed project undergoing environmental review does not constitute pre-determination of the agency's action on the proposed project in violation of CEQA. (See, e.g., *Save Tara v. City of West Hollywood* (2006) 45 Cal.4th 116, 136 [“[i]f having high esteem for a project before preparing an ... (EIR) nullifies the process, few public projects would withstand judicial scrutiny, since it is inevitable that the agency proposing a project will be favorably disposed to it”], quoting *City of Vernon v. Board of Harbor Comrs.* (1998) 63 Cal.App.4th 677, 688.) Here, the RTC is of course aware of prior planning decisions already in place but is proceeding with an open mind with the desire for the best public policy outcome possible within the framework of existing regulatory requirements and legal commitments.

As required by CEQA, the EIR undertakes consideration of project alternatives. The RTC recognizes the importance of such alternatives under CEQA, as they are potential tools for effectuating the “substantive mandate” of CEQA to substantially lessen or avoid significant environmental effects were feasible. (See Pub. Resources Code, §§ 21002, 21081; CEQA Guidelines, §§ 15002[a][3], 15091; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134.)

To ensure objectivity, the RTC retained third party consultants to help identify project alternatives, analyze the Proposed Project and project alternatives, and prepare the EIR in compliance with CEQA. The RTC agreed to analyze a trail only alternative (Alternative 1), which was brought to the RTC's attention well before the Notice of Preparation (NOP) was issued, at an equal level of detail as the Proposed Project. This level of detail is above and beyond the requirements of CEQA for alternatives and demonstrates a good faith effort to consider community concerns.

The RTC also analyzed the Farmers' Alternative (Alternative 3) as requested in comments received in response to the NOP, although at a more general level to compare the merits of the alternatives to the Proposed Project, as allowed by CEQA (Guidelines 15126.6[d]). The RTC disagrees with the commenter's claim the discussion of the Farmers' Alternative is perfunctory and prejudicial. Indeed, the RTC was under no obligation to include the alternative in the EIR and considers its decision to do so a gesture of good faith rather than a perfunctory exercise. As shown in Section 5.2 of the Draft EIR, the analysis of Alternative 3 addresses all the required topics, providing a comparison to the Proposed Project. Most of the impacts would be similar to those of the other trail alignments, for reasons explained in the discussion of each resource topic.

In Section 5.1, Table 5-2, Alternative 3 is found to be inconsistent with project objective 3 (develop trail so future rail use is not precluded) because Alternative 3 would result in the removal of tracks in the north portion of the trail alignment, which would preclude rail use in this portion.

Finally, there are differing opinions on whether rail banking effectively protects a rail corridor for future rail use if the tracks are removed.

Railbanking, established as a practice in 1983 through an amendment to Section 8(d) of the National Trails System Act, is a method by which freight rail lines proposed for abandonment can be preserved for future freight rail use, while allowing for interim conversion to trail or other uses. Although railbanking is part of the federal abandonment process administered by the STB, if a line is railbanked, under the National Trails Act, the corridor is treated as if it had not been abandoned since rail service could be restored in the future. As a result, the integrity of the corridor can be maintained, and any reversion that could break it up into small pieces is prevented.

There are a number of challenges with railbanking, including the following.

- The STB has jurisdiction over freight railroad rate and service issues and rail restructuring transitions including mergers, line sales, line construction, and line abandonments. (The STB also has some limited jurisdiction over interstate passenger rail operations.)
- As part of the abandonment process, the STB provides procedures for petitioners, as well as for those who would like to purchase the line and assume the common carrier freight obligation to provide service over the line, and also procedures that allow for the acquisition of the right of way for railbanking and interim trail use if no one offers to acquire the line for continued freight rail use.
- If the STB allows for railbanking, such a decision would not stop adjacent landowners who have provided easements for the rail corridor from suing the United States, claiming that the trails represent a new use of their land which entitles them to compensation. The Federal Government has been sued numerous times, and courts have ruled in favor of property claims of adjacent landowners depending on the nature and quality of title of the landowners. Neither the RTC nor the railroad operator Saint Paul and Pacific Railroad would be liable for damages to the adjacent landowners.
- The STB has the authority to require that the rail line be reactivated for freight rail use at any time, even if the line is railbanked and/or actively being used for a trail, if there is a need to use the line for freight rail service.
- Some costs associated with converting the trail back to rail use could fall on the agency responsible for the trail, depending on the terms of the interim trail use agreement that would be negotiated between the agency and the railroad.
- Funds from the CTC from Proposition 116 and the State Transportation Improvement Program (STIP) Public Transportation Account (PTA) are tied to rail service. According to the funding agreement with the State, the funding is subject to repayment requirements if there is no rail service on the rail line. Railbanking would likely not prevent the State from requesting repayment of the funds.
- The legislation was first enacted in 1983 to allow for railbanking. The RTC is unaware of any paved trail that has been converted back to rail once the rail line has been railbanked.
- To develop a trail under the railbanking concept, the RTC or trail agency would need to look for alternative funding. Such funding may be more difficult to obtain than the funding for a trail adjacent to the rail line, given the requirement for potential reactivation for rail service. Funding

for a trail under the railbanking concept may require repayment if reactivation of the rail line were to occur.

Also refer to **Master Response A** regarding RTC complying with the basic substantive requirements of CEQA.

No revisions to the Draft EIR are necessary.

Master Response F: Maintenance and Funding

Several comments inquired about funding and responsibility for maintenance of trail and parking facilities, as well as mitigation (Comments 12.6, 12.7, 16.8, 25.2, 36.2, 38.1, 56.2).

Section 1.2.4 under *Santa Cruz County Measure D: Transportation Improvement Expenditure Plan*, includes a discussion on funding. Funding for trail construction, maintenance, and operation would be provided or secured by RTC by using Measure D funds but may include other sources. Funding for the Proposed Project includes allocations for reasonable and prudent mitigation costs.

Section 2.5, *Project Operation and Maintenance*, discusses the routine maintenance activities for the trail and parking lot, as well as the parties responsible for such activities. The trail and parking lots, including the restrooms proposed at the Davenport Beach and Panther/Yellowbank Beach lots, would be operated and maintained by RTC, likely through a contract with a private firm, State Parks, County Parks and Recreation or County Public Works, or some combination thereof through formal agreements. Section 2.5 of the Draft EIR has been revised to add County Public Works as a potential entity responsible for maintenance.

Once the operations and maintenance responsibility is determined, a Trail Manager would be identified and an Operations and Maintenance Plan would be developed. The frequency of trash collection, restroom cleaning, and other maintenance activities would be determined at that time. However, Mitigation Measure AG-3(c) requires twice weekly solid waste collection or more often as needed, and the mitigation has been amended to include garbage, feces, and trampling associated with human activity, including homeless/transient encampments.

Mitigation Measure AG-3(c), Regularly Remove Solid Waste and Litter during Operation

Once the trail is open for public use, the Trail Manager shall ensure that solid waste is collected from each of the 23 proposed trash receptacles twice-weekly, or more often as needed to ensure that the trash and recycling receptacles located along the trail and in the three parking lots do not overflow. The frequency shall be determined by the Trail Manager and may vary seasonally, with more frequent collection in the summer months when the trail is busy. Trash/recycling receptacles located in the parking lots may require more frequent collection than the receptacles along the trail alignment.

The Trail Manager shall be responsible as well for collecting litter along the trail. If litter leaves the trail ROW, the Trail Operator shall ensure that the litter in the vicinity of the trail that is reasonably attributed to trail use is removed within a reasonable time frame. Access to agricultural fields for the purpose of litter removal shall be coordinated with on-site agricultural operators, taking into account pesticide/fumigant restrictions and the goal of minimizing soil compaction or direct contact with crops. The Trail Manager shall not enter adjacent agricultural fields without express permission by the agricultural operator. All solid waste and recyclable materials shall be properly disposed.

Additionally, the Trail Manager shall identify garbage, feces, and trampling associated with human activity, including homeless/transient encampments, and report such activity to the County Sheriff and State Parks.

As described in **Master Response C**, the trail would be closed at night; and it is anticipated the parking lots and restrooms at the Davenport Beach and Panther/Yellowbank Beach lots would also be closed at night. The exact hours of parking lot, restroom, and trail closure would be determined in coordination with the California Coastal Commission, State Parks, and Caltrans, as well as through consultation with other affected property owners.



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA

GOVERNOR'S OFFICE of PLANNING AND RESEARCH



KEN ALEX
DIRECTOR

September 25, 2018

Cory Caletti
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, CA 95060

Subject: North Coast Rail Trail Project
SCH#: 2017092034

Dear Cory Caletti:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on September 24, 2018, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

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1.1

**Document Details Report
State Clearinghouse Data Base**

SCH# 2017092034
Project Title North Coast Rail Trail Project
Lead Agency Santa Cruz County Regional Transportation Commission

Type EIR Draft EIR

Description The project is a 7.5-mi multi-use bicycle and pedestrian trail extending along the railroad corridor from Wilder Ranch State Park on the south to Davenport on the north in unincorporated Santa Cruz County. The project would include a paved path with striping, parallel unpaved path and shoulder, and parking improvements with trail connections at three locations along the alignment. The EIR evaluates the proposed project (coastal side) and alternative 1 (trail only), at an equal level of detail. The proposed project would locate the new multi-use trail almost exclusively on the coastal side of the existing railroad tracks, largely consistent with the Monterey Bay Sanctuary Scenic Trail Network Master Plan. Under alternative 1, the railroad tracks would be removed, and the trail would be located on the rail bed.

Lead Agency Contact

Name Cory Caletti
Agency Santa Cruz County Regional Transportation Commission
Phone 831-460-3200 **Fax**
email
Address 1523 Pacific Avenue
City Santa Cruz **State** CA **Zip** 95060

Project Location

County
City
Region
Lat / Long 36° 57' 37.12" N / 122° 5.1' W
Cross Streets SR 1
Parcel No. Mult
Township

Range **Section** **Base**

Proximity to:

Highways 1
Airports
Railways Santa Cruz Branch Line
Waterways Santa Cruz Crk, Liddell Crk, Pacific Ocean
Schools Pacific ES
Land Use LU: Ag, existing parks and rec, mountain res; Z: PF, CA, SU, PF, RA, TP, B

Project Issues Agricultural Land; Air Quality; Biological Resources; Soil Erosion/Compaction/Grading; Landuse; Noise; Recreation/Parks; Traffic/Circulation; Aesthetic/Visual; Archaeologic-Historic; Coastal Zone; Cumulative Effects; Drainage/Absorption; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Growth Inducing; Minerals; Population/Housing Balance; Public Services; Schools/Universities; Septic System; Sewer Capacity; Solid Waste; Toxic/Hazardous; Vegetation; Water Quality; Water Supply; Wetland/Riparian

Reviewing Agencies Resources Agency; California Coastal Commission; Department of Fish and Wildlife, Region 3; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 5; Air Resources Board, Transportation Projects; Regional Water Quality Control Board, Region 3; Native American Heritage Commission; Public Utilities Commission; State Lands Commission; Department of Fish and Wildlife, Marine Region; Other - Public Comments

Date Received 08/09/2018 **Start of Review** 08/09/2018 **End of Review** 09/24/2018 18



State of California – The Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Bay Delta Region
 7329 Silverado Trail
 Napa, CA 94558
 (707) 944-5500
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
 CHARLTON H. BONHAM, Director



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September 18, 2018

Governor's Office of Planning & Research

SEP 19 2018

STATE CLEARINGHOUSE

Cory Caletti
 Santa Cruz County Regional Transportation Commission
 1523 Pacific Avenue
 Santa Cruz, CA 95060
NCRTDraftEIR@sccrtc.org

Dear Cory Caletti:

Subject: North Coast Rail Trail, Draft Environmental Impact Report, SCH #2017092034, Santa Cruz County

The California Department of Fish and Wildlife (CDFW) has reviewed the draft Environmental Impact Report (EIR) prepared by the Santa Cruz County Regional Transportation Commission (RTC) for the proposed North Coast Rail Trail (Project) located in Santa Cruz County. CDFW is submitting comments on the draft EIR regarding potential impacts to biological resources associated with the proposed Project.

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA) §15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration Agreement (LSAA) and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW offers the following comments and recommendations regarding the Project.

PROJECT DESCRIPTION AND LOCATION

The proposed Project includes the construction of a 7.5-mile multi-use bicycle and pedestrian trail along a RTC-owned railroad corridor from Wilder Ranch State Park on the South to Davenport on the north in unincorporated Santa Cruz County. The trail will be composed of paved path with stripping, parallel unpaved path and shoulder, restrooms, and parking improvements with trail connections at three locations along the alignment.

ENVIRONMENTAL SETTING

Within the proposed alignment of the multi-use bicycle and pedestrian trail, salmonid species, amphibian species, migratory birds, and special-status species are known to inhabit or utilize the area. Based on a review of the California Natural Diversity Database (2018), the special-status species that are known to occur, or have the potential to occur in or near the Project site, include:

- Black swift (*Cypseloides niger*), a state species of special concern;
- California giant salamander (*Dicamptodon ensatus*), a state species of special concern;
- California red-legged frog (*Rana draytonii*), a state species of special concern and listed as threatened under the federal Endangered Species Act (ESA);

- Coho salmon – Central California Coast Evolutionarily Significant Unit (*Oncorhynchus kisutch*), listed as endangered under CESA and listed as endangered under ESA;
- San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*), a state species of special concern;
- Santa Cruz black salamander (*Aneides niger*), a state species of special concern;
- Steelhead – Central California Coast Distinct Population Segment (*Oncorhynchus mykiss irideus*), listed as threatened under ESA;
- Tidewater goby (*Eucyclogobius newberryi*), listed as endangered under ESA;
- Townsend's big-eared bat (*Corynorhinus townsendii*), a state species of special concern; and
- Yellow rail (*Coturnicops noveboracensis*), a state species of special concern.

COMMENTS

Comment 1: Define "Qualified Biologist"

Throughout the Biological Resources section of the draft EIR, "qualified biologists" are described conducting habitat surveys, conducting baseline special-status species surveys, preparing project specific mitigation plans, etc. However, the draft EIR does not define what qualifications a biologist must have to conduct surveys, prepare mitigation plans, etc. Please define "qualified biologist" and indicate what qualifications such a person must hold to conduct special-status species surveys, prepare mitigation plans, etc.

For example, CDFW permits typically define the minimum qualifications for individuals conducting special-status species surveys as at least five years of academic training, professional experience in biological sciences, or related resource management activities, with a minimum of two years conducting surveys for the specific special-status species.

Comment 2: Discuss Natural Bridges State Marine Reserve

While the draft EIR states that the Project borders the Monterey Bay National Marine Sanctuary, there is no mention of the Natural Bridges State Marine Reserve (Natural Bridges SMR) with which it also shares a border.

In a SMR, it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource, except under a scientific collecting permit issued by CDFW pursuant to Section 650 or specific authorization from the Commission for research, restoration, or monitoring purposes. Additional information on the Natural Bridges SMR can be found on CDFW's website (<https://www.wildlife.ca.gov/Conservation/Marine/MPAs>).

As Natural Bridges SMR was not discussed in the draft EIR, it is unclear whether the Project would conflict with these policies or otherwise adversely impact marine resources.

Comment 3: Include Information about Natural Bridges SMR on Signage

The draft EIR states that informational and educational signage would be placed at strategic locations along the trail and in parking lots and include information about the Monterey Bay National Marine Sanctuary (see Project Description section). CDFW recommends that signage also include information about the Natural Bridges SMR.

Comment 4: Plan Construction to Avoid Rainy Season

Construction activities conducted during the rainy season could result in release of sediment into streams and aquatic features, and/or take of migrating amphibians. To address such impacts, Mitigation Measure Bio 2 states that:

If feasible, construction activities should take place during the dry season between June 15 and November 1, or until the first rain of the season, especially vegetation removal and work in or near aquatic features, including ditch wetlands.

However, the rainy season in Santa Cruz County often begins as early as October 15. To avoid construction impacts, CDFW recommends that construction activities in and around sensitive habitats be planned and phased to wrap up by October 15. Only minor activities of no more than five days in duration should be initiated after October 15, and such activities should only proceed in upland areas and when the 10-day forecast predicts a less than 30% chance of precipitation. These changes should also be applied to Table 3.4-5.

Comment 5: Additional Protections for California Red-Legged Frog

The draft EIR does not currently include California red-legged frog (CRLF) protections for in-water work. This could result in unpermitted take of this species. CDFW recommends incorporation of additional measures into Mitigation Measure Bio 2 to decrease the likelihood for take of CRLF and other amphibian species:

- A biologist with two or more years of experience working with CRLF and amphibian species should direct and inspect all vegetation and sediment removal activities for CRLF and amphibians that may be found within vegetation or sediment.
- A biologist with two or more years of experience working with CRLF and amphibian species should inspect any vehicle or heavy equipment that is planned to be moved within the construction site for CRLF and amphibian species to ensure that said species have not moved under the vehicle or heavy equipment.
- Any vegetation removed during the Project should be placed directly into a disposal vehicle. Vegetation should not be piled on the ground unless it is later transferred, piece by piece, under the direct supervision of a biologist with two or more years of experience working with CRLF and amphibians.

Comment 6: Use Native Plants and Bioengineering in Slope Stabilization and Erosion Control

Mitigation Measure Bio-8(a) states that:

Arroyo willow riparian forest impacted by slope stabilization activities shall be minimized to the maximum extent feasible. Construction of retaining walls, slope contouring, and other stabilization techniques shall be limited to the footprint of the required work area. Silt fencing and other erosion control measures shall be placed immediately downslope to prevent sediments and debris from entering stream courses and degrading water quality.

CDFW recommends use of bioengineering techniques (e.g., log crib walls, vegetation planting, etc.), when feasible, as a slope stabilization approach. Bioengineering techniques provide

habitat for fish and wildlife resources, whereas other methods, such as rip rap or retaining walls, have limited habitat value.

CDFW also recommends that any ground left barren from construction activities be revegetated with native vegetation found within similar habitat within the same watershed to minimize erosion, prevent establishment of invasive weeds, and accelerate recovery of native vegetation communities.

Comment 7: Cumulative Impact to Biological Resources

The draft EIR states that there may be cumulative impacts associated with operation of the proposed trail. However, operational details have not reached a level of specificity that addresses the Project's contribution to all identified cumulative impacts on biological resources. To mitigate for cumulative impacts, the draft EIR states that a Project-specific biological resources mitigation management plan will be developed.

The Project's potential contribution to cumulative impacts may include a decrease in wildlife connectivity due to the installation of fencing along the trail; increase in deleterious material (e.g., trash, pollutants, etc.) into streams and the ocean due to the increase of visitors to the Project location; and increase in stream flow due to the culverting of ditches and the funneling of storm runoff around the trail. Any cumulative impact to biological resources should be mitigated to the extent possible or avoided. Mitigation measures may include increasing wildlife connectivity through the creation of wildlife bypasses, education of trail visitors regarding leaving no trace while on trails, and ensuring that storm runoff is dispersed as sheet flow along the landscape and not funneled into streams.

CDFW appreciates that during the development of the biological resources mitigation plan, the RTC will consult with CDFW on potential Project impacts to sensitive habitats, stream corridors, riparian habitat, Fully-Protected species, and Species of Special Concern. CDFW also recommends that the draft biological resources mitigation management plan be submitted to CDFW for review.

Comment 8: CDFW review of Wetland Mitigation and Monitoring Plan

CDFW recommends that a draft wetland mitigation and monitoring plan be submitted to CDFW to identify if the Project would appropriately mitigate for impacts to wetlands associated with development and operations.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a California Endangered Species Act (CESA) permit must be obtained if the project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

Cory Caletti
September 18, 2018
Page 5 of 5

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA §§ 21001(c), 21083, and CEQA Guidelines §§ 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code § 2080.

Lake and Streambed Alteration Agreement

CDFW will require a Lake and Streambed Alteration Agreement (LSAA), pursuant to Fish and Game Code §§ 1600 et. seq. for Project-related activities within any 1600-jurisdictional waters within the proposed Project area. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSAA until it has complied with CEQA (Public Resources Code § 21000 et seq.) as the responsible agency.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

Thank you for the opportunity to comment on the Project's draft EIR. If you have any questions, please contact Ms. Monica Oey, Environmental Scientist, at (707) 428-2088 or monica.oey@wildlife.ca.gov; or Ms. Randi Adair, Senior Environmental Scientist (Supervisory), at (707) 576-2786 or randi.adair@wildlife.ca.gov.

Sincerely,


Gregg Erickson FOR
Regional Manager
Bay Delta Region

cc:

Office of Planning and Research – state.clearinghouse@opr.ca.gov
Darren Howe, NOAA – darren.howe@noaa.gov
Chad Mitcham, U.S. Fish and Wildlife Service – chad_mitcham@fws.gov
Jacob Martin, U.S. Fish and Wildlife Service – jacob_martin@fws.gov
Ryan Moroney, CA Coastal Commission – Ryan.Moroney@coastal.ca.gov
Kim Sanders, Regional Water Quality Control Board – Kim.Sanders@waterboards.ca.gov
William Paznokas, CDFW Marine Region – william.paznokas@wildlife.ca.gov
Steven Rienecke, CDFW Marine Region – steven.rienecke@wildlife.ca.gov

Letter 1

COMMENTER: Scott Morgan, Director State Clearinghouse, California Office of Planning and Research

DATE: September 25, 2018

Response 1.1

The commenter states that the State Clearinghouse submitted the Draft EIR to applicable state agencies, including the California Resources Agency; California Coastal Commission; California Coastal Conservancy; Department of Fish and Wildlife, Region 3; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans District 5; Air Resources Board, Transportation Projects; Regional Water Quality Control Board, Region 3, Native American Heritage Commission; Public Utilities Commission; State Lands Commission; and Department of Fish and Wildlife, Marine Region.

The following State agencies submitted comment letters as follows, and these letters are addressed individually.

- California Coastal Commission (Letter 2)
- California Coastal Conservancy (Letter 3)
- California Department of Fish and Wildlife (Letter 4)
- California State Parks (Letter 5)
- California Department of Transportation (Letter 6)

The State Clearinghouse also acknowledges that RTC has complied with CEQA environmental review requirements.

No further response or changes to the EIR are warranted to address Letter 1.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060
 PHONE: (831) 427-4863
 FAX: (831) 427-4877
 WEB: WWW.COASTAL.CA.GOV



September 24, 2018

Cory Caletti, Senior Transportation Planner
 Santa Cruz County Regional Transportation Commission
 1523 Pacific Avenue
 Santa Cruz, California 95060

Re: RTC's North Coast Trail Project Draft Environmental Impact Report

Dear Ms. Caletti:

Thank you for the opportunity to provide comments on the Draft Environmental Impact Report (DEIR) for the Santa Cruz County Regional Transportation Commission's (RTC) proposed North Coast Trail Project in the RTC-owned Santa Cruz Branch Line rail corridor. As noted in our comment letter on the Notice of Preparation (attached), we would like to emphasize that we are fully supportive of development of a Monterey Bay Sanctuary Scenic Trail (MBSST) network as a critical component and central "spine" of the California Coastal Trail (CCT) network through Santa Cruz County, including the north coast segments. Consistent with this statement, we also strongly support the development of a northern Santa Cruz County trail segment, including as outlined in our January 26, 2015 letter in support of Santa Cruz County Regional Transportation Commission's (RTC) Federal Highway Administration grant application for this trail project (also attached). At the same time, we recognize that a project of this sort invariably raises questions and issues regarding potential impacts to coastal resources, and we appreciate the role of the CEQA process for developing supporting information, and in identifying and resolving those questions and issues at the earliest time possible so as to facilitate the Coastal Commission's review of the project. Along those lines, we would note that this letter is not intended to call into question the DEIR's consistency with CEQA, but rather to help identify information needs and to help identify means to resolve potential coastal resource impacts that will need to be addressed under the Coastal Act when the Commission reviews the proposed project. With that in mind, we offer the following observations with regard to the DEIR.

2.1

Jurisdiction and Permitting

As we have previously indicated, the proposed project constitutes both a "federal agency activity" and a "federal development project", and it is therefore subject to the Coastal Commission's federal consistency requirements under the federal Coastal Zone Management Act of 1972 as it applies to federal activities, development projects, permits and licenses. That means that the proposed project is subject to a federal consistency review requirement to evaluate and address the provisions of Chapter 3 of the Coastal Act, and it will require Coastal Commission review and concurrence under the Commission's Federal Consistency authority as correctly identified in the DEIR (DEIR p. 2-34). In any case, we would note that under the Banning Ranch

2.2

case (i.e., *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918) the CEQA document is required to expressly disclose, consider and analyze the jurisdictional claims and regulatory opinions of the Commission.

Project Description

The proposed North Coast Trail project includes a 7.5-mile Class I multi-use bicycle and pedestrian trail along the RTC-owned railroad corridor from Wilder Ranch State Park north to Davenport. The trail is proposed to be 20-foot wide and comprised of a 12-foot-wide paved surface with 2 to 6-foot wide unpaved shoulders on either side, where all of that 20-foot area would be designed to accommodate and be available to trail users. The project also proposes parking improvements at one of the Davenport Beach parking areas (the existing unpaved parking area in the center of town on the seaward side) to provide some 40 formalized public parking spaces, and at one of the Yellowbank/Panther Beach parking areas (also an unpaved parking area) where some 30-50 formalized parking spaces would be provided, in addition to restrooms, bike racks, benches, and an ADA-accessible route to the trail in both cases. Additionally, the project would include new access from the existing Bonny Doon Beach parking lot to the trail, including improvements to help with crossing Highway 1. Project construction activities would include land clearing, grading, paving, retaining walls, shoreline armoring, and striping for the trail and parking lots, landscaping and related development.

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Potential Parking-Related Issues

Parking Supply and Demand

At a very general level, we have concerns regarding how the proposed parking lot improvements overall appear to decrease the number of existing parking spots at key North Coast access and recreation locations (i.e., from 54 to 43 parking spots in the Davenport lot, 160 to 48 spots at Yellowbank/Panther Beach lot, and from 55 to 48 at the Bonny Doon Beach lot). Although we agree that the project overall has the potential to simultaneously *reduce* parking demand (e.g., by getting folks onto bicycles and walking the new trail), and that future projects that RTC may consider could as well (e.g., rail passenger service), parking demand on the North Coast, particularly on summer days, is likely to remain high for the foreseeable future, and a decrease in parking supplies raises some concern along the North Coast given its ever increasing popularity as a visitor destination. Although we appreciate the analysis, the DEIR does not appear to fully consider ways in which such parking spaces might be maintained and/or potentially made up for elsewhere (including via shifts in demand), and it would be helpful if the RTC could further evaluate such questions, including potential alternative design options that might include more parking (particularly at the Yellowbank/Panther Beach lot). As we previously noted, ideally this evaluation would also look holistically at public parking on the North Coast as a whole system, and the manner in which these proposed parking lot improvements are understood in relation to other parking areas and improvements. It is possible that compensatory parking may need to be considered (e.g., in Davenport, formalizing the unpaved parking area to the north and better connecting it to this new parking lot location, the trail, and Davenport as a whole, etc.), and we hope that the RTC can explore such possibilities as the project is refined. Again, we understand

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that the project is an overall public access enhancement that as a whole should overall reduce parking demand to some degree (as could complementary projects moving forward), but we will need the above-described additional information about parking supply and demand for the Commission's consideration of the project.

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(cont'd)

Parking Restrictions

With regard to the proposed changes to individual parking areas, the DEIR states that "[i]t is anticipated the parking lots providing access to the trail would be closed from 12:00am to 5:00am" (DEIR p. 2-27). This statement raises some Coastal Act concerns. As we indicated in our NOP comments, the public access and recreation policies of the Coastal Act and the LCP require that public access to the coast be "maximized," including for public parking, where the typical Commission starting point for evaluation is that public parking areas are operated for free public parking 24-hours a day. When parking restrictions are proposed, such as the time restrictions here, they need to be narrowly focused and based on solving clearly identified problems, where the solutions to the problems are limited as much as possible to appropriately address the problems while also not unduly limiting bonafide public access needs, including parking access at night. Thus, any proposed parking restrictions need to be supported by actual data and alternatives analyses, including a showing that other less impactful means of addressing identified problems (e.g., via providing trash cans, increased patrols, etc.) has not been successful or is not feasible and that the proposed method is narrowly tailored to address the issue (e.g., minimizing the amount of time lots are closed, such as from 2-4 am only). Any proposed parking restrictions will need to be supported by the RTC with this type of information, and we would be happy to consult on this issue as the project is refined.

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Davenport Parking Lot and Improvements

It appears that the proposed design for the Davenport "North" lot would potentially impact parking access and availability to the "South" lot. As we previously indicated, the "South" lot is subject to a Coastal Commission-issued CDP that includes specific requirements for maintaining the parking in that form. Thus, and as we have discussed with you (as well as with County staff and the underlying property owner), we would encourage the RTC to evaluate alternative parking designs that include both the North and South lots, provided that the ultimate outcome enhances public parking and public access utility, including through potentially developing a portion of the South lot for more passive park related pursuits as have long been desired by the Davenport community. It would be helpful if the DEIR evaluated such options so that any subsequent reviews can make use of that information.

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In addition, we note that the DEIR discusses the possibility of using formalized public restrooms with plumbed connections to water/power utilities with flush toilets as an alternative to the proposed pit toilets at the Davenport site. We strongly support the use of a plumbed connection, including with working sinks as it is clear that this site is central to not only the trail, but also as a hub for visitors to Davenport, and the restroom will ideally reflect this status and provide the best possible services to the public in that context. Also, we hope that the RTC can spend some additional time exploring how siting and design of the paved lot can be accomplished in a

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manner that doesn't block or impair shoreline and ocean views, and that can enhance the significant viewshed out towards the ocean across this lot (e.g., grading/lowering the elevation of the parking area, landscaping for screening and aesthetics, colored concrete, water quality features, etc.) as required by the LCP (including LCP Policy 2.13.5 and Figure 2-5). We have some experience with this at this very location from our efforts with the aforementioned CDP, and would be happy to consult with the RTC on this point. Finally, we strongly support pedestrian crossing improvements for Highway 1 in Davenport, and look forward to working with the RTC, Caltrans, the Davenport community and others to ensure that such provisions can be part of the final refined project in a way that connects and coordinates with public access and recreation features and vehicular needs consistent with the Coastal Act's public access and recreation mandates.

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Other Potential Environmental Impacts

Biological and Ecological Impacts

The Commission's staff ecologist, Dr. Lauren Garske-Garcia, has reviewed relevant portions of the DEIR and provided comments in the attached memorandum, incorporated here by reference. Overall, her conclusions were that the RTC and their team were thorough in the evaluation of the proposed project's potential biological and ecological impacts, and that the mitigation measures proposed were generally appropriate, feasible, and would go a long way toward minimizing these impacts. The DEIR provides a comprehensive analysis of the diverse ecological resources occurring within the project area, and draws from a wide array of up-to-date resources in addition to relying on significant field efforts to identify sensitive species, key ecological functions and values that may be vulnerable. It is evident that our discussions at the February site visit were taken in earnest, and we very much appreciate the RTC's efforts in that regard. Our comments in the attached memo are primarily motivated by a need for some points of clarification rather than citation of omissions or gross misinterpretations, and are not inconsistent with those provided in the September 18, 2018 California Department of Fish and Wildlife letter.

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Geology/Soils and Shoreline Armoring

To the extent that shoreline armoring is proposed as part of the project, the Coastal Act requires a four-part test to be met to allow it: (1) there is an existing structure, (2) that existing structure is in danger from erosion, (3) shoreline-altering armoring is required to protect the existing endangered structure; and (4) the required armoring is designed to eliminate or mitigate shoreline sand supply impacts, and avoid and mitigate other coastal resource impacts (e.g., on public access, public views, etc.). The first three questions relate to whether the proposed armoring is necessary, while the fourth requires implementation of the alternative that will have the least impact to coastal resources, while mitigating for any remaining impacts. If any armoring is proposed as part of the project, the RTC will need to provide an evaluation of the type identified above. We note in advance, as we did at the NOP stage, that the RTC will need to carefully examine potential Davenport Beach slope repair alternatives designed to protect the railroad track and proposed trail (e.g., shoreline armoring, trestle, bridge, caissons, inland relocation of track and trail), and examine San Vicente Creek flow and outlet to determine whether inland

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drainage problems are causing/contributing to bluff erosion and, if so, evaluate options for addressing such problems.

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Design Plans and Alternatives Analysis for Bridge at Station 115

Alternatives should be focused on minimizing any viewshed impacts from existing public vantages (e.g., Highway 1), including through the use of appropriate siting and design, including in terms of bridge coloration and railing design. In this regard, it would be helpful for the DEIR to provide visual simulations to show the visual impact of each alternative.

2.12

Recreation/Public Access

The DEIR identifies the locations of existing cross-track trails between Highway 1 and the blufftop and beach, and identify locations of all trails to be retained and/or closed/consolidated. (DEIR pp. 2.20-2.22). Any proposed closure of existing trails may raise public access concerns, needs to be supported by evidence of need (e.g., habitat degradation, safety, etc.), and the RTC will need to identify all such evidence, as well as offsetting mitigation for any access proposed to be eliminated. We would suggest that these impacts, and potential mitigations, should be evaluated in the "Recreation" chapter of the DEIR, and we stand ready to consult on such issues as the project is further refined. In addition, it would be helpful for the DEIR to clarify if the proposed project also includes spur trails to blufftops and beaches (or just includes the main north/south trail and connections to parking areas), as well as any improvements to such trails proposed and property owner consent for same.

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In addition, the DEIR should identify the locations of all proposed fencing and signs intended to consolidate/funnel foot traffic between Highway 1 and the trail as much as possible, as well as to the blufftop and beach. The siting and design of all such fencing and signs should be described, as well as all measures designed to limit fencing to the maximum extent feasible, and to ensure it is visually compatible with the surrounding area and does not block views or wildlife passage. All alternatives to fencing for purposes of avoiding conflicts with agricultural activities (e.g., use of bollards) should be identified and corresponding impacts detailed. Again, any proposed fencing that will impact existing public trails raises public access concerns and questions, and the need for such fencing will need to be justified with factual evidence when the project is reviewed by the Commission. Ultimately, as the project is further refined, the specific siting and design (including actual wording, examples etc.) of all proposed signage (e.g., parking lots, pathways, etc.) will need to be clearly identified. And again, we stand ready to consult on such issues as the project is further refined.

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Other

In addition to the above, we believe that the project would be strengthened by additional supporting information, including as follows:

- The DEIR indicates that the proposed project would require the RTC to obtain property rights from California State Parks and others for portions of the trail outside the RTC's property, and the same appears to apply to other project elements (including parking areas,

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connecting trails, restrooms, etc.). Please ensure that provisions for such property acquisitions are identified as soon as possible, including as it will be key to Commission authorization to understand underlying property ownerships and rights.

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- As you know, there has been substantial discussion and coordination about North Coast public access provisions over the years, and the RTC has been a central figure for much of that recent discussion. We believe that the project context could benefit from a narrative description of past and ongoing coordination with Santa Cruz County, State Parks, State Lands, the Bureau of Land Management, Trust for Public Land, tribal groups, private property owners, homeowner and community associations, agricultural operators, bicycle and hiking groups and others, and would suggest that RTC summarize such efforts for project context.

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In closing, we just wanted to again identify our strong support for this project. As indicated at the onset, and as we have indicated and discussed with the RTC many times before, we believe this to be an important public recreational access improvement for Santa Cruz County's North Coast, and we look forward to helping to bring it to fruition as soon as possible. Toward that end, we hope that these comments can help the RTC as you further refine and develop the project and its supporting documentation, and we are very much available for consultation in that effort moving forward. We hope that such continued collaboration will prove helpful, including so that the RTC can present the best possible version of the project to the Commission when the Commission considers the federal consistency determination in the future. As always, if you have any questions or would like to discuss this matter, please don't hesitate to contact me at any time.

2.18

Sincerely,



Ryan Moroney
Central Coast District Supervisor
California Coastal Commission

Attachments:

January 26, 2015 letter to Federal Highway Administration

October 16, 2017 letter to RTC (on DEIR Notice of Preparation)

September 19, 2018 DEIR memo from Commission Ecologist Dr. Lauren Garske-Garcia

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MEMORANDUM

FROM: Lauren Garske-Garcia, PhD, Ecologist
 Ian Nomura, Graduate Student Intern – Ecology Group

TO: Dan Carl, Deputy Director
 Ryan Moroney, Central Coast District Supervisor
 Larry Simon, Federal Consistency Unit

SUBJECT: Santa Cruz County Regional Transportation Commission DEIR “North Coast Rail Trail”

DATE: September 19, 2018

Materials Reviewed:

- Executive Summary
- Chapter 1.0 - Introduction
- Chapter 2.0 – Project Description
- Chapter 3.4 – Biological Resources
- Appendix A – Alignment Exhibits
- Appendix G – Biological Resources Supporting Documentation

Overall, the RTC and their team were refreshingly thorough in their evaluation of the Project’s ecological impact and the mitigation measures proposed are appropriate, feasible, and would go a long way toward minimizing these impacts. The DEIR provides a comprehensive analysis of the diverse ecological resources occurring within Project corridor, and draws from a wide array of up-to-date resources in addition to relying on significant field efforts to identify sensitive species, key ecological functions and values that may be vulnerable. It is evident that our discussions at the February site visit were taken in earnest and that there has been movement to adapt guidance provided then into the draft. Our comments are primarily motivated by points of clarification rather than citation of glaring omissions or gross misinterpretations, and are not inconsistent with those provided by CDFW staff in their 9/18/18 letter.

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GENERAL

1. Not having reviewed **the Master Plan for the project, it’s not clear how this and that document relate** but we did note that there are recommendations for protecting maternity bat roosts in the Master Plan with a 500-

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foot buffer and yet, in this document, the recommended mitigation is a 100-foot buffer. Clarification as to how these documents align and where deviations occur, why those are appropriate, would be helpful. 2.20 (cont'd)

2. It does not appear that NOAA/NMFS has been engaged at all in this process and we assume that this would be achieved through the USACE permitting process via consultation for salmonid issues. It would be **prudent to bring NOAA/NMFS into the discussion given the presence of Coho and steelhead**. For example, it is known that a fraction of steelhead smolt in the area have been moving between creeks and rivers between Pescadero and Soquel Creek, including sometimes returning to their natal sites, over a matter of days. This is unprecedented and has potentially very interesting implications when considering regional impacts to the population. 2.21

3. Within the narrative, global and state rankings were not included for the various vegetation communities and species. **For the communities, it was not always clear which alliances and associations were being identified (consistent with the CDFW Natural Communities list (2018))**. Specifically: 2.22

- a. *Rubus* [scrub] alliance – is this meant to refer to Coastal brambles (Alliance CaCode: 63.901.00, G4/S3)?
- b. Arroyo willow scrub seems to refer to the Arroyo willow thickets (Alliance CaCode: 61.201.00, G4/S4) and namesake association (Association CaCode: 61.201.01, sensitive)?
- c. Arroyo willow riparian forest cited as including *Salix lucida* among other tree species perhaps also refers to the Arroyo willow thickets alliance and more specifically, the *Salix lasiolepis-Salix lucida* association (Association CaCode: 61.201.04, G3)?
- d. How does “Mixed Coastal Scrub Alliance” fit in the CDFW list? Later in the document, some further clarification seems to be offered when referencing the *Baccharis pilularis-Frangula californica-Rubus* spp. alliance (Association CaCode: 32.060.30, provisional/sensitive) and *Baccharis pilularis-Eriophyllum staechadifolium* alliance (Association CaCode: 32.060.01, sensitive).

4. Relating to the discussion on p. 3.4-21, we note that: 1) the **Coastal Act does not specifically list habitat types as ESHA** but rather, establishes the three criteria for recognizing ESHA; 2) we consider **rarity rankings at either the global or state level of 1-3 as sensitive**, it is not strictly bound to state rankings and so where associations do have a qualifying global ranking, this meets our criteria for sensitivity. 2.23

5. Further relating to our determination of ESHA, we clarify that there are three criteria for consideration – (a) **rarity or** qualification as ‘especially valuable habitat’ (EVH), **and** (b) sensitivity to disturbance. Rarity and sensitivity are correctly addressed but the **consideration of EVH is absent**. Admittedly, it is more nuanced and typically determined on a case-by-case basis. Here, the DEIR lays out the same rationale we would employ to **recognize the coast live oak forest as EVH, particularly given their maturity and important role for a variety of sensitive species including bats**. Similarly, this would apply to woodrat homes even if the species itself was not protected. That said, the error is inconsequential at this stage because other authorities (i.e. CEQA and the County LCP) do recognize these but it is something that we would like to see clarified in the FEIR.

6. **We should have explicit review authority** over the Project-specific Biological Resources Mitigation and Management Plan as well as the Wetland Mitigation and Monitoring Plan. Reports should also be provided to the Commission. At several points in the draft, this authority is recognized only for USFWS and CDFW. 2.24

7. Of significant concern is mitigation for **potential increases in transient encampments along the trail corridor and their ongoing impacts** to habitat and sensitive wildlife. We would like to see further discussion on this point. 2.25
8. Perhaps it was addressed in other sections, but it would be **worth considering use of bioswales to manage smaller stormwater drainages**. The nature of the nine culverts channeling flow from the inland side of Hwy 1 to the coast do not appear to be well-described – it would be **helpful to understand what ecologically-favorable options there may be to improve these for wildlife and habitat**. **Bioengineering alternatives for slope stabilization** should also be explored and implemented when feasible. 2.26

SPECIES

9. In the field back in February, we had some discussion regarding the **observation of bank swallows (*Riparia riparia*) along the southern portion of the alignment**. On p 3.4-5, there is mention of assessing trail alignments for them (as well as for burrowing owls, *Athene cunicularia*) but then nothing further – were these not found? In Appendix G, they are reported as ‘Not Expected’ and with the nearest occurrence as being Point Año Nuevo. This seems to contradict our previous field discussion. 2.27
10. We seem to recall a passing discussion sometime several years ago that suggested the use of culverts for CRLF passage in the Davenport area failed to perform as intended, that the **frogs did not use the culverts and mortality was not reduced** with crossing Hwy 1. Though the specifics presently evade us, we recommend looking into this as mitigation proposed for the species is considered further. 2.28
11. Impacts to CRLF are anticipated due to increased usage of the trail, which falls within CRLF habitat. While interpretive signage is generally provided for in the DEIR, signage directly pertaining to the threatened status of CRLF and its identification may help to reduce harassment, injury, and mortality to CRLF encountered on the trail due to trampling and bicycle strikes and thus further mitigate this impact. The same is true for other sensitive species and should be **incorporated into the interpretative products**. 2.29
12. Mitigation Measure BIO-4 refers to establishing buffers for nesting birds in consultation with USFWS and/or CDFW. We note that the **Commission typically applies a 500-foot buffer for raptors and 300-feet for other species**. The referenced **PG&E (2015) Nesting Bird Management Plan is perplexing and does not appear in the citations** provided in Appendix G – where is this document coming from and why is it considered appropriate for this project? It should be available for review if there is intent to rely on it. 2.30
13. As noted in Item 1 above, in Mitigation Measure BIO-5 **for bats, the 100-foot minimum buffer to be established around maternity colonies appears to be inconsistent with the Master Plan and further, raises some concern as being insufficient**. Please provide the basis for this recommendation, as bats are quite sensitive to noise disturbance – a larger buffer seems likely necessary. 2.31
14. In Mitigation Measure BIO-6 **for woodrat protections, please add us to the entities receiving reports** on any relocation and monitoring of woodrat houses. 2.32
15. We emphasize the **importance of using wildlife-permeable fencing throughout the project area**. The proposed fencing between the trail and rail is a 4.5-foot 7-string post and wire style, which we expect larger wildlife to be able to pass over. However, ground-dwelling species are likely to have a more difficult time 2.33

passing through but not be excluded completely, thus setting up a situation that risks entrapment when attempting to flee and/or stressed. Consider a 5-string post and wire style that would allow for easier wildlife movement along the ground (i.e. with omission of the lower two wires from the present design). For locations where fencing may be necessary along the trail and adjacent lands, post and wire and split-rail fencing are appropriate options.

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MONITORING, MITIGATION AND MANAGEMENT PLANS

16. Mitigation Measure BIO-8(c) provides a good first step towards the development of a Project-specific Plan including identification of goals. We note that a full Plan will necessarily include a statistically-robust sampling plan that is well-justified by the goals and objectives; employs appropriate reference sites; specifies criteria for assessment; triggers for and nature of adaptive management strategies, presented as a menu of options for various scenarios; and so forth. We are happy to provide direct guidance on this topic as that time approaches. We do note that the **measure cites minimum no-net-loss for mitigation ratios, which the Commission typically exceeds**. While this is ultimately determined on a case-by-case basis and can take into consideration the specific resources as well as the spatial and temporal losses of function, we generally employ a 4:1 ratio for wetlands and 3:1 ratio of ESHA.
17. As previously stated, the **Commission needs to be included in review of the Wetland Plan** (Mitigation Measure BIO-9(b) as well.
18. The DEIR discusses compensatory mitigation in the context of either occurring on-site or on adjacent State Park lands on the coastal side of the alignment, and this does reflect previous conversation we've had with FHWA and their consultants. Having also recently volunteered consideration of their potentially funding other appropriate local projects as an option, **any such mitigation options that are identified as viable should be included in the FEIR.**

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CALIFORNIA COASTAL COMMISSION

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October 16, 2017

Cory Caletti, Senior Transportation Planner
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, California 95060

Re: North Coast Rail Trail Project Notice of Preparation

Dear Ms. Caletti:

Thank you for the opportunity to provide comments on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the proposed North Coast Rail Trail Project. As a preliminary matter, we would like to emphasize that we are fully supportive of development of the Monterey Bay Sanctuary Scenic Trail (MBSST) network as a critical component and central “spine” of the California Coastal Trail (CCT) network through Santa Cruz County, including the north coast segments. Consistent with this statement, we also strongly support the development of a northern Santa Cruz County rail trail segment, including as outlined in our January 26, 2015 letter in support of Santa Cruz County Regional Transportation Commission’s (RTC) Federal Highway Administration grant application for this project (see attached). At the same time, we recognize that a project of this sort invariably raises some questions and issues, and can appreciate the role of the CEQA process in identifying and resolving same. With that in mind, we offer the following observations with regard to the NOP.

Jurisdiction and Permitting

As we have previously indicated, the proposed project constitutes both a “federal agency activity” and a “federal development project”, and it is therefore subject to the Coastal Commission’s federal consistency requirements under the federal Coastal Zone Management Act (CZMA) of 1972 as it applies to federal activities, development projects, permits and licenses. For the purposes of this project, that means that the project is subject to a federal consistency review requirement to evaluate and address the provisions of Chapter 3 of the California Coastal Act of 1976 and will be reviewed under the Commission’s Federal Consistency authority (15 CFR 930). Depending on a variety of factors, it is also possible that the bulk of the federal consistency requirements can be addressed through coastal development permit (CDP) processes as well, but it is too early to conclude on which processes would best be applied in this case. For now, please ensure that the DEIR identifies the federal consistency and CDP requirements that accrue to the proposed project. Accordingly, under *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, the CEQA document is required to expressly disclose, consider and analyze the jurisdictional claims and regulatory opinions of the Commission.

Project Description

The proposed North Coast Rail Trail project includes a 7.5-mile Class I multi-use bicycle and pedestrian trail along the RTC-owned railroad corridor from Wilder Ranch State Park on the south to Davenport on the north. The trail would generally be 20 feet wide and comprised of a 12-foot-wide paved surface with 4-foot wide unpaved shoulders on either side, where all of that 20-foot area would be designed to accommodate and be available to trail users. The project also proposes parking improvements at one of the Davenport Beach parking areas (the existing unpaved parking area in the center of town on the seaward side) to provide some 40-formalized public parking spaces, and at one of the Yellowbank/Panther Beach parking areas (also an unpaved parking area) where some 30-50 formal parking spaces would be provided, in addition to restrooms, bike racks, benches, and an ADA-accessible route to the trail in both cases. Additionally, the project would include new access from the existing Bonny Doon Beach parking lot to the trail, including improvements to help with crossing Highway 1. Project construction activities would include land clearing, grading, paving and striping for the trail and parking lots, landscaping and related development.

Parking Area-Related Issues

The proposed project raises a series of issues related to the parking areas involved that the DEIR needs to fully analyze and explore. With respect to the existing unpaved informal parking area in the middle of Davenport that would be improved, we note that the downcoast portion of that parking area is subject to a Coastal Commission-issued CDP that includes specific requirements for maintaining the parking in that form. As we have discussed with RTC staff, as well as County staff and the property owner, we are open to alternative parking designs in that area provided that the ultimate outcome enhances public parking and public access utility, including through developing a portion of that area for more passive park related pursuits. The DEIR needs to evaluate such options so that any subsequent reviews can make use of that information, and needs to note that a CDP amendment is likely to be required to effect solutions on the CDP-engendered portion of the property.

On that point, the current capacity of the parking area is approximately 100 cars whereas the proposed paved lot capacity is approximately 40 cars. The potential loss of 60 public parking spaces in that scenario is problematic from a public access and recreation standpoint as parking can be scarce during high demand (and other) times in Davenport given it is a popular visitor destination. The DEIR needs to consider ways in which such parking is not lost and/or is made up for elsewhere, and thus needs to evaluate potential alternative design options that include more parking, including ways in which the existing number of parking spots might be able to be maintained to the maximum extent feasible. Any such evaluation needs to look at public parking in the Davenport area as a whole system, and the manner in which this parking lot is understood in relation to other parking areas. It is possible that compensatory parking may need to be provided nearby (e.g., formalizing the unpaved parking area to the north and better connecting it to this new parking lot location, the trail, and Davenport as a whole, etc.), and the DEIR needs to explore such possibilities.

In addition, for this location the DEIR needs to evaluate the possibility of using formalized public restrooms with plumbed connections to water/power utilities with flush toilets as an alternative to the proposed pit toilets. It is clear that this site is central to not only the trail, but it is a hub for visitors to Davenport, and the restroom will ideally reflect this status and provide the best possible services to the public in that context. Finally, the DEIR should provide details on how siting and design of the paved lot can be accomplished in a manner that doesn't block or impair shoreline and ocean views, and that can enhance the significant viewshed out towards the ocean across this lot (e.g., grading/lowering the elevation of the parking area, landscaping for screening and aesthetics, colored concrete, water quality features, etc.) as required by the LCP (including LCP Policy 2.13.5 and Figure 2-5).

With respect to the improvements at the Yellowbank/Panther Beach parking area along Highway 1, we similarly have concerns about the potential loss of parking spaces at this site. It appears there are currently over 100 unformalized parking spaces available to the public, and that would be reduced to 30-50 spaces with the proposed project. As with the Davenport parking lot, the DEIR needs to evaluate ways to ensure that public access is not reduced via loss of parking at this location, including the potential for additional spaces at the parking areas in question, and potential nearby options. We also have concerns, with respect to safety and need, regarding the design aspects to limit ingress and egress here by establishing a channel between the highway and the parking area. Alternative design options that retain more parking, including an alternative that proposes no improvements or minimal improvements, need to be considered in the DEIR for this site. The DEIR needs to evaluate these issues thoroughly, including providing a thorough and detailed justification for any proposed reduction in parking at this location, and needs to evaluate alternatives and options to avoid loss of parking.

In addition, the DEIR must include information on the current use levels of all impacted parking areas, and an inventory of current public parking areas in the project area between Davenport and Wilder Ranch. It would also be helpful to understand how the proposed trail improvements might be expected to offset such impacts (i.e., is it expected that more people will access these sites by walking and/or biking, as opposed to driving), and the DEIR needs to include such an analysis. It will also be critical to identify all affected properties, all affected property owners, and the manner in which the RTC has property rights and permission to construct all project parking lot-related components (including connecting trails, restrooms, etc.) at the earliest possible stage, including because such ownership issues need to be resolved prior to pursuing any Coastal Commission authorizations necessary for the proposed project.

Finally, the public access and recreation policies of the Coastal Act and the LCP generally require that public access to the coast be "maximized," including for public parking where the starting point for evaluation under the DEIR needs to be free public parking 24-hours a day. Any lesser amount of parking (e.g., time restrictions) need to be narrowly focused and based on problems that are persistent and acute, where there are no other feasible options to appropriately address the identified problems. Thus, any proposed parking restrictions must be supported by actual data and alternatives analyses, including a showing that other less impactful means of

addressing identified issues (e.g. providing trash cans, increased patrols, etc.) has not been successful or is not feasible and that the proposed method is narrowly tailored to address the issue (e.g., minimizing the amount of time lots are closed, such as from 2-4 am only). The DEIR analysis needs to reflect these points.

Trail-Related Issues

The NOP indicates that the DEIR will evaluate the proposed project as well as a “rail-to-trail” alternative (i.e., removal of the existing railroad tracks and ties to enable construction on the current track alignment) at an equal level of detail. The NOP also indicates that other project alternatives will also be considered. We understand that rail portion of the ‘rail-trail’ has raised concerns for some over the years, and continues to at the current time, and that it is appropriate for the DEIR to identify a reasonable range of alternatives to respond to these concerns. At the same time, we strongly suggest that the DEIR not get bogged down in the minutiae of the various rail options inasmuch as at its core the proposed project is a trail project and public access improvement project. Yes, rail issues are engendered by the proposed project given the physical reality of the rails being present in the corridor and the fiscal reality that the property was purchased subject to a commitment to provide rail service on it, but in many ways rail issues are secondary in terms of the current trail and parking lot proposal, and we would hope that the DEIR process recognizes that, including by ensuring that any preferred project does not outright preclude future rail service options on the property. Those issues need not be fully resolved in this project context if that is the case.

At the broadest level, both of the NOP-identified alternatives include a developed coastal trail, and we continue to be very supportive of the trail itself. The MBSST network when fully developed will offer one of the most significant and valuable pedestrian and bicycle transportation networks in the country, and will constitute a continuous critical spine of the CCT through this region.¹ This multi-use bicycle/pedestrian trail will provide both locals and the many visitors to Santa Cruz a sustainable transportation option for accessing some of the most stunning beaches, coastal terraces and hills, and redwood forests of our nation. The benefits provided by the MBSST are at the heart of what federal, state and local programs, including the Coastal Act and City and County LCPs, are aiming to achieve in transportation systems that are sustainable. This trail system will help to transform transportation in Santa Cruz by offering safer, greener, and healthier options for bicycling and walking. Residential areas will be connected to employment districts, schools, downtown areas, parks, beaches, and community centers that line the coast. The MBSST will help advance the state and local sustainability measures of improved coastal access and recreation, mobility, environment, safety, economic vitality and health as well as reduce greenhouse gas emissions. The MBSST will also be an important link in the 1270 mile long statewide CCT system, a high priority trail that is currently about 60% complete.

¹ A *continuous* trail along California’s shoreline has long been a collective objective for California’s coastal zone, including as articulated in 1972’s Proposition 20 (the “Coastal Initiative”) and 1976’s Coastal Act. Further details on CCT alignment principles, including continuity and proximity to the sea, may be found in the document “Completing the California Coastal Trail” prepared by the State Coastal Conservancy in 2001.

Proposed Project. According to the NOP, the trail would be constructed primarily on the seaward side of the existing railroad tracks and include safety fencing between the trail and tracks, as presented in the MBSST Master Plan. The proposed project would require that the RTC obtain property rights from California State Parks and others for portions of the trail outside the RTC's property. Again, it will be critical to explicitly identify all affected property ownerships, and the manner in which the RTC plans to obtain property rights to those areas at the earliest possible stage, including because such ownership issues need to be resolved prior to pursuing any Coastal Commission authorizations necessary for the proposed project.

We also note that the proposed project leaves open options for future rail service, as required by the funding that allowed the RTC to acquire the property. As such, it does not raise concerns about any significant impacts that might accrue to the proposed project by virtue of an option that somehow eliminates the rail component. The DEIR should explain how the rail area that would be maintained would be treated in the interim during the time period that it is not used for rail (e.g., landscaping etc.) If it is left alone, it is reasonable to presume that the rail line may have an adverse visual impact on the trail experience due to both the separation fence as well as train tracks that are likely to appear abandoned, and occupied by what one can only surmise would be weeds absent landscaping and/or other aesthetic treatments. The DEIR should therefore evaluate and address the impacts of keeping the tracks in place for this reason, including mitigations to address adverse impacts. The DEIR should also evaluate and explain whether these tracks themselves would be used for future rail, or whether future rail service would require new tracks for the expected equipment in any scenario. Depending on the nature of that analysis, the DEIR may evaluate whether removal of tracks now has a coastal resource/environmental benefit in the interim.

Rail Alignment Alternative. In the rail alignment alternative, the trail itself would be generally the same design as the proposed project, but it would be located slightly further inland along the alignment of the existing railroad tracks. In this alternative, the existing railroad tracks and ties would be removed to enable construction of the trail on the current track alignment, and the project would not include a fence to separate the trail from the rail. This alternative would be entirely located on RTC's property, and thus would not require property to be obtained.

The rail alignment alternative shares the same general trail as the proposed project, and we support it for those same reasons. This alternative may also result in fewer coastal resource impacts (e.g., to environmentally sensitive habitat and landforms) given it would be constructed in an already developed and disturbed area. At the same time, the DEIR needs to explain the manner in which the rail apparatus would be removed, how that area would be treated to prepare it for a trail (including in terms of any hazardous or other materials removal, grading (such as berm removal) to create the level trail area, etc.), and any associated differences in construction as a result. We do have concerns with this alternative in terms of the potential for it precluding future rail options, including due to the requirements that adhere to rail from RTC's funding sources for the property. The DEIR will need to fully explain the manner in which taking out the

rail now affects the potential for future service, and needs to explain the manner in which doing so can be rectified to funding requirements and related obligations. If the conclusion is that future service is not precluded because the RTC will still have enough property to allow for future rail service in the future, then the DEIR needs to evaluate the effect of such potential rail on the trail experience (e.g., if the rail would be then located seaward of the trail, that would have an adverse impact on the trail user experience, relatively speaking, then if it were inland of the trail). If the conclusion is that future rail service would be precluded, then the DEIR should explain the ramifications of such an outcome, including in terms of funding issues. In addition, such a conclusion will require an analysis of what treatment, if any, would be applied to the remainder of the RTC property seaward of the existing rail location, and the effect that foreclosing the possibility of future rail has on recreational opportunities to the North Coast, particularly in relation to rail access to the town of Davenport, the Cotoni-Coast Dairies National Monument, and the potential reuse of the Cemex plant. We would also note that a substantial portion of the existing rail line is located in a fairly deep cut/ravine, and thus may be a less preferable alignment with regard to the recreational user experience in terms of views and openness etc., and the DEIR will need to clearly explain these differences and the manner in which they affect the overall user experience.

Other Potential Alternatives. By letter dated June 1, 2017, Pam Silkwood, on behalf of some north coast property owners and farmers, proposed a third alternative that would utilize existing roads and trails near the bluffs to locate the trail. We note that this proposed alternative raises a series of questions that would need to be addressed, not the least of which is the fact that much of the property at issue is owned by others than the RTC. In addition, although a trail at these blufftop locations would be closer to the ocean, which is consistent with CCT siting principals, we also note that it raises questions about potential erosion and long-term stability of the blufftop areas in question that would need to be addressed. It is also unclear how such alternative would ensure a continuous CCT in the project area. The DEIR would need to evaluate these issues for comparison with other alternatives if it evaluates this alternative. We note that one way in which to understand this proposal is as an adjunct series of trail offshoots and spurs from the main CCT spine along the RTC property. We are supportive of an option that includes such blufftop trail segments *in addition to* the CCT spine, but it is not clear to us that the blufftop suggestion can alone achieve project objectives. In this sense, we believe that this proposed alternative represents a complimentary proposal and aspect to the project as proposed, and we are supportive of this alternative in that context, and the DEIR exploring that option in that way.

Probable Environmental Impacts

The NOP indicates that the proposed project will require DEIR evaluation of impacts in the following key environmental categories: aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, greenhouse gas emissions/climate change, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, recreation, transportation/circulation, and tribal cultural resources. The list identified appears encompassing enough to frame project related impacts and appropriate mitigations, including in terms of

potential alternatives to avoid identified impacts. We offer the following additional comments for DEIR consideration on these points.

Geology/Soils and Shoreline Armoring. To the extent that shoreline armoring is proposed as part of the project, the Coastal Act requires a four-part test to be met to allow it: (1) there is an existing structure, (2) that existing structure is in danger from erosion, (3) shoreline-altering armoring is required to protect the existing endangered structure; and (4) the required armoring is designed to eliminate or mitigate shoreline sand supply impacts, and avoid and mitigate other coastal resource impacts (e.g., on public access, public views, etc.). The first three questions relate to whether the proposed armoring is necessary, while the fourth requires implementation of the alternative that will have the least impact to coastal resources, while mitigating for any remaining impacts. If any armoring is proposed as part of the project, the DEIR will need to provide an evaluation of the type identified above. We note in advance that the DEIR needs to carefully examine potential Davenport Beach slope repair alternatives designed to protect the railroad track and proposed trail (e.g., shoreline armoring, trestle, bridge, caissons, inland relocation of track and trail), and examine San Vicente Creek flow and outlet to determine whether inland drainage problems are causing/contributing to bluff erosion and, if so, evaluate options for addressing such problems.

Design Plans and Alternatives Analysis for Bridge at Station 115. Alternatives should be focused on minimizing any viewshed impacts from existing public vantages (e.g., Highway 1), including through the use of appropriate bridge coloration and railing design. The DEIR needs to provide visual simulations to help show the visual impact of each alternative.

Recreation/Public Access. The DEIR needs to identify the locations of existing cross-track trails between Highway 1 and the blufftop and beach, and identify locations of all trails to be retained and/or closed/consolidated. Any proposed closure of existing trails may raise public access concerns, needs to be supported by evidence of need (e.g., habitat degradation, safety, etc.), and the DEIR will need to identify all such evidence, as well as offsetting mitigation for any access proposed to be eliminated. In addition, the DEIR needs to clarify if the proposed project also includes spur trails to blufftops and beaches (or just includes the main north/south trail and connections to parking areas), as well as any improvements to such trails proposed and property owner consent for same.

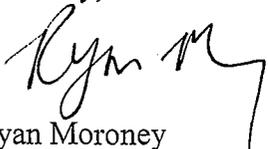
In addition, the DEIR should identify the locations of all proposed fencing and signs intended to consolidate/funnel foot traffic between Highway 1 and the trail as much as possible, as well as to the blufftop and beach. The siting and design of all such fencing and signs should be described, as well as all measures designed to limit fencing to the maximum extent feasible, and to ensure it is visually compatible with the surrounding area and does not block views or wildlife passage. All alternatives to fencing for purposes of avoiding conflicts with agricultural activities (e.g., use of bollards) should be identified and corresponding impacts detailed. Again, any proposed fencing that will impact existing public trails raises public access concerns and questions, and the need for such fencing will need to be justified with factual evidence.

Other. The DEIR should also strive to address each of the following issues at the earliest stage possible as each of these issues will need to be resolved prior to pursuing any Coastal Commission authorizations necessary for the proposed project:

- Clarify beach ownership at Davenport slope repair site (e.g., State Lands Commission, private, etc.).
- Describe past and ongoing coordination with the County, State Lands, State Parks, and BLM.
- Describe past and ongoing coordination with private property owners, homeowner and community associations, agricultural operators, bicycle and hiking groups.
- Identify the entity that will operate and maintain the trail, parking lots, restrooms, and pathways out to the bluff.
- Identify the siting and design (including actual wording) of all proposed signage (parking lots, pathways, etc.).

Thank you for your consideration of these comments. We look forward reviewing the DEIR when it is available, and are available for questions should RTC or its DEIR team need clarification on these comments. We also look forward overall to continuing to work with RTC to bring this important public access improvement project to fruition, including in terms of facilitating Coastal Commission review of the project. Please don't hesitate to contact me at any time.

Sincerely,



Ryan Moroney
Central Coast District Supervisor
California Coastal Commission

Attachments: January 26, 2015 Coastal Commission letter to Federal Highway Administration

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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January 26, 2015

Programming Decisions Committee (PDC)
Federal Lands Access Program
FHWA: Central Federal Lands Highway Division
12300 West Dakota Avenue Suite 380B
Lakewood, CO 80228

Subject: Support for Monterey Bay Sanctuary Scenic Trail Network Grant

Dear Members of the Programming Decisions Committee:

The purpose of this letter is to recommend approval of Federal Lands Access Program funding for a key segment of the **Monterey Bay Sanctuary Scenic Trail (MBSST)**, as requested by the Santa Cruz County Regional Transportation Commission (SCCRTC). The SCCRTC acquired the railroad right-of-way along the northern shoreline of Monterey Bay that was formerly owned by the Union Pacific RR. Accordingly, the SCCRTC will—with the appropriate funding—be in a position to implement a rail-*and*-trail project along the 32-mile Santa Cruz Branch Line.

Specifically, this grant will support the implementation of the SCCRTC's *Monterey Bay Sanctuary Scenic Trail Network Plan*—in particular, the highly scenic segment of the MBSST northwards from Wilder Ranch State Park (just outside the City of Santa Cruz) to Laguna Road (for access to the Coast Dairies lands), near the town of Davenport. This planning effort involved extensive public outreach and interagency coordination. Substantial refinements were incorporated from our own agency's comments, as well as from numerous public workshops.

We believe this grant request is best evaluated in terms of its context relative to the entire California Coastal Trail system, the included Monterey Bay Sanctuary Scenic Trail, and the particular part of the coast that will be served by the trail segment to be funded by this grant—as discussed below.

The California Coastal Trail (CCT), overall. As implemented through California State Senate Bill 908 of 2002, the CCT is fundamentally a hiking trail along the entire California Coast, extending more than 1,000 miles from Mexico to its connection to the Oregon Coast Trail. As well, in many places the CCT already accommodates—or will be designed to accommodate, as part of a networked system--bicycles, equestrians and persons with mobility impairments. Fifteen counties and more than 100 different communities, from small coastal villages to the largest metropolis will be linked by this common thread.

The CCT provide linkages to or through more than two dozen different Federally-managed areas with public recreational values. And, it parallels BLM's California Coastal National Monument along the entire shoreline of the state. As such, it will provide a principal vantage point and interpretive platform for the public's enjoyment of the scenic rocks and islets comprising BLM's California Coastal National Monument. The Santa Cruz-Davenport segment of the CCT is therefore essential to the State-wide continuity of the route as a whole.

Examples of other Federal lands along, or providing segments of the CCT range from Redwood National Park to Humboldt Bay NWR, the King Range NCA, Pt. Reyes National Seashore, Golden Gate NRA, Los Padres National Forest (Monterey Ranger Dist.), Big Sur Coast National Scenic Byway (All-American Road) and its counterpart along the San Luis Obispo County coast, Channel Islands National Marine Sanctuary (Santa Barbara/Stearn's Wharf), Channel Islands National Park visitor center (Ventura), Santa Monica Mountains NRA, and Cabrillo National Monument—to mention the better-known locales.

The Monterey Bay Sanctuary Scenic Trail (MBSST), overall. As a key part of the California Coastal Trail (CCT) system, the MBSST will extend approximately 50 miles around the perimeter of Monterey Bay. Completed and planned segments of the MBSST include both paved and natural surface strands. Natural surfaces are favored by hikers and mountain bikes. In addition to accommodating pedestrians and bicyclists, the paved MBSST segments also provide coastwise access for wheeled baby strollers, wheelchairs and other non-motorized modes. As part of a planned coastal trail *network*, the MBSST is the coastwise corridor that provides essential connectivity to and between the CCT's blufftop hiking paths and beach accessways, via a variety of natural surface and improved-surface paths that intersect the MBSST.

As the name implies, the MBSST parallels the core area of the NOAA-managed Monterey Bay National Marine Sanctuary (NMS). The proposed trail will not only provide outstanding recreational opportunities, but will also offer an ideal platform for interpretation of the marine and coastal environment protected by the Monterey Bay NMS and the California Coastal NM. It is recognized that more visitors will encounter these protected areas from blufftop vantage points than from any other perspective, on or off the water.

Some 19 different marine-oriented research and educational institutions are located along the Monterey Bay shoreline—anchored by the internationally-acclaimed Monterey Bay Aquarium. More than 3 million recreational visitors per year are recorded already. Therefore, implementation of the MBSST represents an unparalleled opportunity for outdoor learning experiences—especially, by providing tangible linkages between the educational sites and the protected federal areas.

Substantial portions of the MBSST are already in service, including the highly popular segment from Lover's Point in Pacific Grove through the Presidio of Monterey, past the Naval Postgraduate School's high dunes, through Ft. Ord Dunes State Park and to a point north of the City of Marina in Monterey County. Here, bicyclists may continue on secondary roads and existing bikeway segments to two Federally-protected wildlife areas, the Salinas Lagoon NWR and Elkhorn Slough NERR, both managed by arrangement with the Calif. Dept. of Fish & Wildlife.

The SCCRTC's acquisition of the 32-mile Santa Cruz Branch Line (SCBL) rail right-of-way will allow the MBSST to continue northwards around the Monterey Bay shoreline. Levee-top trails and the SCBL rail right-of-way are envisioned as linkages to the existing Watsonville Wetlands trail system, Ellicott Slough NWR, the new National Marine Sanctuary Discovery Center at the Santa Cruz municipal wharf, and many State and local park and beach areas. These include 8 different State Park System units in Monterey County, and 9 State Park System units on or near the coast in Santa Cruz County. Connecting paths and bikeways will also link to Ft. Ord National Monument (BLM) and 6 more nearby State Park units to the north and south.

In coordination with planned rail service, interweaving strands of the MBSST Network will serve the serious hiker and dedicated long-distance cyclist, as well as more casual visitors, family groups and persons with mobility impediments. The outcome will be enjoyable, universal access, safely separated from automotive traffic, benefitting local residents and visitors alike.

The Wilder Ranch State Park-Laguna Road segment of the Monterey Bay Sanctuary Scenic Trail. As identified in the SCCRTC's *MBSST Network Plan*, this portion of the MBSST will enhance regional connectivity for both pedestrians and bicyclists northwards from Santa Cruz. It is planned to include both improved-surface and natural surface pathways, comprising a multi-modal recreational system that makes optimal use of the SCCRTC's recently acquired Santa Cruz Branch Line rail right-of-way.

The grant will make it possible for the SCCRTC—through implementation of the *MBSST Network Plan*--to bridge gaps in the California Coastal Trail, and increase access to a number of Federally-protected areas. These include the Monterey Bay National Marine Sanctuary (NOAA), the California Coastal National Monument (BLM), and to the Coast Dairies properties recently transferred to BLM.

In particular, a variety of pedestrian and bicycle paths already provide non-motorized access from the National Marine Sanctuary Exploration Center at Santa Cruz Wharf and U.C. Santa Cruz's Terrace Point marine research campus to Wilder Ranch State Park, approximately 3 miles

north of the wharf. This proposed segment will extend effective non-motorized access northwards from Wilder Ranch, parallel to the RTC's railway tracks, to BLM's Coast Dairies lands and the popular shoreline access points west and north of Laguna Road. These include nearby Laguna Creek Beach, Yellowbank Beach, Bonny Doon Beach and Davenport Beach.

Summary. This project will significantly enhance non-motorized public access options for travel to and within the various parks, beaches, visitor services, downtown areas, educational institutions and residential areas along the northern Santa Cruz County coastline, consistent with California Coastal Act Sections 30210-30224 regarding maximizing public access and recreational opportunities. By creating an important non-motorized transportation alternative, it will support federal, state, and local policies to reduce greenhouse gas emissions—including Coastal Act Sections 30252-30253 regarding non-automotive transportation alternatives and conformance with air quality standards. Accordingly, the MBSST in general—and the Wilder Ranch State Park to Laguna Road segment in particular—promises to be an asset for coastal access, recreation, education, health, transportation, and economic vitality.

Therefore, we are clearly in support of this important coastal access project. It will significantly improve public access and mobility along this part of the California Coast. Accordingly, we encourage you to grant approval of the SCCRTC's Federal Lands Access Program funding request. Please do not hesitate to contact me at (831) 427-4863 if you have any questions regarding this letter of support, the MBSST itself, or other matters concerning the California Coastal Zone.

Sincerely,



Dan Carl,
Deputy Director

Cc:

George Dondero
Executive Director, SCCRTC

Letter 2

COMMENTER: Ryan Moroney, Central Coast District Supervisor, California Coastal Commission

DATE: September 24, 2018

Response 2.1

The comment is an introductory statement that the California Coastal Commission (CCC, Coastal Commission, or Commission) is supportive of the project; and although the Commission staff does not question the Draft EIR's consistency with CEQA, they offer comments regarding potential impacts to coastal resources. These comments are addressed below.

No further response or revisions to the Draft EIR are necessary to address this comment.

Response 2.2

The commenter states that the project is a federal activity subject to the Coastal Commission's federal consistency requirements, and that the CEQA document must consider the Commission's claims and opinions.

The RTC and CFL consider and appreciate the Commission's claims and opinions. The Commission's role as a responsible agency is described in Section 1.3.1 of the Draft EIR. The RTC and CFL coordinated with Commission staff during preparation of the Draft EIR, including a conference call January 11, 2018, and field visit February 14, 2018. The RTC also carefully reviewed input from the Coastal Commission in response to the Notice of Preparation for the proposed project. This coordination was conducted in part in order to ensure that, consistent with *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, this EIR will be legally and informationally sufficient to allow the Commission to conduct its federal consistency review. As the federal lead agency, CFL will be conducting future coordination with the Commission and preparing the federal consistency determination.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 2.3

The comment includes a basic project description, which is consistent with that in the Draft EIR.

The comment does not relate to the adequacy of the EIR or CEQA process.

No revisions to the Draft EIR are necessary.

Response 2.4

The commenter expresses concern that the Project would decrease the number of parking spaces at three lots along the Project corridor. To meet high parking demand in the foreseeable future, the commenter requests an evaluation of alternative design options that would add more parking. These options, the commenter suggests, could include additional spaces at the Panther/Yellowbank Beach Lot or formalizing an existing unpaved lot in Davenport.

Please refer to **Master Response C** for a discussion of the adequacy of parking supply and the feasibility of alternative design options to meet parking demand.

No revisions to the Draft EIR are necessary.

Response 2.5

The commenter states that public access to the coast must be maximized and any restrictions to public parking need to be narrowly focused and based on solving clearly identified problems.

Please refer to **Master Response C** for a discussion of how the proposed timing restrictions on parking access are narrowly tailored to improve public safety.

No revisions to the Draft EIR are necessary.

Response 2.6

The commenter encourages RTC to evaluate alternative parking designs at the Davenport Parking Lot that include potential development of the south lot for passive park uses.

Please refer to **Master Response C** for a discussion of alternative parking design options.

No revisions to the Draft EIR are necessary.

Response 2.7

The commenter would like the restrooms at the Davenport Beach lot to be connected to water/power utilities with flush toilets instead of pit toilets and working sinks.

As described in Section 2.4 of the Draft EIR under *Davenport Beach Lot and Highway 1 Crossing*, the toilets at the at the Davenport lot would be either waterless vault toilets or flush toilets that connect to the Davenport water and wastewater system; and there would be a dispenser for hand sanitizer but no sink.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 2.8

The commenter requests the Davenport Beach lot be designed in a manner that doesn't block or impair coastal views and that can enhance the viewshed.

As shown in the preliminary design (Figure 2-5, Davenport Beach Lot and Highway 1 Crossing), the restroom facility would be a small prefabricated structure on a 12-foot by 18-foot pad located in the northwest corner of the lot near Highway 1. As described in the Aesthetics analysis (Section 3.1.4) under Impact AES-1, the proposed restroom building would be located at the northern edge of the parking lot, where it would not substantially obstruct scenic ocean views, and the impact was determined less than significant.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 2.9

The commenter states strong support for the pedestrian crossing improvements for Highway 1 in Davenport.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 2.10

The commenter states that the Commission's staff ecologist reviewed the evaluation of the potential biological and ecological impacts and found the evaluation thorough and mitigation measures generally appropriate and feasible, reflecting discussions at the February site visit. Specific comments are provided in the attachment portion of this comment letter, and are addressed below as comments 2-19 through 2-36.

No further response or revisions to the Draft EIR are necessary to address this comment.

Response 2.11

The commenter states that the proposed bank reinforcement at Davenport Beach needs to meet the California Coastal Commission's four-part test and will require further technical analysis.

The four-part test is derived from Public Resources Code section 30235, within the Coastal Act, which provides that "[r]evetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible."

The proposed slope reinforcement in this location is consistent with the requirements of section 30235. The railroad tracks and informal trail adjacent to the tracks are threatened by further erosion of the slope. Slope reinforcement would stabilize the railroad tracks, which are considered an existing structure for purposes of the statute. Regardless, because the proposed trail would be a coastal-dependent use, the slope reinforcement would serve the use and is therefore permitted for that reason. Furthermore, the slope reinforcement would not affect the amount of sand being supplied to the beach and would be designed in a manner that would minimize adverse effects on shoreline sand supply. As final design of the trail progresses and there is a better understanding of the alignment and the need for slope reinforcement at Davenport Beach, technical analysis of the slope will be performed. This information will be provided to the Coastal Commission, and discussions with the Commission will be held to determine the most appropriate slope reinforcement method based on the technical analysis. This information will also be included in the formal submission of the Federal Coastal Consistency Determination.

No revisions to the Draft EIR are necessary.

Response 2.12

The commenter suggests that the EIR provide visual simulations for each of the alternatives.

Refer to Figure 3.1-9 and Figure 3.1-10 in Section 3.1, *Aesthetics*, for visual simulations of Alternative 1 (Trail Only). Refer to Figure 5-1 and Figure 5-2 in Section 5.0, *Project Alternatives*, for visual simulations of Alternatives 2 (Inland Side) and 3 (Farmers' Alternative), respectively.

No revisions to the Draft EIR are necessary.

Response 2.13

The commenter states that closure of existing trails needs to be supported by evidence of need and should be evaluated in the Recreation chapter of the Draft EIR.

Reason for Closing Trail Crossings

The trail crossings are described in Section 2.4 under *Trail Crossings* of the Draft EIR. The text has been corrected as follows to account for the additional informal trail that is being closed and was inadvertently omitted from Table 2-1, *Summary of Trail Crossings*, and corresponding figures.

There are 25 ~~24~~ existing crossing locations over the existing rail alignment, including 16 formal crossings, designated and permitted for use by the California Public Utility Commission (CPUC), and 9 ~~8~~ informal crossings (not permitted by the CPUC). Of the 25 ~~24~~ crossings, the Project would retain 15 and close 10 ~~nine~~, including seven ~~six~~ informal crossings created by farmers to access operations or by pedestrians/bicyclists to access beaches, and three formal CPUC crossings.

The reasons for closing these 10 crossings include CPUC's requirement of a no net gain in crossings and for safety (i.e., if there is no trail crossing, people would be less likely to park on the inland side of Highway 1 and cross the highway to get to the new trail). For all crossings being closed, other adjacent crossings would be formalized to maintain access.

The Draft EIR has been revised to reference the Appendix A graphics, which show the trail crossings to remain open and be closed. Additionally, Table 2-1, *Summary of Trail Crossings*, has been revised to include the additional informal crossing identified and the distances from the 10 trails to be closed to the nearest trail crossing.

The CFL and RTC understand the Coastal Commission's objective to maintain coastal access and the Commission's concerns regarding the closure of trail crossings over the existing rail. The RTC and CFL also understand that safety takes precedence over coastal access, and that the CPUC has ultimate regulatory authority over rail crossings. New projects occurring within the rail alignment need to adhere to the CPUC regulatory framework. Thus, the proposed project was designed with the understanding that CPUC requires "no net gain" of crossings, and the informal crossings proposed for closure are not recognized by the CPUC. Therefore, the CFL will coordinate with both the Coastal Commission and CPUC regarding the proposed trail closures during the federal consistency determination process.

Recreation Analysis

The analysis in the Recreation chapter of the Draft EIR focuses on the significance criteria derived from Appendix G of the State CEQA Guidelines, as follows; and it does not include addressing the impact of trail closures.

- Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated.

- Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.

The RTC, CFL and EIR preparers do not consider the closure of the nine trails to result in a substantial adverse effect to pedestrians, bicyclists or farmers because other nearby trails would remain open with formalized crossings which would improve access functionality across the rail, as presented in revised Table 2-1. The RTC, CFL and EIR preparers therefore disagree with the suggestion that offsetting mitigation is necessary. There is no CEQA significant effect to mitigate; and the RTC, CFL, and the EIR preparers are unaware of any Coastal Act statute or formal Coastal Commission policy that requires offsetting mitigation under these circumstances.

It should be noted that, as stated in Section 2.4, the plan for trail closures would require collaboration between various stakeholders and therefore could be subject to change.

Response 2.14

The commenter would like clarification if the proposed project also includes spur trails to the bluffs and beaches or just the main north/south trail and connections to parking lots.

The Project, including the Proposed Project and Alternatives 1-3, does not include new spur trails or any improvements to existing spur trails leading to the bluffs and beaches. It only includes the main north/south trail and connections to the three parking lots. This is described in Sections 2.1, Overview, and 2.4, Project Characteristics, in the Draft EIR and reflected in the project graphics in Appendix A.

Text has been added to Section 2.1, *Overview*, to clarify the Project does not include spur trails to the bluffs and beaches.

Response 2.15

The commenter would like the Draft EIR to identify the locations of all proposed fencing and signs intended to consolidate foot traffic between Highway 1 and the trail as much as possible, as well as to the blufftop and beach. Fencing should be limited, visually compatible with surrounding area and not block views or wildlife passage.

The final location of fencing and signage would occur as part of final design by CFL, which will coordinate with the Coastal Commission. The anticipated fencing is described in Section 2.4, *Project Characteristics* under *Fencing*, and shown in Figure 2-11, *Fencing Design*, in the Draft EIR. The anticipated signage is described in Section 2.4 under *Trail Amenities and Features*. A summary of key points is provided below.

- Fencing would be installed between the trail and rail for safety.
- Fencing would be installed between the trail and agricultural land and at some locations to discourage users from entering agricultural land.
- Fencing may be installed along the trail edge for safety where there are steep slopes adjacent to the trail.
- Fencing would be constructed using concrete posts (4 feet 6 inches in height) etched to resemble wood, and multiple (7) smooth wire strands, similar to that shown in Figure 2-11.
- The informational and educational signage would be placed at strategic locations along the trail and in the parking lots.

As described in Section 3.1.4 under Impacts AES-1 and AES-2 and shown in the photosimulations, the fencing would not substantially obstruct or alter coastal or agricultural views.

As described in Section 3.4.4 under Impact BIO-7, construction fencing would temporarily impact wildlife movement. Mitigation Measure BIO-8(c) includes development of a Biological Resources Mitigation and Management Plan (MMP) that would include strategies for protecting wildlife movement.

The planned fencing (shown in Figure 2-11) consists of posts and smooth wire 4.5 feet in height with 7 wire strands and a 17-inch clearance between the bottom wire and the ground. If the lesser number of wires (five) is employed, this design would be considered wildlife-friendly fencing.

Wherever feasible and especially in areas determined to be critical to wildlife movement, proposed fencing would be modified to be wildlife-permeable. Options would include split rail fencing or a post and smooth wire fencing of no more than four strands with a maximum height of 3.5 feet and a slighter larger clearance (18 – 20 inches) between the bottom wire and the ground.

Thus, the Project and Draft EIR has been revised as follows. Section 2.4, *Trail Amenities*, has been revised to clarify that an example of “strategic” locations for signage includes trail access points and crossings. Section 2.4, *Fencing*, has been revised to broaden the potential number of wires to be 5-7 (not just 7) and to use wildlife permeable fencing where feasible and especially in areas determined to be critical to wildlife movement. Additionally, Mitigation Measure BIO-8(c) has been revised to clarify that strategies for protecting wildlife movement include wildlife movement both across and along the trail corridor.

Response 2.16

The commenter acknowledges that the Project would require RTC to obtain property rights from California State Parks and others for portions of the trail outside RTC’s property, and states that the Commission needs to understand the underlying property ownership and rights.

Refer to **Master Response B**.

Response 2.17

The commenter states that the Project context could benefit from a narrative description of past and ongoing coordination with public agencies and several other groups regarding North Coast access.

Section 1.2, *Project Background*, of the Draft EIR provides a description of such coordination as it relates to the context of the MBSST Master Plan, Project and EIR preparation. Additional information is provided below.

The RTC and CFL have coordinated with Santa Cruz County Public Works and California State Parks from the onset, and there is a Memorandum of Agreement between the four agencies which establishes a collaborative structure. Additionally, the RTC worked with the Bureau of Land Management in the original application for the Federal Lands Access Program grant and subsequently in planning for connecting the proposed project with future trails on the Cotoni-Coast Dairies property under its authority. The California Coastal Conservancy (for the tie-in to the California Coastal Trail), private landowners, agricultural operators, bicycle advocacy groups, trail advocacy entities, bicycle and pedestrian advisory committees to the RTC, tribal groups, and other stakeholders have all been contacted and have been engaged at various stages of the process.

No revisions to the Draft EIR are necessary.

Response 2.18

The commenter reiterates support for the project as an important public recreational access improvement for the County's North Coast, and for continued collaboration.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 2.19

The commenter states that the analysis of ecology resources is thorough and reflects previous coordination with the Commission, and that its specific comments (addressed as comments 2-20 through 2-36 below) are seeking clarification, rather than omissions.

No further response or revisions to the Draft EIR are necessary to address this comment.

Response 2.20

The commenter is not clear how the project relates to the Master Plan, and notes the Master Plan recommends protecting maternity bat roosts with a 500-foot buffer whereas the mitigation requires a 100-foot buffer.

As described in Section 1.2.3, *MBSST Network Master Plan and EIR*, the Master Plan is an approved planning document that establishes the continuous alignment and set of design standards for the planned multi-use trail along RTC's entire Coastal Rail Trail spine for the length of Santa Cruz County. The Coastal Rail Trail spine divided into 20 segments, and the Project represents Segment 5.

The MBSST Network Master Plan EIR is a programmatic EIR prepared to understand the environmental impacts at a broad, planning level. A program EIR typically provides a more general level of analysis. A project-level EIR, such as this North Coast Rail Trail EIR, is prepared for a specific building or facilities project and includes more focus and detail. Specific distinctions are further described in CEQA Guidelines Section 15161. Although this EIR is not formally "tiering" from the Master Plan EIR, it makes use of relevant information contained in the Master Plan EIR, including applicable mitigation measures.

As described in the Approach to Project Analysis at the beginning of Chapter 3, the analyses include relevant information from the Master Plan EIR and additional information specific to the Project. Many of the mitigation measures identified for Project impacts were originally discussed in the Master Plan EIR. As a program-level EIR, the Master Plan EIR focuses on broad changes expected to result from implementing the entire 50-mile MBSST Network. Accordingly, the mitigation measures identified in the Master Plan EIR are necessary broad and general, and those provided in this Project EIR have refinements, additional detail or other changes to the Master Plan EIR mitigation measures.

As described in Section 3.4.4 under Impact BIO-5, Mitigation Measure BIO-5 (Implement Measures to Protect Roosting Bats during Construction) identifies a 100-foot construction buffer around established bat maternity colonies if found whereas the Master Plan EIR (Mitigation Measure B-1i)

identifies a 500-foot buffer. The Draft EIR has been revised to be consistent with the MBSST Network Master Plan EIR. Mitigation Measure BIO-5 now requires a 500-foot buffer.

Response 2.21

The commenter notes that NOAA Fisheries has not been engaged in the EIR process and recommends its participation based on the presence of steelhead and coho in the creeks that transect the alignment.

Potential indirect impacts to sensitive fish species and their habitat are anticipated to be minimal, and are described and addressed in Section 3.4.4 under Impact BIO-1 (Sensitive Fish), Impact BIO-8 (Sensitive Habitats), and Impact BIO-9 (Wetlands and Aquatic/Riverine Habitats). In addition, Mitigation Measure BIO-8(c), which requires development and implementation of a comprehensive biological resources mitigation and management plan, would take into account the essential role these features play in the ecological setting, and habitat replacement and enhancement are likely to target riparian habitats along the creeks and buffers to these features. NOAA Fisheries has been consulted via phone and e-mail regarding sensitive salmonids (Howe 2018)². The following description of Essential Fish Habitat (EFH) for coho salmon has been added to the Draft EIR in Section 3.4.1 under *Coho Salmon*, as well as Impact BIO-1 (NOAA Fisheries 2014)³.

Essential Fish Habitat (EFH) is defined as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” Coho salmon EFH includes all water bodies (“streams, lakes, ponds, wetlands, and other currently viable water bodies”) currently or historically occupied by Pacific Fishery Management Council-managed coho salmon, including the hydrologic units along the coast south of San Francisco and within the Monterey Bay, up to and including the Pajaro hydrologic unit. Coho salmon EFH also includes estuarine and marine areas to 200 nautical miles offshore. No further revisions to the Draft EIR are necessary.

Response 2.22

The commenter notes that global and state rankings were not included for the various vegetation communities, and that alliances and associations were not clearly identified, specifically for the habitat types below.

The authors acknowledge that natural communities with state and global rarity rankings 1-3 are considered Environmentally Sensitive Habitat Areas (ESHA) by the California Coastal Commission as stated in Section 3.4.1 under *Sensitive Habitats* of the Draft EIR.

- a. None of the habitat types/natural communities listed as non-ESHA in the Draft EIR have global or state rankings of 1-3 with the exception of *Rubus* Shrubland Alliance-Coast Brambles (63.901.00, G4/S3). Areas mapped within the Study Area are dominated by the *Rubus ursinus* Association (63.901.05) and limited to four small patches totaling approximately 0.50 acres. These do not represent well formed “coast brambles” but rather early succession of *Rubus ursinus* in disturbed, non-native grassland east of the Wilder Ranch parking lot and along the ruderal upper embankment of a channelized section of Little Baldwin Creek. In these areas,

² Howe, Darren. 2018. Personal Communication via phone and e-mail regarding NOAA Fisheries review of the North Coast Rail Trail DEIR and federally protected salmonids known to occur within north coast streams, with Erin McGinty, Biologist, EcoSystems West Consulting Group. December 17, 2018.

³ National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) (NOAA Fisheries). 2014. Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 18 to the Salmon Fishery Management Plan, Final Rule. Federal Register. 50 CFR Part 660. December 18, 2014.

Rubus ursinus is relatively low-growing and co-dominated by weedy, non-native grasses and forbs including wild oats (*Avena* spp.), brome grasses (*Bromus* spp.), poison hemlock (*Conium maculatum*), and horseweed (*Erigeron canadensis*). Moreover, these patches are situated adjacent to ruderal and urbanized areas subject to repeated anthropogenic disturbances. Therefore, these highly fragmented and isolated areas provide limited potential refugia for special status plants and wildlife. Furthermore, areas mapped as *Rubus* Shrubland Alliance are situated outside of areas to be temporarily or permanently impacted by the Proposed Project and Alternative 1.

- b. Arroyo willow scrub corresponds to the *Salix lasiolepis* Shrubland Alliance-Arroyo willow thickets (61.201.00). This habitat type is considered sensitive by the CDFW. The nomenclature does not change the rarity status of this community type for the purposes of the analyses described in the DEIR. These areas were described in the Draft EIR as “scrub” to clearly differentiate these areas from Arroyo willow riparian forest also dominated almost entirely by *Salix lasiolepis*. Both habitat types fall under the CDFW designation as “arroyo willow thickets”. However, these habitat type notably differ in both structure and composition based on various biotic and abiotic site conditions.
- c. Shining willow (*Salix lucida*) is a minor component of the areas mapped as Arroyo willow riparian forest in the Draft EIR. Although *Salix lucida* was present at some locations, based on species dominance it was not considered appropriate to classify these areas as the *Salix lasiolepis-Salix lucida* Association (61.201.04). Within the *Salix lasiolepis* Shrubland Alliance (61.201.00), both the *Salix lasiolepis* Association (61.201.01) and the *Salix lasiolepis-Salix lucida* Association are considered sensitive by the CDFW, with the primary distinction being that that latter association is listed as G3 while no state or global rarity ranking are listed for areas dominated entirely by *Salix lasiolepis*. This distinction would not change the analyses of potential mitigation measures as outlined by the Draft EIR.
- d. “Mixed coastal scrub” does not correspond with one clearly distinguishable CDFW natural community alliance, but rather as a mosaic of several prominent “coastal scrub” associations as described in the Draft EIR, Section 3.4.1 under *Coastal Scrub*. Within the study area, mixed coastal scrub is considered a functional habitat type and most closely resembles the *Baccharis pilularis* Shrubland Alliance (32.060.00, G5/S5) and *Artemisia californica* Shrubland Alliance (32.010.00, G5/S5). However, in the majority of areas mapped as mixed coastal scrub, there is no single dominant shrub associated plant species composition varies along environmental gradients including microclimate, soil, topography, aspect, and hydrology. Plant associations listed in the DEIR, including the *Baccharis pilularis-Frangula californica-Rubus* Association (32.060.30) and *Baccharis pilularis-Eriophyllum stachaedifolium* Association (32.060.01), are both considered sensitive by the CDFW. However, all areas mapped as “mixed coastal scrub” within the Study Area are considered ESHA by the Coastal Commission as coastal scrub is included as an ESHA type in the County of Santa Cruz Local Coastal Program and Sensitive Habitats Ordinance.

The Draft EIR has been revised to include these details.

Response 2.23

The commenter describes the criteria for ESHA and clarifies the term ‘especially valuable habitat’ (EVH), which is absent from consideration in the EIR.

The phrase “especially valuable habitat” refers to a kind of ESHA. Although Public Resources Code section 30107.5 defines “environmentally sensitive area,” the courts have understood the definition therein to describe “environmentally sensitive habitat areas” (ESHA), which are protected under Public Resources Code section 30240. (See *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 506-507.) Section 30107.5 defines “environmentally sensitive area” (i.e., an ESHA) as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.” Under this definition, an area qualifies as ESHA if it contains plant or animal habitats that (i) are either (a) rare or (b) especially valuable because of their special nature or role in an ecosystem and (ii) could be easily disturbed or degraded by human activities and developments. The commenter adds that the Coastal Commission considers habitats subject to rarity rankings at the state or global level of 1-3 as to be both rare and sensitive to disturbance (i.e., it “could be easily disturbed or degraded by human activities or developments”), and therefore ESHA.

In general, based on state and global rarity rankings and because it is not included in the County of Santa Cruz LCP, the *Quercus agrifolia* Alliance-coast live oak woodland/forest (71.060.00, G5/S4) is not considered ESHA. However, coast live oak woodlands and forests may be considered ‘especially valuable habitat’ (EVH) and therefore rare and sensitive by the Coastal Commission. The Commission determines EVH on a case-by-case basis based on inherent unique qualities, including maturity of trees and potential to support special-status species including bats and the San Francisco dusky-footed woodrat.

There are two distinct areas mapped as coast live oak forest in the study area: a 1.01-acre stand on the coastal side of the tracks south of the northern terminus of Scaroni Road above the lower extent of Majors Creek, and a 0.30-acre patch on the steep embankments immediately northwest of the freshwater marsh and lagoon at Laguna Creek. Although relatively small and fragmented in its extent, the stand of coast live oak near Majors Creek supports mature, multi-trunked trees with potential to support a variety of bird and bat species. The understory is well-developed, and a number of woodrat houses were observed adjacent to the rail corridor. The coast live oak patch near Laguna Creek is comprised of scattered to locally dense mature trees that are relatively healthy but support a dense infestation of cape ivy (*Delairea odorata*). This area supports an understory comprised primarily of cape ivy, poison hemlock, California blackberry, and stinging nettle and the trees provide suitable habitat for a variety nesting birds and bats. Several woodrat houses were noted in the immediate vicinity of this forest patch.

In addition, as described in Section 3.4.1 under *Sensitive Habitats*, “Although fragmented, these forests support large mature coast live oak trees and are positioned immediately adjacent to riverine, riparian, and scrub habitats, thus representing a locally important function in the assemblage of ecotones or edge habitats.”

The RTC concurs with the Commission staff that, based on the “special role” of these habitats to support a diversity of wildlife species, including the San Francisco dusky-footed woodrat, and represent a locally rare habitat type within the coastal mosaic, these areas meet the requirement for EVH and are therefore considered ESHA.

Potential impacts to the coast live oak forest near Majors Creek would be minimal and would primarily entail limbing trees to make room for the trail adjacent to the railway. No impacts to coast live oak forest adjacent to Laguna Creek are anticipated.

The Draft EIR has been revised to include coast live oak forest as EVH and ESHA.

Response 2.24

The commenter states that the Coastal Commission will have review authority over the Biological Resources mitigation and management plan (MMP) and Wetland MMP and will receive monitoring reports.

The Draft EIR, Mitigation Measures BIO-8(c) and BIO-9(b), has been revised to include a review component in the development of the Biological Resources MMP and Wetland MMP and a provision for involved agencies (USFWS, CDFW, CCC, State Parks) to receive monitoring reports.

Response 2.25

The commenter is concerned about transient encampments and requests further discussion and mitigation.

The RTC acknowledges that there is an existing issue with transient or homeless encampments in the North Coast area and throughout the County. The causes of and solutions to homelessness are primarily social issues that are outside the purview of this EIR and would be addressed by the County and other local, state and federal social service agencies and, if illegal activities or public safety are concerns, by local law enforcement agencies such as the Santa Cruz County Sheriff's Department and possibly by State Parks. A description of County-Wide Homeless Programs can be found on the County of Santa Cruz website (<http://www.sccoplanning.com/PlanningHome/Housing/County-WideHomelessPrograms.aspx>).

The purview of this EIR is to identify potential physical impacts to the environment. As stated in CEQA Guidelines section 15131, economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect through anticipated social changes resulting from the project to physical changes.

Potential physical impacts associated with homeless encampments and other off-trail uses of the surroundings (e.g., leaving waste, trampling vegetation) and have been identified in Section 3.2, *Agricultural Resources* (Impact AG-3), and Section 3.4, *Biological Resources* (Impact BIO-7), of the Draft EIR. Mitigation identified to address these issues includes Mitigation Measures AG-3(c) and AG-3(d), which include removing waste/litter and providing notices regarding food hygiene issues and the location of restroom facilities, and Mitigation Measures BIO-8(c) and BIO-9(d), which include developing strategies such as "leave no trace" signage, green fencing that deters off-trail uses, and adaptive management, in the event that performance standards are not met as a result of impacts associated with illegal camping and other off-trail uses.

In light of concerns raised through the public review and comment process, Mitigation Measure AG-3(c) has been revised to include additional detail that specifically addresses waste and litter associated with homeless encampments and activities. This mitigation measure is shown below with the new language underlined.

Mitigation Measure AG-3(c): Regularly Remove Solid Waste and Litter during Operation

Once the trail is open for public use, the Trail Manager shall ensure that solid waste is collected from each of the 23 proposed trash receptacles twice-weekly, or more often as needed to ensure that the trash and recycling receptacles located along the trail and in the three parking lots do not overflow. The frequency shall be determined by the Trail Manager and may vary seasonally, with more frequent collection in the summer months when the trail is busy.

Trash/recycling receptacles located in the parking lots may require more frequent collection than the receptacles along the trail alignment.

The Trail Manager shall be responsible as well for collecting litter along the trail. If litter leaves the trail ROW, the Trail Operator shall ensure that the litter in the vicinity of the trail that is reasonably attributed to trail use is removed within a reasonable time frame. Access to agricultural fields for the purpose of litter removal shall be coordinated with on-site agricultural operators, taking into account pesticide/fumigant restrictions and the goal of minimizing soil compaction or direct contact with crops. The Trail Manager shall not enter adjacent agricultural fields without express permission by the agricultural operator. All solid waste and recyclable materials shall be properly disposed.

Additionally, the Trail Manager shall identify garbage, feces, and trampling associated with human activity, including homeless/transient encampments, and report such activity to the County Sheriff and State Parks.

Mitigation Measure BIO-8(c) has also been revised to include additional details regarding the vegetative barriers and linear wetland replacement features that are likely to deter off trail use, and include adaptive management that allows for a reduction of hours of operation of the trail and associated facilities. Additionally, the list of bulleted measures in Mitigation Measure BIO-8(c) has been re-ordered such that long-term monitoring and adaptive management strategies are more logically presented after the implementation strategies. The relevant text is excerpted below with the new language underlined.

- Strategies to protect remaining sensitive habitats along the trail corridor and surroundings from direct and indirect impacts from trail users and illegal camping, such as: ~~(strategies may include~~
 - split-rail and wire fencing,
 - interpretive signage including specific information about sensitive habitats and species and “leave no trace” content, ~~and~~
 - green fencing (dense vegetative buffers consisting of plant species that deter human passage such as poison oak, Pacific blackberry, and stinging nettle), and
 - linear replacement wetlands (see Mitigation Measure BIO-9[b]) of sufficient width (e.g., greater than 6 feet) and depth (e.g., greater than 2.5 feet) to deter crossing.
- Strategies to protect wildlife movement, both across and along the trail corridor, supported by complex and mature sensitive habitat mosaics, including perennial water sources.
- Consideration of experience-based management approaches, the science of recreation ecology, and social carrying capacity analysis⁴ in the development of this MMP.
- Long-term quantitative and qualitative monitoring and reporting, including consideration of carrying capacity analysis and alternative approaches (Simon, Narangajavana, and Marques 2004), and documenting the ability to meet or surpass performance criteria.

⁴ Garrigos Simon, F.J., Y. Narangajavana, and D. Palacios Marques. 2004. Carrying capacity in the tourism industry: a case study of Hengistbury Head. *Tourism Management* 25(2): 275-283; Knight, Richard L., and Kevin J. Gutzwiller, editors. 1995. *Wildlife and recreationists: Coexistence through management and research*. Washington, D.C: Island Pres; Leung, Yu-Fai and Jeffrey L. Marion. 2000. *Recreation Impacts and Management in Wilderness: A State-of-Knowledge Review*. U.S. Department of Agriculture, Forest Service Proceedings RMRS-P-15-VOL-5. Washington, DC 2000; *Manfredo*, Michael J., and Richard A. *Larson*. 1993. *Managing for wildlife viewing recreation experiences: an application in Colorado*. *Wildlife Society Bulletin* 21:226-236; Manning, Robert E. 2002. “How Much Is Too Much: Carrying Capacity of National Parks and Protected Areas.” *Monitoring and Management of Visitor Flows in Recreational and Protected Areas Conference Proceedings*. A. Amberger, C. Brandenburg, A. Muhar, editors. 2002. 306-313.

- Adaptive management strategies to:
 - identify shortcomings in meeting performance standards;
 - ensure long-term viability of existing, enhanced, restored, and/or newly-created sensitive biological resources;
 - enhance ecological functions and values of sensitive habitat mitigation areas, including CRLF habitat and habitat for wildlife movement;
 - ascertain the sufficiency of the parking lots, trail access, facilities development and management, and interpretive design features associated with the project to protect biological resources, with consideration given to adaptive management strategies identified in recreation ecology and social carrying capacity analysis references;⁵
 - if impacts from illegal camping and other off-trail uses result in failure to meet performance standards, adaptive management strategies shall include reducing the hours of operation of the trail and associated facilities (restrooms and parking lots) to be consistent with State Parks hours (open from 8:00 am to sunset).

Finally, with respect to potential physical impacts associated with the need for increased law enforcement (i.e., increased demand for services resulting in the need to construct new facilities, which in turn could result in environmental impacts), the impacts of the Project on police and fire service are discussed in Section 3.12, *Public Safety and Services*. As described under Impact PUB-2, the project would not require the construction of additional Santa Cruz County Sheriff's stations or the expansion of services currently provided by the Sheriff's Department, as increases in the need for services along the North Coast, including those associated with the Proposed Project alignment, have been anticipated and service provisions have already been expanded. Thus, there would be no physical impact to the environment from constructing new facilities or expanding service.

As described in the impact discussion, it is the duty of the Sheriff's Office to both cite and relocate those citizens who illegally camp in the unincorporated county public lands. The Sheriff's department would relocate the citizen and all belongings to the appropriate facility in the county, in accordance with the Homeless Services Center, and remove debris and waste from the site. The County would provide appropriate services for individuals that may include transitional shelters, permanent housing programs, and income and employment support, with the goal of reducing the overall homeless population throughout the county. If ongoing illegal camping is identified along the Proposed Project alignment, regular patrol of the alignment by the Sheriff's Office or SPPO would be instated to ward off the establishment of permanent illegal campers.

Also refer to **Master Response F** and **Response 41.1**.

Response 2.26

The commenter suggests bioswales and other ecologically favorable options for managing stormwater.

Wherever feasible, ecologically-favorable options for stormwater management would be employed and, if possible, in conjunction with replacement and enhancement designs associated with Mitigation Measure BIO-8(c), the Biological Resources MMP, and Mitigation Measure BIO-9(b), the

⁵ see Footnote 4 above.

Wetland MMP. Bioengineering alternatives for slope stabilization will be explored and implemented when feasible.

No revisions to the EIR are necessary.

Response 2.27

The commenter inquires as to the potential presence of bank swallows and burrowing owl along the alignment.

The tentative observation of bank swallow occurred in December 2017, outside of breeding bird season by a novice birder. An avian biologist conducted several surveys of the same location during the breeding bird season and no bank swallows were observed. In addition, Alex Rinkert (2018) of the Santa Cruz Bird Club was consulted, and he confirmed that the nearest known breeding site for bank swallow is Ano Nuevo, which is approximately 10 miles north of Davenport.

According to Alex Rinkert (2018) and ebird (2018), wintering burrowing owls have been observed incidentally along the alignment. However, they are not known to breed in this location and this portion of their wintering habitat is not protected. The “Not Expected” finding in the Appendix G-3 refers to nesting behavior.

No revisions to the EIR are necessary.

Response 2.28

The commenter recalls that culverts have not been proven to reduce mortality of California red-legged frog (CRLF) in Davenport and recommends further investigation into this proposed mitigation.

The comment is acknowledged. In the Draft EIR, Section 3.4.4 under Impact BIO-2, culverts are described as being both potentially detrimental and potentially beneficial.

No revisions to the EIR are necessary.

Response 2.29

The commenter states that the interpretive signage should include information pertaining to the threatened status of California red-legged frog and other sensitive species to reduce harassment, injury and mortality encountered on the trail.

As described in Section 2.4, under *Trail Amenities and Features*, the signage would include information about the Monterey National Marine Sanctuary and coastal resources.

The Draft EIR (Section 2.4, *Trail Amenities and Features*) has been revised to specify the signage should also include information on sensitive species.

Response 2.30

The commenter noted the typical buffer applied by Coastal Commission for nesting raptors (300 feet) and other avian species (300 feet) and was not able to locate or understand the intended application of the cited reference (PG&E 2015).

The cited reference is: Pacific Gas & Electric Company. 2015. Nesting Bird Management Plan. Final Draft. August.

This management plan was prepared by ICF International and H.T. Harvey and Associates and is a compilation of information on nesting birds and human disturbance. Appendix B of this document lists species accounts of birds by habitat type and includes buffer distances that are based on behavioral responses of birds to disturbance for species groups and, in some cases, species. The reference is intended to provide a standard of baseline information, with the understanding that agency representatives may make different recommendations for buffer distances.

The Draft EIR, Chapter 7, has been revised to include this reference.

Response 2.31

The commenter requests the basis for recommending a 100-foot buffer around established bat colonies.

Refer to **Response to Comment 2.20**.

Response 2.32

The commenter requests that the CCC receive and review the Woodrat Relocation Plan and Monitoring Report, which is part of Mitigation Measure MM BIO-6.

The Draft EIR has been revised to include this addition.

Response 2.33

The commenter states that ground-dwelling species may have a difficult time passing the planned fencing (4.5-foot 7-string post and wire style) and suggests a 5-string and wire style.

Refer to **Response to Comment 2-15**.

Response 2.34

The commenter provides standards that CCC will expect for implementing Mitigation Measure BIO-8(c), the Biological Resources MMP, and states the typical mitigation ratios employed by CCC is a 4:1 ratio for wetlands and 3:1 ratio for ESHA.

The comment is acknowledged. Mitigation Measure BIO-1(c) requires the preparation of a Project-specific Biological Resources MMP to compensate for direct and indirect impacts to sensitive habitats and other sensitive biological resources. As noted in the measure, compensatory mitigation will occur as close to impacted areas as feasible and result in no-net-loss (minimum 1:1 replacement ratio) of sensitive habitat types, or their functions and values. The 1:1 ratio is a *minimum*, established for the purposes of mitigating project effects under CEQA. The measure does not prevent the establishment of a higher ratio, such 3:1 or 4:1, as mentioned by the commenter. In fact, the measure directly acknowledges that the mitigation area locations and the final replacement ratios (which may be above the minimum of 1:1) will be determined in consultation with relevant agencies, including CCC.

Final mitigation ratios and other details for implementing the Biological Resources MMP will be determined in coordination with CCC, as well as CDFW, during the permitting process.

No revisions to the EIR are necessary.

Response 2.35

The commenter states that the CCC will have review authority over the Wetland MMP and will receive monitoring reports.

The EIR has been revised to include a review component in Mitigation Measure BIO-9(b), Develop and Implement a Wetland MMP.

Response 2.36

The commenter acknowledges compensatory mitigation described in the Draft EIR, but also suggests funding local projects as potential compensatory mitigation.

The RTC and CFL plans to mitigate for permanent losses of ESHA, including wetlands, through on-site and in-kind replacement and enhancement. Per regulatory guidance such as that of the U.S. Army Corps of Engineers under the Clean Water Act, the preference for mitigation is on-site. Enhancement of degraded ESHA within the project vicinity will be considered. Therefore, the program partners will prioritize those opportunities. As the design is in a preliminary stage, all potential mitigation opportunities have not yet been identified. Mitigation requirements and opportunities will continue to be discussed with environmental regulators through the design and environmental permitting process.

No revisions to the Draft EIR are necessary.



Ms. Cory Colletti
Regional Transportation Commission of Santa Cruz County
1523 Pacific Avenue
Santa Cruz, CA 95060

September 21, 2018

The State Coastal Conservancy wishes to thank the Regional Transportation Commission for this opportunity to comment on the Draft Environmental Impact Report (DEIR) for the North Coast Rail Trail, a portion of the Monterey Bay National Sanctuary Scenic Trail (MBNSST). As described in the DEIR, the Alternatives 1-3 are outside the scope of the project and would fail to meet project objectives (Section 2.3 Objective 3, page 2-4). While the environmental impacts of the Alternatives are similar to the proposed project, we object to it for the reasons outlined below.

3.1

Scope: The Coastal Conservancy is supportive of the proposed project because the MBNSST (“rail trail”) will enhance the public’s access and appreciation of the coast and is a vital segment of the California Coastal Trail. In addition to pedestrian and bicycle access, rail passenger service also has the potential to expand the public’s access to the coast in ways that reduce reliance on automobile use.

Though not common in California, there are many examples throughout North America and Europe of tourist rail services providing access to natural lands. Likewise, while bicycle use is gaining in popularity, not all members of the public have the ability to use such this mode of transportation. Therefore, we feel there is compelling need to maintain the existing rail infrastructure, as it may be one of several modes of transportation used by the public to access current and future open spaces along the Coast.

Delay: According to the DEIR, switching the project to trail-only will cause a significant delay in implementation and require the RTC to pay back millions of dollars in grants and other funds. The process to make this change will further delay the project and could jeopardize future funding opportunities. Building trails, especially miles of multi-use ADA-compliant trails such as this, is a slow, expensive and resource-intensive process.

3.2

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510•286•1015 Fax: 510•286•0470

The DEIR states that implementing Alternative 1 project (essentially building a different project than what was proposed in the 2014 Master Plan) will result in an estimated delay of 8 years due to the legal, policy and contractual issues resulting in changing the objectives of the (page 2-29).

3.2
(cont'd)

Future Demand: Currently the stretch of the coastal highway from Wilder Ranch to Davenport and beyond is troubled with substandard, unplanned and unsafe beach parking areas. Visitors to these more northern areas of coastal bluffs and beaches end up parking their automobiles in a haphazard fashion along the busy highway. There is also a severe lack of visitor amenities (e.g. restrooms, formal trails, ADA-access, trailhead information, etc.). Despite these negative aspects, beaches and visitor services in Davenport (restaurants, hotel and shops) are a major draw for tourists visiting the area and likely to be even more so in the future. Moreover, while the future uses of the former CEMEX plant site are far from certain, we hope to see additional visitor-serving, tourist-oriented services within the footprint of site (and is a consideration of a pending County-lead redevelopment study).

3.3

We are also excited about the prospect of adding new access to trails leading into Coast Dairies and San Vicente Redwoods: two major holdings of natural lands that will draw more visitors once open. Given that Route 1 traffic is already at over-capacity and poorly serviced, one should consider a fully functional rail-line vital for future coastal access.

Highway Traffic: The proposed rail trail, including future passenger rail service, has the potential to mitigate for future traffic impacts of development by providing alternative means of commuting between Davenport and the greater Santa Cruz Area. We agree with the DEIR that the trail in-itself is not “growth-inducing” as there is no plan for home or commercial type development proposed with this project. However when and if future developments are proposed, the rail trail could play an important role in mitigating potential traffic impacts and should be seen as a community asset.

3.4

Alternatives 2 and 3: The Conservancy also disfavors Alternative 2 (Inland Side) and Alternative 3 (Farmer’s Option) for the following reasons.

3.5

Alternative 2 would build the trail on the inland side of the railroad tracks instead of the outside or western (ocean) side of the tracks. While in some instances, there could be constraints and feasibility issues that force the trail to the inland side of the tracks, we feel that in general the trail belongs on the coastal side of the tracks because to do otherwise would greatly diminish the user’s experience of the coast. We agree with the analysis in the EIR: “The views of the ocean and ability to experience and interpret the sanctuary would be reduced” (page 5-12). We also question the relative safety of having the public on the inland side of the tracks when so many of the attractions are on the coastal side, thereby increasing the frequency of rail crossings (planned and ad-hoc). This concern also applies to Alternative 3, discussed below, because the public would be compelled to cross the tracks in many locations in order to view the ocean and access beach and bluff areas.

Alternative 3 is entitled the “Farmer’s Alternative”, as the alignment was suggested by those farming the land in the area. This alternative would remove the tracks and move the trail to run parallel and adjacent to Highway 1 south of Scarorni Road. The DEIR does not go into detail about why this alternative is proposed but we think it may be, in part, be due to concerns by farm operators over having a public trail close to croplands. We are aware that trails adjacent to farm fields raise unique challenges, but we also see potential benefits in terms of engaging the public in farming practices and education related to “local food”.

3.5
(cont'd)

Sincerely



Tom Gandesbery
Project Manager

Letter 3

COMMENTER: Tom Gandesbery, Project Manager, California Coastal Conservancy

DATE: September 21, 2018

Response 3.1

The commenter supports the Proposed Project and opposes Alternatives 1-3.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 3.2

The commenter reiterated the Draft EIR's estimation that alternatives involving a trail only scenario will be subject an estimated 8-year delay due to loss of funding and would not be consistent with the project approved in the Master Plan.

Refer to **Master Response D**.

Response 3.3

The commenter states that there is currently substandard parking and visitor amenities on Highway 1 for visitors, there could be more visitors in the future, and given Highway 1 traffic is already over capacity, one should consider a fully functional rail-line vital for future coastal access.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 3.4

The commenter states that the rail trail could play an important role in mitigating potential traffic impacts and should be seen as a community asset.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 3.5

The commenter opposes Alternatives 2 and 3 for reasons specified in the comment.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.



State of California – The Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Bay Delta Region
 7329 Silverado Trail
 Napa, CA 94558
 (707) 944-5500
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EDMUND G. BROWN JR., Governor
 CHARLTON H. BONHAM, Director



Letter 4

September 18, 2018

Cory Caletti
 Santa Cruz County Regional Transportation Commission
 1523 Pacific Avenue
 Santa Cruz, CA 95060
NCRTDraftEIR@scrtc.org

Dear Cory Caletti:

Subject: North Coast Rail Trail, Draft Environmental Impact Report, SCH #2017092034, Santa Cruz County

The California Department of Fish and Wildlife (CDFW) has reviewed the draft Environmental Impact Report (EIR) prepared by the Santa Cruz County Regional Transportation Commission (RTC) for the proposed North Coast Rail Trail (Project) located in Santa Cruz County. CDFW is submitting comments on the draft EIR regarding potential impacts to biological resources associated with the proposed Project.

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA) §15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration Agreement (LSAA) and other provisions of the Fish and Game Code that afford protection to the State’s fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW offers the following comments and recommendations regarding the Project.

PROJECT DESCRIPTION AND LOCATION

The proposed Project includes the construction of a 7.5-mile multi-use bicycle and pedestrian trail along a RTC-owned railroad corridor from Wilder Ranch State Park on the South to Davenport on the north in unincorporated Santa Cruz County. The trail will be composed of paved path with stripping, parallel unpaved path and shoulder, restrooms, and parking improvements with trail connections at three locations along the alignment.

ENVIRONMENTAL SETTING

Within the proposed alignment of the multi-use bicycle and pedestrian trail, salmonid species, amphibian species, migratory birds, and special-status species are known to inhabit or utilize the area. Based on a review of the California Natural Diversity Database (2018), the special-status species that are known to occur, or have the potential to occur in or near the Project site, include:

- Black swift (*Cypseloides niger*), a state species of special concern;
- California giant salamander (*Dicamptodon ensatus*), a state species of special concern;
- California red-legged frog (*Rana draytonii*), a state species of special concern and listed as threatened under the federal Endangered Species Act (ESA);

4.1

- Coho salmon – Central California Coast Evolutionarily Significant Unit (*Oncorhynchus kisutch*), listed as endangered under CESA and listed as endangered under ESA;
- San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*), a state species of special concern;
- Santa Cruz black salamander (*Aneides niger*), a state species of special concern;
- Steelhead – Central California Coast Distinct Population Segment (*Oncorhynchus mykiss irideus*), listed as threatened under ESA;
- Tidewater goby (*Eucyclogobius newberryi*), listed as endangered under ESA;
- Townsend’s big-eared bat (*Corynorhinus townsendii*), a state species of special concern; and
- Yellow rail (*Coturnicops noveboracensis*), a state species of special concern.

4.1

COMMENTS

Comment 1: Define “Qualified Biologist”

Throughout the Biological Resources section of the draft EIR, “qualified biologists” are described conducting habitat surveys, conducting baseline special-status species surveys, preparing project specific mitigation plans, etc. However, the draft EIR does not define what qualifications a biologist must have to conduct surveys, prepare mitigation plans, etc. Please define “qualified biologist” and indicate what qualifications such a person must hold to conduct special-status species surveys, prepare mitigation plans, etc.

4.2

For example, CDFW permits typically define the minimum qualifications for individuals conducting special-status species surveys as at least five years of academic training, professional experience in biological sciences, or related resource management activities, with a minimum of two years conducting surveys for the specific special-status species.

Comment 2: Discuss Natural Bridges State Marine Reserve

While the draft EIR states that the Project borders the Monterey Bay National Marine Sanctuary, there is no mention of the Natural Bridges State Marine Reserve (Natural Bridges SMR) with which it also shares a border.

4.3

In a SMR, it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource, except under a scientific collecting permit issued by CDFW pursuant to Section 650 or specific authorization from the Commission for research, restoration, or monitoring purposes. Additional information on the Natural Bridges SMR can be found on CDFW’s website (<https://www.wildlife.ca.gov/Conservation/Marine/MPAs>).

As Natural Bridges SMR was not discussed in the draft EIR, it is unclear whether the Project would conflict with these policies or otherwise adversely impact marine resources.

Comment 3: Include Information about Natural Bridges SMR on Signage

The draft EIR states that informational and educational signage would be placed at strategic locations along the trail and in parking lots and include information about the Monterey Bay National Marine Sanctuary (see Project Description section). CDFW recommends that signage also include information about the Natural Bridges SMR.

4.4

Comment 4: Plan Construction to Avoid Rainy Season

Construction activities conducted during the rainy season could result in release of sediment into streams and aquatic features, and/or take of migrating amphibians. To address such impacts, Mitigation Measure Bio 2 states that:

4.5

If feasible, construction activities should take place during the dry season between June 15 and November 1, or until the first rain of the season, especially vegetation removal and work in or near aquatic features, including ditch wetlands.

However, the rainy season in Santa Cruz County often begins as early as October 15. To avoid construction impacts, CDFW recommends that construction activities in and around sensitive habitats be planned and phased to wrap up by October 15. Only minor activities of no more than five days in duration should be initiated after October 15, and such activities should only proceed in upland areas and when the 10-day forecast predicts a less than 30% chance of precipitation. These changes should also be applied to Table 3.4-5.

Comment 5: Additional Protections for California Red-Legged Frog

The draft EIR does not currently include California red-legged frog (CRLF) protections for in-water work. This could result in unpermitted take of this species. CDFW recommends incorporation of additional measures into Mitigation Measure Bio 2 to decrease the likelihood for take of CRLF and other amphibian species:

4.6

- A biologist with two or more years of experience working with CRLF and amphibian species should direct and inspect all vegetation and sediment removal activities for CRLF and amphibians that may be found within vegetation or sediment.
- A biologist with two or more years of experience working with CRLF and amphibian species should inspect any vehicle or heavy equipment that is planned to be moved within the construction site for CRLF and amphibian species to ensure that said species have not moved under the vehicle or heavy equipment.
- Any vegetation removed during the Project should be placed directly into a disposal vehicle. Vegetation should not be piled on the ground unless it is later transferred, piece by piece, under the direct supervision of a biologist with two or more years of experience working with CRLF and amphibians.

Comment 6: Use Native Plants and Bioengineering in Slope Stabilization and Erosion Control
Mitigation Measure Bio-8(a) states that:

Arroyo willow riparian forest impacted by slope stabilization activities shall be minimized to the maximum extent feasible. Construction of retaining walls, slope contouring, and other stabilization techniques shall be limited to the footprint of the required work area. Silt fencing and other erosion control measures shall be placed immediately downslope to prevent sediments and debris from entering stream courses and degrading water quality.

4.7

CDFW recommends use of bioengineering techniques (e.g., log crib walls, vegetation planting, etc.), when feasible, as a slope stabilization approach. Bioengineering techniques provide

habitat for fish and wildlife resources, whereas other methods, such as rip rap or retaining walls, have limited habitat value.

CDFW also recommends that any ground left barren from construction activities be revegetated with native vegetation found within similar habitat within the same watershed to minimize erosion, prevent establishment of invasive weeds, and accelerate recovery of native vegetation communities.

Comment 7: Cumulative Impact to Biological Resources

The draft EIR states that there may be cumulative impacts associated with operation of the proposed trail. However, operational details have not reached a level of specificity that addresses the Project's contribution to all identified cumulative impacts on biological resources. To mitigate for cumulative impacts, the draft EIR states that a Project-specific biological resources mitigation management plan will be developed.

The Project's potential contribution to cumulative impacts may include a decrease in wildlife connectivity due to the installation of fencing along the trail; increase in deleterious material (e.g., trash, pollutants, etc.) into streams and the ocean due to the increase of visitors to the Project location; and increase in stream flow due to the culverting of ditches and the funneling of storm runoff around the trail. Any cumulative impact to biological resources should be mitigated to the extent possible or avoided. Mitigation measures may include increasing wildlife connectivity through the creation of wildlife bypasses, education of trail visitors regarding leaving no trace while on trails, and ensuring that storm runoff is dispersed as sheet flow along the landscape and not funneled into streams.

CDFW appreciates that during the development of the biological resources mitigation plan, the RTC will consult with CDFW on potential Project impacts to sensitive habitats, stream corridors, riparian habitat, Fully-Protected species, and Species of Special Concern. CDFW also recommends that the draft biological resources mitigation management plan be submitted to CDFW for review.

Comment 8: CDFW review of Wetland Mitigation and Monitoring Plan

CDFW recommends that a draft wetland mitigation and monitoring plan be submitted to CDFW to identify if the Project would appropriately mitigate for impacts to wetlands associated with development and operations.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a California Endangered Species Act (CESA) permit must be obtained if the project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

4.7
(cont'd)

4.8

4.9

4.10

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA §§ 21001(c), 21083, and CEQA Guidelines §§ 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code § 2080.

4.10
(cont'd)

Lake and Streambed Alteration Agreement

CDFW will require a Lake and Streambed Alteration Agreement (LSAA), pursuant to Fish and Game Code §§ 1600 et. seq. for Project-related activities within any 1600-jurisdictional waters within the proposed Project area. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSAA until it has complied with CEQA (Public Resources Code § 21000 et seq.) as the responsible agency.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

Thank you for the opportunity to comment on the Project's draft EIR. If you have any questions, please contact Ms. Monica Oey, Environmental Scientist, at (707) 428-2088 or monica.oey@wildlife.ca.gov; or Ms. Randi Adair, Senior Environmental Scientist (Supervisory), at (707) 576-2786 or randi.adair@wildlife.ca.gov.

Sincerely,


Gregg Erickson
Regional Manager
Bay Delta Region
FOR

cc:

Office of Planning and Research – state.clearinghouse@opr.ca.gov
Darren Howe, NOAA – darren.howe@noaa.gov
Chad Mitcham, U.S. Fish and Wildlife Service – chad_mitcham@fws.gov
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Letter 4

COMMENTER: Gregg Erickson, Regional Manager, California Department of Fish and Wildlife

DATE: September 18, 2018

Response 4.1

The comment includes introductory information about the commenting agency, the project description and location, and environmental setting.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 4.2

The commenter requests that the qualifications be defined for biologists conducting habitat surveys, baseline special-status species surveys, and preparing mitigation plans.

In general, based on CDFW standards, a qualified biologist is an individual who shall have a minimum of five years of academic training and professional experience in biological sciences and related resource management activities with a minimum of two years conducting surveys for each species that may be present within the Study Area.

Per the *CDFW 2018 Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*, botanical field surveyors possessed the following minimum qualifications:

- Knowledge of plant taxonomy and natural community ecology;
- Familiarity with plants of the region, including special status plants;
- Familiarity with natural communities of the region, including sensitive natural communities;
- Experience with the CNDDDB, BIOS, and Survey of California Vegetation Classification and Mapping Standards;
- Experience conducting floristic botanical field surveys as described in this document, or experience conducting such botanical field surveys under the direction of an experienced botanical field surveyor;
- Familiarity with federal, state, and local statutes and regulations related to plants and plant collecting; and
- Experience analyzing the impacts of projects on native plant species and sensitive natural communities.

Surveys for sensitive habitats, including wetlands, were performed by a biologist with over 15 years of experience conducting botanical and wetland field work, including focused rare plant surveys and habitat characterizations throughout Santa Cruz County and the north coast, as well as formal jurisdictional delineations of wetlands and waters using ACOE and CCC protocols.

Surveys for special-status wildlife species known or with potential to occur within the Study Area were performed by biologists familiar with the distinguishing physical characteristics of all life stages of the species, the ecology, habitats, and behavior of the species, and documented field experience

with that species over a number of surveys at multiple geographic locations. The biologists had familiarity with and were able to identify native and non-native species that may co-occur with the listed species. The biologists were familiar with USFWS and CDFW-agency standards and, if relevant, agency protocols for performing surveys. For many of the sensitive species known or with potential to occur, the biologists had been approved to serve as authorized biologists by CDFW and/or USFWS on previous projects. In some cases, such as for Ohlone tiger beetle, a recognized expert performed the habitat assessment and survey.

The assessment of wildlife movement was performed by biologists familiar with the sensitive species and habitats of the Study Area, as well as with methodology and standards for assessing wildlife movement.

The biologist(s) authorized to prepare the Biological Resources MMP, identified as Mitigation Measure BIO-8(c), would be approved by USFWS and CDFW (as noted in the Draft EIR) and meet the criteria described above, as well as have experience developing multi-species, multi-habitat mitigation and management plans.

The Draft EIR has been revised to include these details.

Response 4.3

The commenter states that there is no mention of the Natural Bridges State Marine Reserve (SMR), and it is unclear if the Project would conflict with SMR policies.

The Draft EIR (Section 3.4.1 under *Regional Biological Setting*) has been revised to acknowledge the Project is adjacent to the Natural Bridges SMR, as well as the Monterey Bay National Marine Sanctuary.

The Draft EIR considered potential effects on marine resources in Section 3.4.4 under Impact BIO-1. The discussion has been revised to clarify the potential impact to marine resources within the Monterey Bay National Marine Sanctuary and Natural Bridges SMR would be less than significant. Additionally, the regulatory setting in Section 3.4.2 has been revised to include a general description of the federal National Marine Sanctuaries Act and state Marine Life Protection Act.

Response 4.4

The commenter recommends the information and educational signage also include information about the Natural Bridges SMR.

The Draft EIR (Section 2.4, *Trail Amenities and Features*) has been revised to specify the Project's informational and educational signage would also include information on the Natural Bridges SMR.

Response 4.5

The commenter requests that the dry season be defined as ending on October 15, and work in or around sensitive habitats be planned and phased accordingly, suggesting language to this effect and revisions to Table 3.4-5.

The Draft EIR has been revised to include these suggestions.

Response 4.6

The commenter recommends additional measures be added to Mitigation Measure BIO-2, Conduct Biological Monitoring for CRLF and Other Sensitive Wildlife Species.

The Draft EIR has been revised to include these measures.

Response 4.7

The commenter recommends alternate/additional methods for slope stabilization and recommends revegetation with locally sourced native plants in Mitigation Measure BIO-8(a), Minimize Construction in Sensitive Habitats.

The Draft EIR has been revised to include these suggestions.

Response 4.8

The commenter lists potential cumulative impacts to biological resources and reiterates the importance of CDFW's participation in the development of the Biological Resources MMP and requests that CDFW be a partner in reviewing the MMP.

The comments are acknowledged. Refer to **Response to Comment 2.24**.

No further revisions to the Draft EIR are necessary.

Response 4.9

The commenter recommends that CDFW review the Wetland MMP.

Refer to **Response to Comment 2.35**.

Response 4.10

The commenter advises that a California Endangered Species Act (CESA) permit must be obtained for potential take of CESA-listed species.

"Take" of CESA listed species is not anticipated; therefore, this permit would not be required. The only state-listed species known or with potential to occur within the Study Area is CCC coho. Impacts to this species would be avoided.

No revisions to the Draft EIR are necessary.



DEPARTMENT OF PARKS AND RECREATION
Santa Cruz District
303 Big Trees Park Road
Felton, CA 95018

Lisa Ann L. Mangat, Director

September 19, 2018

Ms. Cory Caletti
Senior Transportation Planner
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, CA 95060

Re: State Parks Comments Public Draft EIR – North Coast Rail Trail

Thank you for the opportunity to comment on the Public Draft EIR, North Coast Rail Trail. California State Parks (CSP) supports maximizing opportunities for public access for recreation and enjoyment, consistent with the protection and preservation of the natural and cultural resources.

5.1

Public access to State Parks property should also be consistent with protecting the rights and interests of current lessees. In this regard, we would like to emphasize the need to maintain farmer/lessee access to their leased property during construction and upon completion of the project.

5.2

Based on this document, it is difficult to determine the location of expected impacts to sensitive natural and cultural resources. For a more specific review of project impacts on State Park property, it would be valuable to have detailed site maps showing project elements proposed for State Parks property. To assist in our project review, we request RTC provide more detailed maps including property ownership as soon as feasible so that we can more carefully evaluate impacts upon State Parks land and resources.

5.3

Many of the measures for impact avoidance and mitigation rely on the preparation of Mitigation and Monitoring Plans. Although this is understandable given the need to determine specific impacts based on a chosen project design, this strategy makes it difficult to analyze the project impacts to State Parks resources and to recommend any additional avoidance or mitigation measures.

5.4

The details of these Mitigation and Monitoring plans will be important, and State Parks will need to work closely with those preparing the plans for sensitive resources and habitats on State Park property.

CSP has the following specific comments on the Draft EIR:

Parking Lots, P. 2-14 Panther/Yellowbank Beach Lot: We recommend including a gate to control illegal, after-hours parking at this site. Site conditions at this beach restrict radio communication and safe access, making this a dangerous area for law enforcement response. Similar parking areas also suffer from trash issues that warrant well maintained receptacles or dumpsters to prevent the overflow of trash onto Park property.

5.5

Trail Amenities and Features, P. 2-25: We would suggest putting benches one mile apart rather than ½ mile apart. This approach would still satisfy the rest area idea but be a compromise for our farmers/lessees who are concerned about potential conflicts between public access and continued agricultural operations. We recommend providing trash receptacles and limited bike racks at the parking/restroom areas only and support a pack in/pack out option for the trail corridor.

5.6

Timing and Duration, P. 2-29: State Parks would prefer timing of construction to be before or after the fall harvest timeframe for our farmer lessees to avoid impacts to their operation.

5.7

Existing Trail Crossings, P. 2-20: We recommend the existing informal pedestrian RR crossing at Laguna remain open. Since there is a county parking lot across Hwy 1 at this location, this crossing provides access to the beach and is very well used by the public. Pedestrian use will likely expand with the opening of the National Monument trailhead nearby.

5.8

3.5 Cultural Resources, P. 3.5-1 Existing Conditions: This section could be improved by including or referencing more contemporary contextual studies and regional cultural taxonomies. Contextual studies should demonstrate the capability and capacity to properly record and evaluate resources, or address the impacts to them.

5.9

History, P. 3.5-2: The text does not include a discussion of Spanish and Mexican Period land grants in the contextual study other than Rancho Refugio at Wilder Ranch State Park. Other Ranchos were situated further up the coast within the project area. Historical accounts such as those of Lorenzo Assisara, an Ohlone man from Mission Santa Cruz, would have been useful in the contextual study. Assisara described the continued presence of Native Americans on the coast within the vicinity of the project area.

Project Corridor Setting, Cultural Resources, P. 3.5-5: The project area is directly adjacent to the Wilder Ranch State Park Cultural Preserve. The Cultural Preserve includes a large inventory of sites and structures that should be included in this discussion, and the potential impacts to the Cultural Preserve should be considered.

Paleontological Resources, P. 3.5-7: Paleontology should not be included in the Cultural Resources section. Despite the organization of the City of Santa Cruz General Plan which has combined these topics, paleontology may be more relevant to the Geological assessment in this Draft EIR.

5.10

3.5.3 Methodology and Significance Thresholds, Cultural Resources, P. 3.5-16: Wilder Ranch Cultural Preserve is directly adjacent to the project area, and should be included in the Project Impact Analysis.

5.11

Proposed Project (Coastal Side), P. 3.5-21: Any archaeological evaluations conducted within the jurisdiction of State Parks will require an Archaeological Investigation Permit. State Parks assumes that SCR-56 and SCR-58 are already potentially eligible resources. SCR-10 on the coast side has already been tested and found to no longer have sufficient integrity; the inland portion of SCR-10 is intact.

5.12

Mitigation Measure CR-1(b), P. 3.5-21: For resources within State Parks property, archival histories should be curated with State Parks Cultural Resources Division.

5.13

Mitigation Measure CR-2(a) and CR-2(b), P. 3.5-22: For resources within State Parks property, the methods used will be chosen in consultation with State Parks.

Alternative 1 (Trail Only), P. 3.5-23: State Parks would advocate avoidance of impacts rather than data recovery. For situations of late discovery during construction, implementation of a previously approved data recovery Archaeological Treatment Plan may be useful.

Mitigation Measure CR-3, P. 3.5-27: Any paleontological resources found on State Park land would remain the property of California State Parks.

Tribal Consultation, P. 3.15-1: This section cites literature that is not current, and may not be correct. For example, there are thought to be 50 rather than 40 tribes composing the Ohlone cultural sphere. There is no archaeological support for some of the items listed as food (such as Roosevelt elk and dog), and this limited overview does not assist in the analysis of tribal resources within the project area.

5.14

Assembly Bill 52 Consultation, P. 3-15.2: State Parks is currently engaged with the Amah Mutsun Tribe on cultural projects at the Sand Hill Bluff adjacent to the current project. Site SCR-7, a National Registered archaeological site, is not mentioned in the Draft EIR. State Parks recommends that project managers contact the Amah Mutsun Tribe directly for consultation.

Mitigation Measure TCR-1, P. 3.15-5: Native American Monitoring should be considered a method rather than a mitigation measure. Actual mitigation EIR could include use of a Treatment Plan once finds are made by a monitor. The Draft EIR should delineate procedures and guidelines for Native American Monitors.

5.15

We look forward to the partnership with the Regional Transportation Commission as they move forward with this worthwhile project. If you have any questions regarding these comments, please contact Sr. Park and Recreation Specialist Sheila Branon at 831-335-6385.

Sincerely,



Chris Spohrer
District Superintendent

Letter 5

COMMENTER: Chris Spohrer, District Superintendent, California Department of Parks and Recreation

DATE: September 21, 2018

Response 5.1

The commenter states that State Parks supports maximizing opportunities for public access, consistent with protection of resources.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 5.2

The commenter states the need to maintain farmer/lessee access during construction and upon completion of the Project.

It is anticipated that farmer/lessee access would be maintained throughout project construction. As stated in Section 2.6 under *Construction Staging*, there would be no staging from productive agricultural land.

The potential for disruption to agricultural operations during construction is addressed in Section 3.2.4 under Impact AG-3, and Mitigation Measure AG-3(a) requires implementation of the following measures to reduce potential impacts.

- Staging areas shall not be placed in or directly adjacent to active agricultural areas and access to staging areas shall not block or inhibit access to existing farmland or farm access roads
- Where feasible, construction adjacent to agricultural areas shall not occur during peak harvest periods, typically in the fall months (Branon 2018)
- When construction activities must occur during agricultural harvest (for example, to avoid nesting bird season), reasonable access to farmland, as determined by the RTC or CFL in consultation with the North Coast Farmers, shall be maintained; while precise timing cannot be specified, the RTC or CFL would endeavor to consult with the Farmers as early as feasible in the development of the construction schedule
- The construction contractor shall designate a contact for construction-related complaints. Contact information shall be provided to agricultural operators adjacent to the rail line, and shall be posted at construction staging areas. The contractor shall respond to complaints in a timely manner

These measures shall be included in final design plans and implemented by the construction contractor. The RTC or its designee shall review plans to confirm inclusion of these measures and conduct spot-check monitoring during construction to ensure compliance.

As stated in Section 2.4 under *Trail Crossings*, for all farmer crossings being closed, other adjacent crossings would be formalized to maintain farmer access. Additionally, as stated in Section 2.6 under *Construction Staging*, there would be no staging from productive agricultural land.

No revisions to the text of the Draft EIR are necessary. However, the mitigation measure text was revised as shown above to clarify that it is RTC or CFL who would be responsible for this coordination, because CFL would be responsible for construction management. Additionally, Table 2-1, *Summary of Trail Crossings*, has been revised to include the distances from the informal trails to be closed to the next nearest trail crossing.

Response 5.3

The commenter requests RTC provide more detailed maps including property ownerships.

Maps with overlays of the Proposed Project and Alternatives are provided in Appendix A of the Draft EIR. As design evolves further, a higher level of detail will be developed and shared with State Parks and other parties with property ownership authority.

Refer to **Master Response B** for further information regarding property ownership information.

The comment does not relate to the adequacy of the EIR or CEQA process.

No revisions to the Draft EIR are necessary.

Response 5.4

The commenter states that State Parks will need to work closely with those preparing the mitigation and monitoring plans for sensitive resources and habitats on State Park property.

Mitigation Measure BIO-8(c), Develop Project-specific Biological Resources Mitigation and Management Plan for Impacts to Biological Resources Resulting from Trail Construction, specifies that mitigation area locations and replacement ratios shall be determined in consultation with USFWS, CDFW, and CCC.

The Draft EIR, Mitigation Measure BIO-8(c), has been revised to clarify that the mitigation and management plan will be developed in consultation with State Parks as well.

Response 5.5

The commenter states that State Parks recommends including a gate at the Panther/Yellowbank Beach lot.

Refer to **Master Response C**.

Response 5.6

The commenter recommends putting benches one mile apart rather than ½ mile apart, and providing trash receptacles and limited bike racks only at the parking lots to minimize potential conflicts with agricultural operations.

As stated in Section 2.4 under *Trail Amenities and Features*, most of the amenities (benches, trash/recycling containers, bike racks) would be in the three parking lots and in rest areas 0.5 to 1.0 mile apart depending on terrain and beach access locations. The RTC and CFL will consider the request for locating these facilities 1-mile apart during final design. The RTC and CFL support trash/recycling receptacles at the rest areas to minimize trash and litter which could also have an adverse effect on agricultural operations, as discussed in Section 3.2.4 under Impact AG-3.

No revisions to the Draft EIR are required.

Response 5.7

The commenter requests that construction be timed to avoid farmer lessees' fall harvests.

The Draft EIR identifies Mitigation Measure AG-3(a), Implement Measures to Reduce Construction-Related Conflicts with Agricultural Operations, which includes minimizing construction impacts during harvest season. As noted in Mitigation Measure AG-3(a):

- Where feasible, construction adjacent to agricultural areas shall not occur during peak harvest periods, typically in the fall months (Branon 2018);
- When construction activities must occur during agricultural harvest (for example to avoid nesting bird season), reasonable access to farmland, as determined by the RTC or CFL in consultation with the North Coast Farmers, shall be maintained; while precise timing cannot be specified, the RTC or CFL would endeavor to consult with the Farmers as early as feasible in the development of the construction schedule.

No revisions to the Draft EIR are required.

Response 5.8

The commenter requests that the informal crossing of the railroad tracks at Laguna Beach remain open.

The proposed closure of the informal railroad crossing that accesses Laguna Beach is being proposed primarily due public safety concerns of crossing Highway 1 in this area where there is a significant grade. The informal crossing is therefore proposed for closure as part of this process.

No revisions to the Draft EIR are necessary.

Response 5.9

The commenter states the Project area is directly adjacent to the Wilder Ranch State Park Cultural Preserve and should be included in the EIR, and potential impacts to the Cultural Preserve should be considered.

The Wilder Ranch State Park Cultural Preserve (SPCP) is addressed in Section 3.5.1, *Cultural Resources/Existing Conditions*. According to documentation on file with the California Historical Resources Information System (CHRIS), Wilder Ranch is recorded as P-44-000480 and the Project corridor does not extend to the recorded boundaries of the resource. Per this documentation, Wilder Ranch has not been formally evaluated for listing in the California Register of Historical Resources (CHRIS) and is not a historical resource as defined by CEQA. It is therefore not discussed in the impacts discussion of Section 3.5, *Cultural Resources*.

Should the Wilder Ranch SPCP be determined a historical resource per CEQA later, it is not anticipated that the current Project would negatively affect its integrity or result in a significant adverse impact. The Project is outside of the boundaries of the Wilder Ranch SPCP and does not have potential result in any direct changes to that property. Further, the Project would not result in any indirect impacts to the Wilder Ranch SPCP, as no substantial above ground elements are proposed with potential to negatively affect its setting.

No revisions to the Draft EIR are necessary.

Response 5.10

The commenter states that paleontology should not be included in the Cultural Resources section.

Paleontology has been included in the Cultural Resources section consistent with the State CEQA Guidelines, Appendix G, Environmental Checklist Form.

The comment does not relate to the adequacy of the EIR or CEQA process.

No revisions to the Draft EIR are necessary.

Response 5.11

The commenter states that the Wilder Ranch SPCP is directly adjacent to the project area and should be included in the Project impact analysis.

Refer to Response 5.9. As stated therein, the Wilder Ranch SPCP is not a historical resource as defined by CEQA, and the Project would not impact the Wilder Ranch SPCP.

No revisions to the Draft EIR are necessary.

Response 5.12

The commenter notes that archaeological evaluations conducted within the jurisdiction of State Parks will require an Archaeological Investigation Permit, that SCR-56 and SCR-58 are potentially eligible resources, and that SCR-10 is only partially intact.

The text of the Draft EIR states that archaeological work conducted on State Parks land will require a permit. For the purposes of this Project, SCR-56, SCR-58, and the intact portions of SCR-10 are assumed to be eligible for listing in the NRHP and CRHR and mitigation is required to address impacts to these sites.

No revisions to the Draft EIR are necessary.

Response 5.13

The commenter states that archival histories for resources on State Parks property should be curated with the State Parks Cultural Resources Division. The commenter also states that methods used for work required by Mitigation Measures CR-2(a) and CR-2(b) be chosen in consultation with State Parks. The commenter states that State Parks would advocate for avoidance rather than data recovery and that an Archaeological Treatment Plan may be useful for late discoveries during construction. Lastly, the commenter notes that paleontological resources found on State Parks land would remain property of State Parks.

In response to this comment, Mitigation Measure CR-1(b) has been revised to clearly indicate that, for resources entirely or partially within State Parks property, documentation shall be curated with the State Parks Cultural Resources Division. In addition, Mitigation Measures CR-2(a) and CR-2(b) have been revised to specify that archaeological capping or monitoring of resources within State Parks property must be completed in consultation with State Parks. These revisions are shown in Section 3.5, *Cultural Resources*.

Capping in accordance with Mitigation Measure CR-2(a) was chosen as the approach for finds during construction, thus an Archaeological Treatment Plan was not added to the DEIR. The third

paragraph under *Alternative 1 (Trail Only)* under Impact CR-2 has been revised to remove mention of data indexing.

Lastly, Mitigation Measure CR-3 has been revised to state that any significant fossils identified on State Parks property shall be curated with State Parks.

In response to this comment, revisions to Mitigation Measures CR-1(b), CR-2(a), CR-2(b), CR-3, and the discussion of Alternative 1 under Impact CR-2 have been revised.

Response 5.14

The commenter notes that portions of the ethnographic setting may be incorrect, specifically that there may have been 50 Ohlone tribelets rather than 40 and that there is no archaeological evidence of the consumption of Roosevelt elk and dog, and that the overview provided does not assist in the analysis of resources within the Project corridor. The commenter also notes that the Amah Mutsun Tribe is currently participating in an excavation at an archaeological site near the Project corridor and recommends that the Tribe be contacted directly for consultation.

The *Regional Tribal Cultural Resources* discussion in Section 3.15.1 in Section 3.15, *Tribal Cultural Resources*, consists of a background on the ethnographic group that occupied the Project area and provides a general context. This section is not intended to identify the potential for specific tribal cultural resources within the Project corridor. No specific tribal cultural resources have been identified within the project area through consultation, therefore more detailed information is not necessary.

The Amah Mutsun Tribe was contacted during the AB 52 consultation process for the Project and did not respond to the invitation for AB 52 consultation. Therefore, no further action is required. Site SCR-7 is located outside of the current project site and would therefore not be impacted by the project and does not require discussion in the Draft EIR.

In response to this comment, potentially incorrect information has been removed. The second paragraph under *Regional Tribal Cultural Resources* has been revised to remove the statement that there were approximately 40 Ohlone tribelets. In the third paragraph, Roosevelt elk and dog were removed from the text.

Response 5.15

The commenter states that Native American Monitoring should be considered a method rather than a mitigation measure, that mitigation should include a Treatment Plan for finds made during construction, and that the Draft EIR should delineate procedures for Native American Monitors.

Mitigation Measure TCR-1 requires the preparation and implementation of a mitigation plan (equivalent to a Treatment Plan) in the event of a discovery. The requirement of a Native American monitor during ground disturbance in archaeologically sensitive areas is a common mitigation approach, thus no changes to the requirements of the measure have been made.

To clarify procedures for Native American monitors in the event of a discovery, Mitigation Measure TCR-1 in Section 3.15, *Tribal Cultural Resources*, has been revised to specify that the Native American monitor shall have the authority to halt and redirect ground disturbance away from the find.

DEPARTMENT OF TRANSPORTATION

50 HIGUERA STREET
SAN LUIS OBISPO, CA 93401-5415
PHONE (805) 549-3101
FAX (805) 549-3329
TTY 711
<http://www.dot.ca.gov/dist05/>

Letter 6



*Serious drought
Help save water!*

September 14, 2018

SCr-1-VAR
SCH#2017092034

Cory Caletti
Santa Cruz County Regional Transportaion Commission
1523 Pacific Avenue
Santa Cruz, CA 95060

Dear Ms. Caletti:

COMMENTS FOR THE DRAFT ENVIRONMENTAL IMPACT REVIEW (DEIR) – NORTH COAST RAIL TRAIL, SANTA CRUZ COUNTY, CA

The California Department of Transportation (Caltrans), District 5, Development Review, has reviewed the DEIR for the North Coast Rail Trail which proposes building a 7.5 mile multi-use bicycle and pedestrian trail in Santa Cruz County. Caltrans offers the following comments in response to the DEIR:

- 1. Projects that support smart growth principles which include improvements to pedestrian, bicycle, and transit infrastructure (or other key Transportation Demand Strategies) are supported by Caltrans and are consistent with our mission, vision, and goals. Further, we commend local planning efforts that are consistent with State planning priorities intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety. 6.1
- 2. As previously dicussed during email correspondence and site visits, any new items in Caltrans right-of-way (e.g. trash containers, bike racks, or benches) are subject to an encroachment permit for review and approval. Additionally, a maintainance agreement with a public entity will be required for new features as well. Please note that no restroom facilities will be approved in the right-of-way. 6.2
- 3. We recognize that it is a request of State Parks, but unfortunately the entrance and exit gates as proposed at the Panther/Yellowbank Beach parking area will not be allowed. 6.3
- 4. Again, please be aware that if any work is completed in the State’s right-of-way it will require an encroachment permit from Caltrans, and must be done to our engineering and environmental standards, and at no cost to the State. The conditions of approval and the requirements for the encroachment permit are issued at the sole discretion of the Permits Office, and nothing in this (cont'd) 6.2

Ms. Cory Caletti
September 14, 2018
Page 2

letter shall be implied as limiting those future conditioned and requirements. For more information regarding the encroachment permit process, please visit our Encroachment Permit Website at: <http://www.dot.ca.gov/trafficops/ep/index.html>.

6.2
(cont'd)

Thank you for the opportunity to review and comment on the proposed project. If you have any questions, or need further clarification on items discussed above, please contact me at (805) 542-4751 or email john.olejnik@dot.ca.gov.

Sincerely,



JOHN J. OLEJNIK
Senior Transportation Planner
Sustainability and Intergovernmental Review

Letter 6

COMMENTER: John Olejnik, Senior Transportation Planner, California Department of Transportation

DATE: September 14, 2018

Response 6.1

The commenter states that Caltrans supports projects that improve pedestrian, bicycle and transit infrastructure.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 6.2

The commenter states that any new items in Caltrans right-of-way (e.g., trash containers, bike racks, or benches) are subject to an encroachment permit and a maintenance agreement, and that no restroom facilities will be approved in the right-of-way.

The required encroachment permit is acknowledged in Section 2.7, *Required Permits and Approvals*, of the Draft EIR. RTC and CFL will coordinate with Caltrans during final design of the improvements to the parking areas and planned facilities within Caltrans ROW.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 6.3

The commenter states that entrance and exit gates as proposed at Panther/Yellowbank parking area will not be allowed.

As stated in Section 2.5 under *Hours and Closures*, no gates are proposed as part of the Project.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

September 21, 2018

Santa Cruz County Regional Transportation Commission
Cory Caletti, Senior Transportation Planner
1523 Pacific Avenue
Santa Cruz, CA 95060

SUBJECT: DRAFT ENVIRONMENTAL IMPACT REPORT: NORTH COAST RAIL TRAIL

Dear Ms. Caletti,

Thank you for providing the Monterey Bay Air Resources District (Air District) the opportunity to comment on the above-referenced document. The Air District has reviewed the document and has the following comments:

Draft EIR: North Coast Rail Trail

Executive Summary Table ES-1: Summary of Project Impact:

In the table under Greenhouse Gas Emissions/Climate Change, GHG-1 discusses that the Project could be potentially significant with respect to GHG emissions and the CA Air Resources Board 2017 Scoping Plan. The Project does not address the electrification of local transit fleets or the need for and installation of electric vehicle supply equipment (EVSE) for the light-duty vehicle fleet as well as for the medium to heavy-duty fleets. MBARD would recommend that the Project consider and address the electrification of the local transit fleets and the installation of strategic fast-charge EVSE along the roadway corridors adjacent to the Project area as a means to reduce Project GHG emissions.

7.1

Both the Santa Cruz Metropolitan Transit District (Metro) and the Monterey-Salinas Transit (MST) are actively pursuing the electrification of their respective transit fleets. As an example, MST has already taken delivery of two full size BYD electric buses. Metro should be receiving their Proterra electric bus in early 2019 and is scheduled to run the Watsonville Circulator route as a pilot electric bus service. Electric vehicles (EVs) produce no GHG as well as zero ozone precursor criteria pollutants.

Equally important is the need for EVSE, which is essential to support and grow the light-duty electric fleet in CA. The VMT associated with EVs is uniquely characterized by the fact these are zero-emission miles. As technology advances the design and capability of fast-charge stations, more medium range EVs will be able to travel longer distances with much shorter duration charging events.

3.3.4 Project Impact Analysis: Construction

The Air District appreciates that the draft document includes quantification of the proposed project construction and operation emissions with a comparison to the Air District's CEQA thresholds, [http://mbard.org/pdf/CEQA_full%20\(1\).pdf](http://mbard.org/pdf/CEQA_full%20(1).pdf), to evaluate whether the proposed project's impact would be significant. The Air District also appreciates the use of the appropriately referenced emission modeling tool, the California Emissions Estimator Model (CalEEMOD) in the document.

7.2

In either case of the Proposed Project or Alternative 1, construction and operational emissions can be further mitigated as well as maintaining compliance with Air District *Rule 402 (Nuisance) and CEQA Guidelines, Section 8.2*, [http://mbard.org/pdf/CEQA_full%20\(1\).pdf](http://mbard.org/pdf/CEQA_full%20(1).pdf) by implementing the following Best Management Practices:

Construction Dust:

- Prohibit all grading activities during periods of high wind (over 15 mph)
- Water all active construction areas at least twice daily. Frequency should be based on the type of operation, soil, and wind exposure.
- Apply chemical soil stabilizers on inactive construction areas (disturbed lands within construction projects that are unused for at least four consecutive days)
- Apply non-toxic binders (e.g., latex acrylic copolymer) to exposed areas after cut and fill operations, or hydro-seed area.
- Maintain at least 2'0" of freeboard in haul trucks.
- Cover all trucks hauling dirt, sand, or loose materials.
- Plant vegetative ground cover in disturbed areas as soon as possible.
- Cover inactive storage piles.
- Install wheel washers or other appropriately effective track-out capture methods at the construction site for all exiting trucks.
- Post a publicly visible sign which specifies the telephone number and person to contact regarding dust complaints. This person shall respond to complaints and take corrective action within 48 hours. The phone number of the Air District shall be visible to ensure compliance with *Rule 402 (Nuisance)*

Operational Emissions:

- With respect to diesel operated off-road construction and stationary equipment, the Air District recommends using cleaner equipment that conforms to ARB's Tier 3 or Tier 4 diesel emission standards. We further recommend that, whenever feasible, construction equipment use alternative fuels such as compressed natural gas (CNG), propane, electricity or biodiesel.
- Please consult with the Air District Engineering Division on the use of stationary portable engines and for any pending changes to the portable engine regulations established by the California Air Resources Board (ARB). Per *Rule 201, Section 4.14.1 (10/15/2014)* any stationary IC engine greater than 50 HP must be permitted by the Air District or registered with the ARB. For Engine-Generator sets, the engine will have a different rating, normally higher than the rating of the generator output.

Please feel free to contact the Planning Division at the Air District to discuss these comments or if there are any questions or clarifications.

Best Regards,

Alan Romero
Air Quality Planner III
aromero@mbard.org
831.718.8030

cc: David Frisbey

Letter 7

COMMENTER: Alan Romero, Air Quality Planner III, Monterey Bay Air Resources District

DATE: September 24, 2018

Response 7.1

The commenter requests that the EIR consider and address the electrification of local transit fleets and the installation of strategic fast-charge electric vehicle service equipment (EVSE) charging station along the roadway corridors adjacent to the Project area as a means to reduce Project GHG emissions.

Both the electrification of local transit fleets and installation of EVSE charging stations along roadway corridors are outside the scope of the Project, and would represent a far more ambitious mitigation strategy than is necessary for a trail project that lacks any stationary source of air pollution and would generate comparatively small amounts of vehicle traffic. The commenter has not provided any information suggesting that, given the relatively modest GHG emissions from the Proposed Project (compared with, for example, a large commercial, retail, industrial, or residential project), fleet electrification and EVSE installation at multiple locations would constitute proportional mitigation. (See, e.g., *Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School District* (1994) 24 Cal.App.4th 826, 841, 842 [mitigation measures “must be assessed in accordance with the ‘rule of reason’”; “[w]e are aware of no authority which would require the [lead agency] ... to consider a mitigation measure which itself may constitute a project at least as complex, ambitious, and costly as [the proposed] project itself”].) More importantly, however, the more limited mitigation proposed in the Draft EIR is sufficient to mitigate GHG impacts to a less than significant level, as discussed below. Under CEQA, no additional mitigation is required.

Notably, implementation of the Project would not affect the ability of Santa Cruz Metropolitan Transit District (Metro) or Monterey-Salinas Transit (MST) to electrify their fleet. As such, electrification of these fleets would not be an appropriate means to reduce Project-generated GHG emissions.

However, as described in Section 3.7.4 under Impact GHG-1, installation of electric vehicle infrastructure at parking lots is addressed and included as a means to reduce Project GHG emissions. Table 3.7-5 (2017 Scoping Plan Key Sector Actions Compliance) and Table 3.7-6 (2017 Scoping Plan Minimization Measure Compliance) identify provision of electric vehicle infrastructure as necessary in order to be consistent with the California Air Resources Board’s updated 2017 *Scoping Plan*.

Mitigation Measure GHG-1 (Install Electric Vehicle Infrastructure in Parking Lots) is identified to reduce this impact to a less than significant level by requiring the project to provide, at a minimum, an electric vehicle charging station at the Davenport parking lot. Additional locations were considered; however, as stated in Mitigation Measure GHG-1, charging stations elsewhere on the trail alignment may be infeasible due to existing limits on electricity distribution infrastructure. The specifications of the charging station are unknown at this time; however, the charging station is primarily intended to reduce GHG emissions related to passenger vehicle trips to the site, as these are the GHG emissions-generating trips attributable to the Project.

No revisions to the Draft EIR are necessary.

Response 7.2

The commenter suggests that the Project's criteria pollutant emissions during construction and operation may be further mitigated through compliance with best management practices listed in the letter.

Criteria pollutant emissions are addressed in Section 3.3.4 under Impact AIR-2. As demonstrated in this impact discussion, construction and operation of the Project would not exceed any MBARD significance threshold. As such, mitigation is not required, and incorporation of the suggested best management practices is not necessary. Even so, however, construction of the Project would comply with MBARD's Rule 402 by implementing best management practices (BMPs) during construction.

The Draft EIR has been revised to clarify that BMPs would be implemented during construction in both Section 2.6 under *General Methodology* and in Section 3.3.4 under Impact AIR-2.



COUNTY OF SANTA CRUZ

OFFICE OF THE AGRICULTURAL COMMISSIONER
JUAN HIDALGO
AGRICULTURAL COMMISSIONER
SEALER OF WEIGHTS AND MEASURES
DIRECTOR, MOSQUITO AND VECTOR CONTROL

September 24, 2018

Cory Caletti
Senior Transportation Planner
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, CA 95060

Subject: Comments on the Draft Environmental Impact Report for the North Coast Rail Trail Project

Dear Ms. Caletti:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (EIR) for the North Coast Rail Trail Project. My office strives to serve the public’s interest by promoting and protecting agriculture, assuring environmental quality, and protecting the health, safety and welfare of Santa Cruz County’s citizens. We do this by enforcing agricultural laws and regulations to ensure the safe and effective use of pesticides, by responding to and investigating public concerns regarding pesticide exposure and other agricultural activities, and by protecting public health through responsible management of mosquitoes and other vectors.

8.1

The Draft EIR addresses different approaches intended to mitigate potential concerns from trail users and the use of pesticides on the adjacent agricultural operations. My office offers the following comments regarding the mitigation measure intended to provide pesticide use notification to trail users.

Mitigation Measure AG-5: Establish Pesticide Spray Notification Procedures and Install Temporary Warning Signage along the Trail

Mitigation Measure AG-5 in conjunction with mitigation measure AG-3(b) and AG-3(e) would provide information to trail users about potential pesticide use, make it clear not to trespass on the agricultural land and provide information about the importance of agriculture in our county. This information will help people assess the risks of using the trail. However, this will not prevent trail users from complaining about the agricultural activities or concerns of pesticide use and exposure. This has the potential to increase the amount of time agricultural office staff spend investigating these types of incidents, diverting time from other agricultural programs. (My office is tasked with responding to pesticide related concerns and illnesses and conducting investigations to assess if any pesticide use laws and regulations were violated.) That being said, the establishment of notification procedures requiring at least a 24-hour notification prior to a pesticide

8.2

application would be more effective if this communication occurs directly between the adjacent agricultural operators and the Trail Manager. Agricultural operations are only required by law to notify my office of pesticide applications if they intend to apply a California Restricted Material. Use of a California Restricted Material requires the operator to obtain a permit from my office prior to use. Agricultural operations are not required to notify the Agricultural Commissioner of other pesticide applications. It is likely that most pesticides used on agricultural farms adjacent to the trail will not be California Restricted Materials. I recommend that the pesticide application requirement be implemented using direct communication between the adjacent agricultural operators and the Trail Manager. In addition to the information contained in the signage instructing trail users about agricultural pesticide applications, the sign should also provide trail users a way to obtain more information about pesticides such as providing the web address to the National Pesticide Information Center (<http://npic.orst.edu/>). This website provides the public with information on pests, pesticides and their risk, and emergency resources.

8.2
(cont'd)

Lastly, not all materials that trail users may see being applied in nearby agricultural fields are pesticides – instead they may be fertilizers or soil amendments. Similar farm equipment is utilized for the application of both pesticides and fertilizers, which can lead people to mistake a fertilizer application for pesticide use. On the planned agricultural-themed displays for public education regarding local farming operations, it may be worthwhile including some explanatory information on this topic so as to reduce potential concerns our office may receive regarding potential pesticide exposure.

8.3

Thank you for your consideration. If you have any questions regarding the foregoing comments, please do not hesitate in contacting me.

Sincerely,



Juan Hidalgo
Agricultural Commissioner

JH

Letter 8

COMMENTER: Juan Hidalgo, Agricultural Commissioner, County of Santa Cruz Office of the Agricultural Commissioner

DATE: September 24, 2018

Response 8.1

The commenter describes the role of the County of Santa Cruz Office of the Agricultural Commissioner and the purpose of the letter as offering comments on the Draft EIR. The comment is noted.

Response 8.2

The commenter recommends that Mitigation Measure AG-5 be revised to require direct communication between the agricultural operators and the Trail Manager, and suggests that required signage include the web address to the National Pesticide Information Center.

In response to this comment, Mitigation Measure AG-5 has been revised to remove the Agricultural Commissioner from the notification, and to add that notices shall include the web address to the National Pesticide Information Center.

Response 8.3

The commenter notes that trail users may mistake fertilizer application for pesticide use, and recommends including information regarding this topic on the proposed agricultural-themed interpretive exhibits.

In response to this comment, Mitigation Measure AG-3(e) has been revised to indicate that displays shall explain that not all materials applied in nearby agricultural fields are pesticides, but rather may be fertilizer or other soil amendments.

Cory Caletti, Senior Transportation Planner
Santa Cruz County Regional Transportation Commission
1523 Pacific Ave., Santa Cruz, CA 95060

RE: Comments for the Proposed North Coast Rail Trail Project Draft EIR

Dear Ms. Calletti,

Thank you for the opportunity to comment on the Draft EIR for the North Coast Rail Trail. As a representative of County of Santa Cruz Environmental Health, the agency that is providing regulatory oversight for the characterization, mitigation and potential remediation of soil contamination along the Santa Cruz Rail Corridor in Santa Cruz County, I would like to submit the following comments to be incorporated into the final EIR:

- 1) As stated on page 3.8.33 under Historic Use “Although no contaminants detected by the Phase II ESA soil borings identified concentrations above the respective contaminant’s industrial environmental screening level or applicable background concentration, the Phase II ESA investigation presented an information gap due to the soil borings being located along a one-mile segment of the Project corridor immediately adjacent to the Coast Dairies property.” In fact, additional testing has been conducted in the rail corridor since the Phase II ESA Investigation, on other sections of the rail corridor, and elevated levels of contamination above the industrial, commercial, and construction worker risk-based screening have been found. It is therefore reasonably likely that further testing along the North Coast section of the rail corridor will indicate the need for soil mitigation measures to protect the construction worker and the public. As a result, it is incumbent of the RTC or any other agency responsible for development in this area to notify County of Santa Cruz Environmental Health well in advance of conducting work in the rail corridor that will result in soil disturbance, so that our agency can provide adequate oversight of the project to ensure the protection of the workers and the public. 9.1

- 2) In addition, prior to conducting the Soil Investigation, as outlined under the section “Mitigation Measure HAZ-4(a): Conduct Soil Sampling and Implement Necessary Remediation” located on page 3.8-34, a Work Plan or Work Plans for the Soil Investigation that is described must be submitted to County of Santa Cruz Environmental Health for review and acceptance, well in advance of implementation. 9.2

Rebecca Supplee, Program Manager
County of Santa Cruz Health Services Agency
Environmental Health Division
701 Ocean St., Rm. 312
Santa Cruz, CA 95060

Letter 9

COMMENTER: Rebecca Supplee, Program Manager, County of Santa Cruz Health Services Agency, Environmental Health Division

DATE: September 22, 2018

Response 9.1

The commenter describes that additional soil testing has been conducted in other sections of the rail corridor since the Phase II ESA Investigation, and that elevated concentrations of contamination above the industrial, commercial, and construction worker risk-based screening level has been found. Given this, the commenter states that it is reasonably likely that further testing will indicate the need for soil mitigation measures, and recommends that RTC notify County of Santa Cruz Environmental Health prior to conducting any work in the rail corridor.

The Draft EIR discusses the potential for soil contaminants under Impact HAZ-4 in Section 3.8, *Hazards and Hazardous Materials*. As stated therein, former rail use in the Project corridor presents the potential that the corridor is contaminated with arsenic, heavy metals, pesticides, herbicides, PAHs, TPHs, and other contaminants associated with rail operations. The Draft EIR further acknowledges that the Phase II ESA investigation presented an information gap due to the soil borings being located along a one-mile segment of the Project corridor immediately adjacent to the Coast Dairies property. Mitigation Measures HAZ-4(a) and HAZ-4(b) would require soil sampling and remediation if sampling indicates such a need. These measures also require coordination with the County of Santa Cruz Environmental Health Division. This is consistent with the comment.

No revisions to the Draft EIR are necessary.

Response 9.2

The commenter recommends that Mitigation Measure HAZ-4(a) be revised to require that the Work Plan or Work Plans for the Soil Investigation be submitted to County of Santa Cruz Environmental Health for review and acceptance prior to conducting the Soil Investigation.

Mitigation Measure HAZ-4(a) currently requires that the RTC coordinate with the County of Santa Cruz Environmental Health Division to develop and implement a program to remediate or manage known contaminated soil during construction. However, in response to this comment, the measure has been revised to require that Work Plan(s) be submitted to County of Santa Cruz Environmental Health.

In response to this comment, revisions have been made to Mitigation Measure HAZ-4(a).

Letter 10

From: [Ezekiel Bean](#)
To: [NCRT Draft EIR](#)
Subject: DEIR for the proposed North Coast Rail Trail
Date: Thursday, August 16, 2018 9:19:36 AM

Good morning, Cory.

The DEIR for the proposed North Coast Rail Trail contains multiple references to “below the barrier at Majors Creek” (e.g. Coho Salmon discussion, page 3.4-37, p1). I do not see any discussion of this barrier or its location, and I am very familiar with Majors Creek yet know of no barrier (other than the large boulder barrier about 1 mile upstream of the project boundaries). Can you please provide some context to the reference of this barrier throughout the document?

10.1

Thank you,

Zeke Bean
Water Resources Supervisor, [Watershed Section](#)
City of Santa Cruz Water Department
715 Graham Hill Road
Santa Cruz, CA 95060
831/420-5478



*To Serve the Community
with Honor, Respect
and Professionalism*

Letter 10

COMMENTER: Zeke Bean, Water Resources Supervisor, City of Santa Cruz Water Department

DATE: September 16, 2018

Response 10.1

The commenter requests additional information about the location of the barrier at Majors Creek.

The first complete barrier to salmonid migration is located approximately 0.71 miles upstream of the creek mouth of Majors Creek, and it consists of a series of cascades with drops of 6 to 15 feet (ENTRIX 2004).

The Draft EIR has been revised to include these details.



BIKE SANTA CRUZ COUNTY

333 Soquel Avenue • Santa Cruz, CA 95062
(831) 425-0665 www.bikesantacruzcounty.org

September 24, 2018

Cory Caletti
Senior Transportation Planner
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue, Santa Cruz, CA 95060
NCRTDraftEIR@sccrtc.org

Re: North Coast Rail Trail - Draft Environmental Impact Report (DEIR)

Dear Ms. Caletti,

Bike Santa Cruz County has been advocating for the Coastal Rail Trail for more than 15 years. We are thrilled the Environmental Impact Review for the North Coast segment is in progress and appreciate the thorough analysis of environmental impacts of several variations of the trail configuration.

11.1

The Bike Santa Cruz County board of directors will be reviewing the variations over the next two months and will make a decision on our preferred alternative for the December EIR hearing.

Bike Santa Cruz County will continue to advocate for the rail trail to be built as soon as possible and we are happy the next step in the process will be complete in the coming months.

Thank you for your time and tireless dedication to bring the Coastal Rail Trail to fruition.

Sincerely,

Janneke Strause
Executive Director
Bike Santa Cruz County
director@bikesantacruzcounty.org

Letter 11

COMMENTER: Janneke Strause, Executive Director, Bike Santa Cruz County

DATE: September 24, 2018

Response 11.1

The commenter states that Bike Santa Cruz County advocates for the rail trail and appreciates the thorough analysis of environmental impacts.

The comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

DAVENPORT/NORTH COAST ASSOCIATION

C/O NOEL GARIN BOCK, P.O. BOX 251, DAVENPORT, CA 95017 NGBOCK@ATT.NET 831-423-3033

22 September 2018

Cory Caletti, Sr. Transportation Planner/MBSST & Rail Trail Program Manager
Santa Cruz County Regional Transportation Commission
1523 Pacific Ave; Santa Cruz, CA 95060

Santa Cruz County Regional Transportation Commission,

The Board of Davenport North Coast Association (DNCA) thanks you for the opportunity to comment on the Draft EIR for the North Coast Rail Trail Project. As you may know, our nine board members have worked for many years as the liaison between Supervisor Coonerty’s office, the Sheriff’s office, BLM, Land Trust of Santa Cruz County, CalFire and other agencies and NGOs to inform citizens of activities in Davenport and environs. We have over 250 community members on our email list.

12.1

The Davenport North Coast Association sent a response to the SCCRTC’s Notice of Preparation on October 14, 2017, which is included in the DEIR’s Appendix B. CEQA guidelines define scoping as "the process of early consultation with the public and agencies during the initial stage of EIR preparation." The DEIR does not include reasons why the concerns raised in the 10/14/17 letter were not considered and addressed as part of the DEIR analysis. Please explain why.

3.1-Aesthetics

Page 3.1-2 **PROJECT CORRIDOR SETTING/ PUBLIC ACCESS:** The Draft EIR does not make the distinction between Federal Coast Dairies property, and State Coast Dairies property. We feel it is a serious omission not to address the possible points of access to Federal Coast Dairies National Monument property, across Highway One from the Rail Trail, as also noted by BLM Field Manager Ben Blom in the NOP comments. What are the entrance location plans for the Cotoni-Coast Dairies National Monument? It is our understanding Federal Highway Administration funds were accepted in order to create the North Coast Rail Trail study to the Federal land; therefore, safe access from the Trail to the National Monument, across Highway One, must be addressed.

12.2

Page 3.1-24 We would like an explanation of how Alternative 1, whereby the rail bed is removed, would result in a smaller (10’) path than the original use (12”) path.

12.3

Page 3.1-24 **PARKING:** We appreciate that the project planners incorporated some of our previous suggestions regarding the parking area at the Davenport terminus. If the “daily peak use is estimated at 951 trail users” and the assumption is that half “average trail users would start at the northern section, traveling 3.75 miles and back”, then we believe the 54 spaces as shown in the diagram to be completely inadequate. We currently have the need for at least 100 parking spaces on busy weekends, and this is before there are proposed new trail users. This discrepancy needs to be addressed. Lateral parking along the highway is not safe or acceptable.

12.4

This parking area should have a gate which can be locked at night to deter late night beach party-goers consistent with State Park beach parking lots. Minimally, an ordinance requiring no night time parking should be enacted and restrictions must be enforced. In addition, the parking area west of the highway should include a designated and restricted space outside the gate for bus parking.

12.5

Page 3.1-26 **TRASH:** Although we are recognize the inclusion of trash/recycling containers and plans for routine maintenance for removing graffiti, it is imperative that an ongoing source funding and hiring for maintenance personnel be included in the EIR. Currently the dumpsters are often overflowing, so they

12.6

need to be picked up more than once a week. It would be helpful if the project planners would identify the responsible agency for such maintenance, the expected frequency of service, and the staffing and budget available for these operations over time. If County Parks is subcontracted with an MOU, the level of service, and source of sustainable funding should be identified.

12.6
(cont'd)

Page 3.1-24 **TOILETS: “...restroom facility in a prefabricated structure on a 12-foot by 18-foot pad.”** We appreciate that the project planners incorporated our previous suggestion that the parking area at the Davenport terminus include toilet facilities. Currently, Davenport businesses bear a disproportionate amount of the burden of meeting the needs of the general public for toilet facilities. A public restroom at this site will also reduce the amount of urination and defecation within the right of way and on the bluff lands and beaches. The EIR should provide more detail on the toilets - number of stalls, flush versus pit, etc.

12.7

The toilet facilities will only be used if they are maintained and regularly serviced and locked at night, consistent with State Park beach facilities. It would be helpful if the project planners, in the response to comments, identify the responsible agency for such maintenance, the expected frequency of service, and the staffing and budget available for these operations over time.

3.6-Geology and Soils

Section 3.6 of the DEIR analyzes the trail’s impact on geological stability of the project corridor and the exposure to seismic and geological hazards. It does not address the effects of trail users on soil erosion and potential drainage issues. Trail users, including mountain bikers, will be veering off the trail, based on both Monterey and San Mateo coast trails usage. What is the expected impact of trail users on soil erosion and drainage rerouting? Are EV bikes and motorized skate boards permitted on the trail? If so, what will be the potential for increased soil erosion and drainage problems? These questions should be addressed and answered in the EIR.

12.8

3.2-Agricultural Resources

Overall Comments:

Project Impacts AG-3 and AG-5 are all certain to be significant, due to “nuisance” (e.g. pesticide drift exposures) and trespass incidents. Negative impacts will affect trail users as well as agricultural operators. Analysis of existing conditions is inadequate and discounts severity of current and potential agricultural use and exposure conflicts. See Jacobs’ Farm vs. Western Farm Services (to cite). Proposed mitigations for AG-3 and AG-5 are distinctly inadequate to reduce potential for and significance of negative impacts.

12.9

Despite “Right to Farm” ordinances and nominal compliance with agriculture regulations, project as proposed/mitigated will result in 1) additional pressures on agricultural operators and reduced viability of coastal agriculture uses; 2) potential public health issues from project users’ exposure to agricultural chemicals. More extensive mitigations would be needed to avoid chronic and severe conflicts between project users and agricultural operations.

Opportunities are available for mitigating measures to substantially reduce potential, significant impacts through more active partnership with agricultural property owners (i.e. State Parks). Agricultural Landowners and tenants can undertake positive management changes, and project mitigations should more actively encourage and support such changes.

Specific Comments:

Section 3.2.1, Existing Conditions

Page1- DEIR conflates “organic” and “conventional” farming, as regards pesticide use. Certain USDA and CDFA approved pesticides may be applied by certified organic operations, but the potential impacts to Project Users are very significantly different and should be recognized as such by the EIR. DEIR includes

12.10

boilerplate language regarding pesticides (i.e. "Properly applied...") which is inappropriate and not germane to the Project analysis.

12.10
(cont'd)

DEIR includes no discussion of certified organic agriculture as a distinct class of pesticide use/impact. Pesticide use in Project Corridor by certified organic operations should be specifically characterized and compared. Analysis of pesticide use in Project Corridor is not adequate. Highest-use (frequency) and most common (by acreage) of pesticide applications should be analyzed and considered for specific impacts/mitigations. Focus on fumigant use alone is not adequate.

Discussion of fumigant use (Telone II) is misleading. Use pattern relative to Project Corridor should be considered in terms of application area within the corridor, not just frequency as a % of all pesticide use. Analysis of Telone II use in the DEIR discounts fumigant use as a potentially significant feature of the corridor and may be in need of specific mitigation.

3.2.2 Regulatory Setting

Section should include discussion of California Organic Foods Act and the U.S. Organic Foods Production Act. Section should include discussion of State Parks agricultural leasing policies in Santa Cruz County. Discussion of California DPR pesticide application regulations is inadequate
Pages 3.2.10-11 The EIR should include analysis of Jacobs' Farm vs. Western Farm Service and courts findings regarding adequacy of DPR regulations and enforcement in cases of drift from volatilization and coastal fog transport.

12.11

Pages 3.2.3-4, Project Corridor Agriculture

DEIR does not identify Certified Organic operations. Parcels are registered with County Ag Commissioner and CDFA. The EIR should explicitly identify Certified Organic operations in Project Corridor.

Pages 3.2.7, Pesticide Use

DEIR does not mention or consider landmark pesticide-drift damages case Jacobs' Farm vs. Western Farm Service. Implications of this case are significant, specifically recognition that pesticide volatilization and transport in coastal fog is a chronic feature of the Project Corridor.

3.2.4 Project Impact Analysis

Impact AG-1, Page 3.2-18. Discussion of "indirect conversion" due to impairment of pesticide application is highly generalized and not at all grounded in specifics of the Project Corridor agricultural operations. Following is NOT "typical" and rarely a regular practice in this area. Reduced or inefficient agricultural operations due to avoidance of human impacts will certainly be a feature of the proposed project, and the impacts may be highly detrimental to agricultural operators. The EIR should revise this analysis and examine based on specifics of coastal benchland ag operations.

12.12

Impact AG-3 In each of the areas considered (Trespass, Littering, Food Safety, Nuisance), the DEIR consistently understates the potential for significant impacts, and makes findings that are unsupported by either data or familiarity with the specifics of the coastal benchland agriculture. Mitigations need to account for assisting transition to operations that can be compatible with Project. For these sections, additional or incidental mitigations are offered, whose effects are not estimated or supported by reference.

Page 3.2-31 Mitigation Measure AG-3(e) "Interpretive Exhibits"

The DEIR offers no evidence or reference to suggest that "interpretive exhibits" as described will do anything to mitigate potential detrimental conflicts between project use and ag operations. This mitigation measure could be the baseline beginning of steps to actively facilitate more positive impacts, but the EIR needs to develop such measures at much more depth.

3.12-Public Safety and Services

It is our understanding that the path is to be built to support emergency vehicles including fire trucks which will access the path to deal with injuries and medical emergencies. It is also our understanding that emergency vehicles require a surface 12 feet wide.

12.13

Thus, the first comment regarding Public Safety & Services ties back to Section 2 (Description) where Figure 2-3b shows the Project path only 8 feet wide. This is inadequate with regard to a 12-foot width requirement for emergency vehicles. The Alternate 1 trail width descriptions on page 2-7 lists a typical path cross section as 10 feet—this would also be inadequate for emergency vehicles. The trail width description elsewhere in Section 2 lists 20 feet width a 12-foot wide path which is sufficient. Unless the emergency vehicles are going to travel partly on the path and partly on the shoulder on certain narrower sections of the path, the multiplicity of descriptions and figures needs to be corrected to the proper 12 feet throughout.

For the balance of Public Safety & Service topics the analysis seems to be the same—the DEIR considers the only environmental impact to be new buildings/facilities. Head counts, vehicles and vehicle trips may be increased to serve the increase in injuries, medical emergencies and law enforcement without environmental impact. No forecast of head counts or call out data are provided in Section 3.12. to support a conclusion of no impact on the environment (including the path itself) from emergency and law enforcement vehicles and personnel. This data should be addressed in the EIR.

3.4-Biological Resources

The project description does not document how the project, by maintaining (presumably) the status quo with regards to lack of connectivity between watersheds transected by the project and the ocean, will affect the long-term recovery of threatened salmonids and coastal estuarine habitats. Watershed alteration due to diversions, culverts, channeling (all of which were done to originally create the rail line) is considered an important impediment to salmon recovery and small coastal estuarine integrity. Increasingly, CalTrans is considering how to mitigate these pocket estuary impacts in their redesign/repair of Highway 1 roadway where most estuaries in the Northern Santa Cruz County roadway were seriously damaged by infill, culverts, and diversion. The rail line likewise was created with little regard to the importance of these estuary habitats.

12.14

There is no evidence of consideration of improving ecological conditions across the watershed/ocean connections transected by this project (especially the San Vicente Creek, Liddell Creek, Laguna Creek and Majors Creek). How will the project improve/enhance connectivity, particularly with regards to restoring estuarine habitats (e.g. San Vicente Creek watershed)? This should be addressed under the corridor and connectivity sections. How is connectivity currently impeded? How could connectivity be improved? Indeed, the rail corridor is considered a spatial LINK between features as opposed to a barrier, but for salmonids this is clearly not the case.

3.10-Land Use and Planning

There is no mention of the Santa Cruz County North Coast Beaches Plan, which is the most thorough document related to the existing resources and management of the lands under California State Parks and Bureau of Land Management ownership. How is the Project coordinated with the long-term management of the adjacent public lands?

12.15

3.13-Recreation

3.13-9 Draft EIR estimate of 951 daily trail users during peak summer weekends seems low considering present visitation rates to north coast beaches and communities. Current conditions include overflowing official and unofficial parking areas, dangerous parallel parking and unsafe crossing on Highway One, packed beaches, overflowing trash receptacles. Graffiti, trash, illegal trails, erosion, etc. continue to

12.16

dramatically degrade the aesthetics of the north as the area has become ever more popular. Mitigation measures need to address these specific concerns.

12.16
(cont'd)

3.13-9 The presumption that building no new housing means we will have no increased demand for existing recreational facilities (e.g., parks and trails) in the North Coast area is simply not a sound one. The area has already become a popular destination for people throughout the Bay Area (population 7 million and growing), and it will likely see dramatically more visitors with the addition of new mountain biking and hiking trails nearby accessing San Vicente Redwoods and Cotoni-Coast Dairies, as well as the new rail-trail. It also bears mentioning the north coast has become more popular year-round, particularly in low-snow (i.e. drought) years when winter sports in the Sierras are not available to outdoor recreation enthusiasts.

12.17

We would like to see better data about current use, and we would like to see adequate mitigation planned for the impacts to the surrounding areas of the likely significantly higher number of trail users projected.

(3.13-9) The section about the proposed project – coastal side notes:

“The existing facilities are very large open space areas with primarily natural and passive uses, and do not include substantial infrastructure that would deteriorate through increased use. Therefore, the new trail users are not anticipated to increase the use of other existing recreational facilities such that it would result in a substantial physical deterioration of existing recreational facilities, open space, or beaches in the North Coast area.”

Increased access to the coast and to new recreational amenities such as this, and the other planned area trails, not to mention future visitor serving amenities at the former CEMEX plant, will undoubtedly increase pressures on our local sheriff, the highway patrol, local fire and rescue, and on the surrounding environment.

12.18

- We request that mitigation measures be included for erosion impacts on informal coastal access trails, and that there be adequate measures put in place to discourage new trail building, encampments, and garbage making its way into new places that will be made more accessible by the rail trail.
- North Coast beaches will need more protection and patrolling due to their increased accessibility.
- Please consider adding parking and restroom facilities.
- Recreational access should be limited from 10 pm to 6 am on north coast beaches to prevent camping and partying, which have serious environmental impacts and noise impacts on local residents. We support the closure and enforcement of parking facilities to support environmentally friendly usage and discourage graffitiing, fireworks, and other illegal activities.

3.13-10 The premise that “recreators would not significantly degrade the existing facilities” (e.g. state parks, open space, and beaches) because their use would be ‘passive’ doesn’t capture their potential to create demands on local fire and rescue services.

12.19

- We request clarification about MOUs with the Sheriff, Highway Patrol, State Parks and CalFire in order to address the inevitable increase in responses to incidents and accidents on the highway, trails, local beaches, and cliffs. Our limited resources on the north coast must be properly augmented in order to adequately address increased visitation and use of the area.
- Include specifics about how the Regional Transportation Commission will work with State Parks, BLM and CalTrans to plan for and enhance safe recreational access across to non-coastal Cotoni-Coast Dairies properties from the rail trail.
- The lack of a connection with what will be the main access point and parking for the new National Monument on the current CEMEX plant property with the rail trail is a problem. This is a serious problem for recreational users, which the crossing at Highway One in Davenport does very little to address.

3.14-Transportation and Circulation

Overall, the Project would improve alternate modes of transportation for access to recreational opportunities on the North Coast, which is a positive outcome of the Project. However, the evidence

12.20

presented to the public for both the current and cumulative Project analyses underestimates the visitor-ship demand generated by this Project and other adjacent recreational projects. This under-representation of visitor-ship demand trickles down throughout the DEIR and particularly in this section’s traffic volume and level of service (LOS) analyses. For example, the DEIR assumes overflow parking that cannot be accommodated in the reduced-capacity lots can easily park along Highway One. As noted on page 3.14.17,

“These pedestrian crossings in areas without crosswalks or signage would be potentially unsafe. However, sufficient parking space is available on the coastal side of Highway One to accommodate additional parking demand by trail users... Because of abundance of parking on the coastal side of Highway One, it is expected that few trail users would park on the inland shoulder of Highway One.”

Had the traffic consultant visited the project site on a peak holiday weekend instead of relying on a Google earth aerial photo, they would have seen cars parked on both sides of the highway close to the access point. Why is the Project not responsible for providing parking for all the additional parking demand it generates?

In the BLM scoping letter dated October 10, 2017, BLM Field Manager Ben Bloom expressed concern the Project would increase the likelihood that visitors would cross Highway One to access the National Monument on the inland side. He requests analysis of alternate ways to cross Highway One including, “...pedestrian crosswalk, overpass, or underpass.” The DEIR does not directly address this important safety concern. With increased visitor-ship, other than in Davenport, where does the DEIR provide evidence that safe-crossing facilities are not required?

3.14.2 The peak traffic count was taken on a weekday in advance of a holiday weekend, which does not adequately represent the peak traffic volume. The peak volumes occur on Saturday, Sunday, and Monday of a typical three-day weekend. A Google Earth aerial with no time-of-day stamp does not adequately assure the public reviewing this document that the analysis accurately represents peak conditions. How are the LOS calculations accurate if the peak traffic volumes were determined during a deflated timeframe? How is the visitor-ship calculation reliable throughout the DEIR’s other sections if the peak condition is based on a non-peak timeframe?

3.14.9 Please refer to the DNCA’s 10/14/17 response to the NOP (comment number 2), as the DEIR does not adequately address the concerns raised in that letter.

The parking areas at Davenport and Panther Beach (and Shark Fin) are already overflowing at peak times with cars parking on the opposite side of the highway and families running across the road. As described in the DEIR, the number of vehicle spaces at Davenport will be reduced as a result of this project. At Panther Beach, the Project will reduce the number of spaces to less than a third of the current capacity. The DEIR uses the lower capacity to justify lower turning volumes into these parking areas:

“Intersection delays are expected to improve slightly with this reduction in proposed parking capacity and subsequent turning volumes at the driveways. LOS would remain unchanged. The results presented in the TIA (Traffic Impact Analysis) and summarized below can therefore be considered conservative.”

As the capacity of these lots is not readily visible from the highway, there is no reason to believe the number of vehicles looking for parking would be reduced. There would also be increased traffic impacts as vehicles that could not find space would exit the driveway onto Highway One. Additionally, the turning numbers would actually increase as the volume of tourists increases, thus lowering the LOS and increasing the chance of traffic accidents. Based on the above, how does the DEIR analysis accurately represent the impacts of the Project?

3.14.10 The estimated additional 300 vehicle trips per day generated by the project would need an additional 100 parking spaces. As the North Coast is a regional recreational destination and the DEIR analysis does not reflect how far visitors are willing to travel to spend a day on the North Coast, clarify

how the number of 300 additional trips was derived? Why was the parking turnover calculation not taken in person in the field during the Labor Day weekend when more people come for longer periods of time?

12.21
(cont'd)

3.13.11 While this analysis is not yet required under the CEQA guidelines, the DEIR's assumption of 10.7 miles as "the national average social and recreational trip length" does not accurately reflect the location of the Project and the surrounding context. Would the DEIR consultant use 10.7 miles per trip if this Project were in Yosemite? This location is not like driving to a local urban park or playground. Visitors coming to the North Coast intentionally drive long distance to spend time at a remote location. In general, why does the DEIR use generic and therefore meaningless metrics in this analysis as well as elsewhere in the traffic section?

3.16-Utilities and Service Systems

- Correction - The water treatment plant was operational long before Cemex ceased operations.
- Water meters and new water lines are already installed in 97% of Davenport. Report indicates this will happen in 2018-2019.
- In considering servicing the project both during construction and maintenance, there is no comment about heavy equipment, hauling, burning fossil fuels for septic servicing.
- In the Alternative 1 Demolition, there is no comment about the impact of hauling creosoted railroad ties as much as 60 miles away.

12.22

4.0-Other CEQA Required Discussions

4.1 Cumulative Analysis

Please refer to the DNCA's 10/14/17 response to the NOP (comment number 3) as the DEIR does not adequately address the concerns raised in that letter.

This section focuses on a list local cumulative projects which have little population growth implications. As the North Coast recreational opportunities become publicly available and are publicized, they will draw people from a much broader area than the DEIR acknowledges. As this project is part of a suite of increased recreational opportunities, including CA State Park beaches, BLM's Cotoni Coast Dairies National Monument, and San Vicente Redwoods, the cumulative analysis should include visitors to the North Coast who travel from the Bay Area and other areas outside Santa Cruz County. In fact, the Association of Bay Area Governments projects the population of the Bay Area, which is within an hour's drive of the North Coast, to be greater than all of New York City. The DEIR does not fully consider or analyze the cumulative impacts through 2040 related to the completion of public access to the State Park beaches, BLM's Cotoni Coast Dairies National Monument, San Vicente Redwoods, and the North Coast Rail Trail. How does the cumulative analysis adequately represent to the public the potential impacts through 2040 based on the limited list of projects included in the cumulative analysis?

12.23

Letter 12

COMMENTER: Noel Bock, Davenport/North Coast Association

DATE: September 22, 2018

Response 12.1

The commenter states that the Draft EIR does not include reasons why the concerns raised in their NOP comment letter were not considered as part of the EIR analysis.

As stated in Section 1.3.2 of the Draft EIR, the purpose of the Notice of Preparation (NOP) is for the Lead Agency (RTC) to solicit input in determining the scope of an EIR, potential topics to be addressed, the range of alternatives, and the possible mitigation measures. CEQA does not require that every comment on the NOP be part of the EIR analysis. As a matter of record, no directives within CEQA require lead agencies to specifically respond to any comments made on a NOP, but do require them to consider the input. The primary function of a NOP is to allow responsible agencies to inform lead agencies of the types of analyses the responsible agencies will require in an EIR in order to make fully informed decisions on the particular project approvals that will come before the responsible agencies. (See CEQA Guidelines, § 15082.) Members of the public are welcome to submit comments on the scope of analysis for an EIR, but their input does not serve the same technical purpose as that provided by responsible agencies.

Following is a brief list of the comments made in DNCA's October 05, 2018, NOP comment letter, followed by a brief bulleted response.

1. The commenter is glad the project includes restroom and trash facilities but believes the parking is inadequate, and they need plans for beach access trails.
 - The Project includes access trails from the parking areas to the proposed multi-use path, but constructing additional trails from the path to the beach is outside the scope of the current Project.
 - Refer to **Master Response C** regarding the adequacy of the parking.
2. The highway crossing in Davenport is great, but how will the BLM lands to the south be accessed?
 - The BLM lands would be accessed by the existing informal parking along Highway 1. Please note that improving parking and access to these lands on the inland side of Highway 1 is outside the scope of this Project, requires further study, and would need to be implemented by the BLM.
3. An extension to the gateway at Cemex should be prioritized.
 - Comment noted. Also refer to the response to #1 below.

Following is a brief list of the comments made in DNCA's October 14, 2018, NOP comment letter, followed by a brief bulleted response.

1. Extend the trail further north, past the Highway 1/Ocean Street terminus.
 - The RTC considers the existing Davenport Beach parking area located at the Highway 1/Ocean Street intersection to be a logical north end terminus, which in conjunction

with the south end terminus at the Wilder Ranch parking lot, provides the project with end-to-end functionality.

2. The number of parking spaces to be provided at the Davenport Beach lot and Panther/Yellowbank Beach lot is inadequate, and the analysis should identify how the number of spaces was determined.
 - Refer to **Master Response C** regarding the parking design and analysis.
3. The cumulative traffic analysis should include future use of Cotoni-Coast Dairies National Monument, San Vicente Redwoods, and Coast Dairies State Park.
 - The traffic analysis is essentially a cumulative one, and does consider these future uses. The methodology is described in both Section 4.1.15 of the Draft EIR and Appendix K, Transportation Impact Analysis.
4. Typically, the Land Use and Planning section of an EIR considers a project's compatibility with the general plan. The project description in the NOP makes no mention of the agencies who have been involved in coordinating the development of visitor-serving uses on the North Coast, including BLM, State Parks, Santa Cruz County, Caltrans, CAL FIRE, Santa Cruz County Sheriff, Highway Patrol, non-profit land conservation organizations, etc. The DNCA requests the project and EIR reflect a coordination with the agencies.
 - As stated at the beginning of Section 3.10, *Land Use and Planning*, because the North Coast Rail Trail Project is being implemented by the federal government, local land use authority is preempted such that local policies and regulations do not directly apply to the Project.
 - The CEQA Guidelines (Section 15082) require that the NOP include a brief description of the project, location of the project, and probably environmental effects of the project. CEQA does not require the NOP project description to include a list of agencies involved in regional development issues for context.
 - The NOP was distributed to over 1,000 agencies, organizations and individuals including the agencies listed by the commenter, and several of these organizations provided comments on the NOP and on the Draft EIR.
 - Section 1.3.1, *Lead, Responsible, and Trustee Agencies*, includes a list of agencies with discretionary approval over the project or with jurisdiction over by law over natural resources affected by the project, including: California Coastal Commission, California Department of Fish and Wildlife, California Department of Transportation, California Public Utilities Commission, California State Parks, California Regional Water Quality Control Board, U.S. Army Corps of Engineers, and U.S. Fish and Wildlife Service.
 - Several of the agencies listed by the commenter were contacted during preparation of the Draft EIR to obtain input on the analyses, and project implementation requires the ongoing coordination with these agencies.

No revisions to the Draft EIR are required.

Response 12.2

The commenter states the Draft EIR does not make the distinction between the Federal Coast Dairies Property and the State Coast Dairies Property, and does not address the access points and safe access across Highway 1 from the North Coast Rail Trail alignment.

As shown in Figure 3.13-1a Recreational Facilities: North (Davenport to Scaroni Road), the figure distinguishes between the Federal Coast Dairies Property and the State Coast Dairies Property, with Highway 1 as the dividing line between the two properties. The discussion within Section 3.13 of the document further discusses the division of the State and Federal Coast Dairies Properties.

As described in Section 2.4 of the Draft EIR under *Davenport Beach Lot and Highway 1 Crossing*, the parking improvements would include coordination with Caltrans to enhance the Highway 1 crossing to improve the overall safety of those crossing Highway 1 at Davenport Beach. This area is located adjacent to the northern portion of the Federal Coast Dairies National Monument, across Highway 1 near the town of Davenport.

The plans for the Federal Coast Dairies National Monument are being developed, and final plans are not available. At this time, access and parking for the National Monument would be from Laguna Road on the inland side of Highway 1. Currently on the coastal side of Highway 1, there is an informal path from Highway 1 crossing over the railroad tracks to access Laguna Creek Beach. As described in Section 2.4 under *Trail Crossings* and in Table 2-1, the Project would close this informal trail crossing primarily due to public safety concerns of crossing Highway 1 in this area where there is a significant grade. Access to the trail alignment along the coastal side of Highway 1 at crossings 8 and 10, just north and south of Laguna Road, would be enhanced through project implementation.

Because there are no formal recreational facility design plans for the National Monument, enhancements to improve connectivity between the North Coast Rail Trail and the National Monument have not been included in the project at these crossings. Future coordination between the BLM, RTC and Caltrans would be necessary to plan for future access across Highway 1 to the National Monument upon finalization of planning documents.

No revisions to the Draft EIR are necessary.

Response 12.3

The commenter requests an explanation of how Alternative 1, whereby the rail bed is removed, would result in a smaller (10') path than the original use (12') path.

As described in Section 2.4 under *Alternative 1 (Trail Only)/Trail Width*, the trail only alignment would be narrower than the Proposed Project because of the intent to use the existing rail bed, stay within the right-of-way, and minimize the earthwork and associated impacts and costs of building retaining walls or making large cut slopes to expand outside the existing rail bed. The 10-foot paved path width is consistent with the rail-to-trail option evaluated by the CFL team in early 2017, which identified a 14-foot-wide trail with a 10-foot-wide paved path, a 4-foot-wide unpaved shoulder on the coastal side, and no shoulder on the inland side. The trail width is also consistent with the trail width identified in RTC's Unified Corridor Study, which is underway and identifies a 12-15-foot-wide trail for the trail only scenario in the rural areas north of Wilder Ranch.

The comment does not relate to the adequacy of the EIR or CEQA process.

No revisions to the Draft EIR are necessary.

Response 12.4

The commenter expresses concern that the Project would decrease the number of parking spaces at the Davenport Lot (north), and that lateral parking along the highway is neither safe nor acceptable.

Please refer to **Master Response C** for a discussion of adequacy of parking supply. The commenter's opinion that shoulder parking is unacceptable is noted.

No revisions to the Draft EIR are necessary.

Response 12.5

The commenter states the parking area in Davenport should have a gate, and there should be an ordinance prohibiting night time parking, and there should be a space outside the gate for bus parking.

Refer to **Master Response C**.

Response 12.6

The commenter states that the EIR should include the ongoing source of funding for maintenance personnel and trash collection, and current dumpsters are overflowing and should be picked up more than once per week.

Refer to **Master Response F**.

Response 12.7

The commenter states that they appreciate restrooms at the Davenport terminus, and the EIR should provide more detail on the toilets (e.g., number of stalls, flush vs. pit). The commenter would also like to know which agency would be responsible for restroom maintenance and the frequency of service, and the budget available for operations.

As stated in Section 2.4 under *Davenport Beach Lot and Highway 1 Crossing*, the restroom facility would be a prefabricated structure with up to two ADA-accessible toilets. The toilets would be either waterless vault toilets or flush toilets that connect to the Davenport water and wastewater system. The waterless version would be designed with a 1,000-gallon concrete storage vault that would be periodically emptied with a septic truck.

Refer to **Master Response F** for information about maintenance responsibility, frequency and funding.

The comment does not relate to the adequacy of the EIR or CEQA process.

No revisions to the Draft EIR are required.

Response 12.8

The commenter states that EIR Section 3.6, *Geology*, should consider if mountain bikers who veer off the proposed trail, electric bikes, and motorized skateboards could cause soil erosion and alter drainage patterns.

As discussed in Draft EIR Section 2.5, *Project Operation and Maintenance*, electric bicycles with a rating limited to 20 miles per hour would be allowed on the proposed trail in accordance with

California law. The trail would also accommodate skateboards (including electronic skateboards with a rating limited to 20 miles per hour) and non-electric bicycles (i.e., electric power assist but not gas-powered) including mountain bikes. Trailside fencing would prevent users in most sections from veering off the unpaved shoulders. Although mountain bikers might infrequently travel outside the unpaved shoulders where not restricted by fencing or vegetation, this activity would not substantially affect soil erosion and drainage patterns. As found in Draft EIR Section 3.6, *Geology/Soils*, the proposed trail would have a less than significant impact from soil erosion with implementation of Mitigation Measures HYD-1(c) and HYD-1(d) to control stormwater runoff.

In response to this comment, Section 2.5 under *Trail Use and Restrictions* in Section 2.0, *Project Description*, has been revised to clarify that electronic skateboards up to 20 mph would be allowed on the trail.

Response 12.9

The commenter states the opinion that Impacts AG-3 and AG-5 in Section 4.2, *Agricultural Resources*, are significant due to pesticide drift and trespassing, that analysis of existing conditions is inadequate, and that more extensive mitigation would be needed to reduce impacts to agricultural viability and public health. The commenter specifically suggests active partnership with agricultural property owners as mitigation. The commenter additionally cites Jacobs' Farm vs. Western Farm Services, but does not provide any specific comments related to this case. The case is discussed in **Response to Comment 12.11**.

Both Impacts AG-3 and AG-5 were identified as potentially significant, consistent with the commenter's assertion that these impacts would be significant. Mitigation identified in the EIR includes various measures to reduce potential conflicts between construction-related activities and agricultural operations; regular removal of solid waste and litter; the installation of no trespassing signs, notices of ongoing agricultural operations, and agricultural interpretive exhibits; and the establishment of a pesticide spray notification procedure. The spray notification procedure mitigation (Mitigation Measure AG-5) specifically requires that the Trail Manager coordinate with the Agricultural Commissioner to identify pesticides of primary concern, and that agricultural operators adjacent to the trail alignment notify the Trail Manager at least 24 hours prior to application of these pesticides within 100 feet of the trail. This measure requires coordination between the Trail Manager and agricultural tenants.

Additional protection of the health of trail users will be provided by Mitigation Measure HAZ-1, as added to this Final EIR. The new recommended mitigation now reads as follows:

Acting as responsible agency, the California Department of Parks and Recreation, in consultation with the Department of Pesticide Regulation (DPR), at the time of next renewal or extension of agricultural leases with North Coast farmers along the North Coast Rail Trail corridor, shall revise the current leases to include the following:

- Prohibition of pesticide application within 50 feet of a distance from the North Coast Rail Trail corridor sufficient to protect trail users
- Prohibition of pesticide application during public hours, which would be determined through coordination with State Parks, the Coastal Commission, and property owners
Consistent with DPR regulations, a requirement that pesticide use occur only at times of the day when public health and safety can be protected
- Requirement that, when spraying in areas within 100 feet of along the trail corridor, agricultural operations place temporary warning signs at reasonable points along the

potentially affected portion of the corridor, to the extent consistent with state pesticide regulations.

As stated in Section 2.0, *Project Description*, the Project would be located predominantly on publicly-owned land, with the alignment within or adjacent to the RTC-owned rail corridor and through land owned by the California Department of Parks and Recreation (State Parks). RTC coordinated with State Parks during preparation of the EIR, and State Parks commented on the EIR in Letter 5. Their comments do not raise issues with Mitigation Measure AG-5. The commenter does not specify how a more active partnership can or should be established, how such a partnership would lead to positive management changes, or how such changes would mitigate potential impacts.

Regarding the statement that the analysis of existing conditions is inadequate, it should be clarified that the purpose of an EIR is to identify existing conditions in order to establish a baseline from which to address potential project-related impacts. Existing conditions are discussed in Section 3.2.1 of Section 3.2, *Agricultural Resources*. It establishes the baseline physical conditions by which it is determined whether an impact is significant (CEQA Guidelines §15125(a)). The commenter has not questioned the adequacy of the existing setting or baseline discussion, nor made specific suggestions as to what else should be considered.

Pesticides and public health are discussed further in **Response to Comment 16.5**. In response to this comment, no revisions to the Draft EIR are necessary.

Response 12.10

The commenter suggests that Section 3.2.1 in Section 3.2, *Agricultural Resources*, should distinguish between organic and conventional agriculture, particularly the types of pesticides that may be applied to organic operations, and suggests that the EIR analysis provide more specificity regarding the frequency and acreage of pesticides application. The commenter further suggests that pesticide application should be analyzed in terms of frequency, area, and use pattern for all pesticides (not just fumigants), and suggests that specific mitigation for Telone II may be warranted.

The assessment of impacts related to pesticide use included a review of Pesticide Use Records (PUR) for the North Coast area from November 2012 to November 2017 (Santa Cruz County Agricultural Commissioner 2017a). These records show all pesticides applied in the North Coast area during the time frame studied, regardless of whether they were applied to organic or conventional operations. For the purpose of public health, the pesticide applied is more relevant than the organic certification status of the underlying farming operation. It is unclear from the comment how the status of agricultural land as organic or conventional would influence the analysis of Project impacts on the environment. Therefore, no further response is possible.

As stated in Response 12.9, the purpose of Section 3.2.1 is to establish the baseline physical conditions by which it is determined whether an impact is significant (CEQA Guidelines §15125(a)).

Pesticide application and the potential for exposure to trail users are discussed primarily in impact HAZ-1 in Section 3.8, *Hazards and Hazardous Materials*, not Section 3.2.1, as referenced by the commenter. That discussion states the frequency of application (4,242 times in a five-year period), the number of different pesticides used (140), the type of applications (95 percent ground, 5 percent fumigation), and timing (over half during July, August, and September; 88 percent between May and October). The PURs included as **Appendix E** to the Draft EIR provide additional detail

regarding the location of every pesticide applied in the North Coast area between November 2012 and November 2017.

There is no specific mitigation for Telone II in the Draft EIR, as a discrete impact associated with this fumigant was not identified. Additional detail regarding the potential health impacts of Telone II is provided in Response 16.5. As noted therein, the potential for exposure of trail users to Telone II is limited, and reasonably would not be expected to result in significant health effects. As noted in **Response to Comment 12.9** above, this Final EIR includes a new Mitigation Measure HAZ-1, which will provide additional protection for trail users from potential exposure to Telone II. This new measure would require the California Department of Parks and Recreation, in consultation with the Department of Pesticide Regulation (DPR), at the time of next renewal or extension of agricultural leases with North Coast farmers along the North Coast Rail Trail corridor, to revise the current leases to include (i) a prohibition of pesticide application within 50 feet a distance from the of North Coast Rail Trail corridor sufficient to protect trail users, (ii) consistent with DPR regulations, a requirement that pesticide use occur only at times of the day when public health and safety can be protected a prohibition of pesticide application during public hours, which would be determined through coordination with State Parks, the Coastal Commission, and property owners, and (iii) a requirement that, when spraying in areas within 100 feet of along the North Coast Trail corridor, agricultural operators operations place temporary warning signs at reasonable points along the potentially affected portion of the corridor.

No additional augmentations or revisions to the Draft EIR are necessary.

Response 12.11

The commenter suggests that Section 3.2.2 (*Regulatory Setting*) in Section 3.2, *Agricultural Resources*, should have included discussions of the California Organic Foods Act, the U.S. Organic Foods Production Act, State Parks agricultural leasing policies, and the court decision in *Jacobs Farm/Del Cabo, Inc. vs. Western Farm Service, Inc.* The commenter additionally states that discussion of California DPR pesticide application regulations is inadequate, and should include court findings regarding the adequacy of DPR regulations.

In response to this comment, the California Organic Foods Act, the U.S. Organic Foods Production Act, and current lease agreements between State Parks and North Coast farmers have been added to Section 3.2.2.

In *Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.* (2010) 190 Cal.App.4th 1502, the plaintiff (*Jacobs Farm/Del Cabo*) alleged that pesticides applied by the defendant (*Western Farm Service*) to fields near plaintiff's organic farm migrated to plaintiff's land, contaminated plaintiff's crop, and rendered the crop unmarketable. A jury found the defendant liable in negligence, trespass, and nuisance. The commenter states that this case is important for the Project because it recognizes that pesticide volatilization is common in areas of frequent coastal fog, such as *Wilder Ranch*. In response to this comment, text has been added to the end of the *Pesticide Use* section in Section 3.2.1 to acknowledge the potential for pesticide volatilization, or pesticide drift, during fog conditions.

The commenter does not specify how the *Pesticide Regulation* discussion in Section 3.2.2 [where California Department of Pesticide Regulations (DPR) is described] is inadequate. In addition, it is unclear what other court findings regarding adequacy of DPR regulations the commenter would like to see in the EIR. Because the commenter did not reference specific court findings, no revisions to the Draft EIR have been made to the *Pesticide Regulation* section.

In response to this comment, text has been added to Section 3.2.2 (*Regulatory Setting*) and Section 3.2.1 (*Existing Conditions*). No other revisions to the Draft EIR are necessary.

Response 12.12

The commenter states that the analysis of indirect agricultural conversion in Impact AG-1 is generalized, that fallowing is not a typical practice in the North Coast area, that Impact AG-3 understates impacts, and that interpretive exhibits alone are not adequate mitigation.

Impact AG-1 assesses whether the Project would convert a substantial amount of Important Farmland to non-agricultural use. Pursuant to the threshold language, the analysis considers whether the Project would convert Farmland Mapping and Monitoring Program (FMMP)-designated Important Farmland to non-agricultural use. FMMP data was used by GIS analysts to identify Important Farmland underlying the Proposed Project and Alternative 1 alignments. While FMMP data is statewide and therefore may be considered “general,” the analysis performed with the FMMP data was both site- and Project-specific. Therefore, the commenter’s statement that the analysis is generalized and “not at all” grounded in specifics of the Project corridor is unsupported. Indirect conversion of FMMP Important Farmland, such as conversion of planted crops to farm roads outside of the Project alignment, is not included in the FMMP calculations because such conversion is not considered a “non-agricultural use” (per the applied threshold). Furthermore, it would be speculative to quantify the acreage of farm roads to be constructed by agricultural operators outside of the Project corridor. Indirect impacts are instead analyzed separately under *Impacts AG-3 and AG-4*.

In response to the comment pertaining to fallowing as an atypical practice in the North Coast area, the referenced statement has been removed from Impact AG-1, fourth paragraph, of the Final EIR. The removal of this statement does not alter the analytical conclusions in the EIR.

Regarding Impact AG-3 being understated, the commenter does not provide specific evidence why this impact would be worse than presented in the Draft EIR. The commenter offers that mitigation should “[assist] transition to operations that can be compatible with Project,” but does not specifically explain what this mitigation would entail, nor support that such a measure would be required. Therefore, no revisions to the Draft EIR in response to this comment have been made.

Regarding interpretive exhibits as mitigation [per Mitigation Measure AG-3(e)], this is one of several measures offered to reduce conflicts between the Project and existing agricultural operations. The intent is to educate trail users so they understand both the importance of agriculture, as well as typical agricultural practices. With improved understanding, users may be less likely to contact the Agricultural Commissioner to complain about standard practices such as pesticide application, for example. However, this measure is not meant to stand alone. Instead, the Draft EIR identifies four other measures to mitigate this impact, including measures to reduce construction-related conflicts, installation of no trespassing signs, regular removal of solid waste and litter, and posting notices to promote food safety. In addition, as noted in **Responses to Comments 12.9 and 12.10**, this Final EIR includes a new Mitigation Measure HAZ-1, which would require the California Department of Parks and Recreation, in consultation with the Department of Pesticide Regulation (DPR), at the time of next renewal or extension of agricultural leases with North Coast farmers along the North Coast Rail Trail corridor, to revise the current leases to include (i) a prohibition of pesticide application within 50 feet a distance from the of North Coast Rail Trail corridor sufficient to protect trail users, (ii) consistent with DPR regulations, a requirement that pesticide use occur only at times of the day when public health and safety can be protected ~~a prohibition of pesticide application during public~~

hours, which would be determined through coordination with State Parks, the Coastal Commission, and property owners, and (iii) a requirement that, when spraying in areas within 100 feet of along the North Coast Trail corridor, agricultural operators place temporary warning signs at reasonable points along the potentially affected portion of the corridor. Because the commenter does not explain how more “in depth” mitigation would be crafted, nor clearly identify why the provided measures are inadequate, no additional revisions to the Draft EIR in response to this comment have been made.

In response to this comment, a statement about fallowing being a typical practice has been removed from Impact AG-1. No other revisions to the Draft EIR are necessary.

Response 12.13

The commenter states that the path is to be built to support emergency vehicles including fire trucks, which require a surface 12-foot-wide, and the project description indicates portions of the path are less than 12 feet, which is allegedly inadequate for emergency vehicles. Additionally, the commenter states that the Public Safety & Services analysis considers the only environmental impact to be new buildings/facilities, and there are no forecast of head counts or data to support a conclusion of no impact on the environment from emergency vehicles and personnel.

As described in Section 2.4 under *Trail Width*, the typical cross section of the Proposed Project is 20 feet wide with a 12-foot wide paved path and 8 feet of unpaved shoulders. The 12-foot wide paved path would be consistent throughout the length of the alignment, but the width of the 6-foot-wide unpaved shoulder on the coastal side could be reduced to 4 or 2 feet to minimize slope cuts and maintain the required distance between the paved trail and railroad tracks. Figures 2-3a to 2-3c show representative cross sections, but Figure 2-3b incorrectly shows an 8-foot-wide paved path, and this has been corrected. Under Alternative 1, the paved path would be 10 feet wide.

As described in Section 3.12.4 under Impact PUB-1, the Proposed Project trail alignment would allow sufficient emergency access for responders, based on input from CAL FIRE which specifically indicated that for access they would require a minimum of 12 feet. It was also determined that Alternative 1 would meet the requirements because the 12-foot minimum is met by using the shoulders.

CAL FIRE does not distinguish between paved and unpaved trails, as the structural integrity of the trail is the determining factor to support emergency vehicles, not the surface material. The defining parameter is that the trail, whether paved or not, must support a 35,000-pound fire engine (Larkin 2018)⁶. The Public Safety & Services analysis is based on CEQA Guidelines Appendix G, which contains the following inquiry:

Would the Project “result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for...fire protection”?

Although the Draft EIR did not specifically address whatever temporary impacts might occur when emergency vehicles travel along the paved trail and unpaved shoulders, this omission was typical of EIRs, which normally do not address the kinds of minor temporary impacts that would occur due to

⁶ Ian Larkin, Unit Chief, CAL FIRE, San Mateo Santa Cruz Unit. Telephone conversation on November 6, 2018.

occasional vehicle trips over physically altered surfaces. Neither the paved trail nor the unpaved shoulders would include any sensitive resources that might be crushed or otherwise harmed by tires. Figure 2-3b in the Draft EIR has been revised to show a 12-foot-wide paved path instead of 8-foot-wide.

Response 12.14

The commenter's question is about improving ecological conditions within the watersheds and coastal estuarine habitats of the Study Area, with particular concern given to habitat connectivity, to promote listed salmonid species recovery.

Potential Project impacts to the creeks, adjacent riparian habitat, and sensitive fish species are minimal and are described and addressed in Section 3.4.4 under Impact BIO-1 (Sensitive Fish), Impact BIO-8 (Sensitive Habitats), and Impact BIO-9 (Wetlands and Aquatic/Riverine Habitats). In addition, Mitigation Measure BIO-8c (Biological Resources MMP) would take into account the essential role these features play in the ecological setting, and habitat replacement and enhancement are likely to target riparian habitats along the creeks and buffers to these features.

Removing barriers to salmonid migration and improving salmonid habitat within the creeks would be outside of the intended scope of the mitigation, since this does not mitigate for impacts related to the Project. Indeed, CEQA is concerned only with adverse changes to existing baseline conditions, and does not create any generalized duty to improve existing conditions, even where they are degraded. (See, e.g., Pub. Resources Code, § 21068 [defines "Significant effect on the environment" as "a substantial, or potentially substantial, *adverse* change in the environment"].) Even so, there are a number of other project features and mitigation measures identified that would be expected to have a beneficial effect (e.g., focusing pedestrian access to beaches on formal crossings, implementing erosion control measures).

No revisions to the EIR are necessary.

Response 12.15

The commenter would like the North Coast Beaches Unified Plan document, which analyzes the existing resources and management of lands under the California State Parks and Bureau of Land Management ownership, included in the Draft EIR.

The Santa Cruz County Parks, Open Space and Cultural Services North Coast Beaches Unified Plan (North Coast Beaches Unified Plan) includes a discussion of beaches along the North Coast from Greyhound Rock Beach at the north terminus to Laguna Creek Beach at the southern terminus. The majority of the Project would be constructed within this area, including the proposed parking improvements at Davenport Beach, Bonny Doon Beach and Panther/Yellowbank Beach.

With regards to future land use planning, the proposed project does not constrain the use or development of other public lands in the area. The proposed project provides access points along the route for all user types to access other public lands such as the Coast Trails, State Parks, and BLM Coast Dairies National Monument.

The Draft EIR has been revised to include an overview of the North Coast Beaches Unified Plan in Sections 3.10.2, Regulatory Setting (Land Use and Planning) and in Section 3.13.2, *Regulatory Setting* (Recreation). The Plan also has been mentioned in the discussion for Impact LUP-2 (The Project Would Not Conflict with Applicable Plans and Policies), as well as considered in the plan consistency analysis of project alternatives with the document.

Response 12.16

The commenter states an opinion that the Draft EIR's estimate of 951 trail users during peak summer weekends seems low based on current use of North Coast beaches and communities. The commenter adds that mitigation is needed to address dangerous parallel parking and crossings on Highway 1, graffiti, trash, illegal trails, and erosion.

As discussed in the Transportation Impact Analysis prepared for the Draft EIR (Appendix K), it is estimated that 951 people would use the North Coast Rail Trail "on an average summer weekend day" by the year 2040. This estimate is derived from visitor counts at similar existing trails near the Project corridor, including the Wilder Ranch Trail and Arana Gulch Trail in Santa Cruz County, and the Monterey Bay Coastal Recreation Trail in Monterey County, which represent the best available data for trail use in the North Coast area. Trail counts taken during non-peak months were increased by 26 percent to estimate peak summer use based on a comparison of non-summer and summer weekend bicycle trips on the Arana Gulch Trail.

The *Traffic Congestion* discussion in Section 3.14.3, *Methodology and Significance Thresholds*, of the EIR has been amended to clarify that the estimate of 951 trail users per day applies to average summer weekend days, not to individual peak days, which could exceed this level of trail use on an infrequent basis.

Regarding the safety of crossings on Highway 1, the Project would introduce design features to reduce existing traffic hazards for pedestrians crossing Highway 1, as discussed in Draft EIR Section 3.14, *Transportation/Circulation*. Better signage, striping, and/or lighting at the Highway 1/Ocean Street intersection would provide a clearer warning to motorists of crossing pedestrians, reducing traffic hazards between motorists and pedestrians in this part of Davenport.

As discussed in Draft EIR Section 3.1, *Aesthetics*, routine trail maintenance would include graffiti removal and repair and replacement of signage. Mitigation Measure AG-3(c) in Section 3.2, *Agricultural Resources*, also would reduce the impact of littering by requiring regular litter removal along the trail. Please refer to **Response to Comment 12.8** for a discussion of erosion impacts associated with social trails.

In response to this comment, minor revisions were made to Section 3.14.3.

Response 12.17

The commenter would like further analysis on the increased use of the North Coast for recreational purposes because, although the project does not involve building new housing, there will still be an increased demand for existing recreational facilities within the North Coast of Santa Cruz County, especially with other planned recreation at the San Vicente Redwoods and the Cotoni-Coast Dairies properties.

As described in Sections 3.13, Recreation, and 4.1.14, (Cumulative) Recreation, the Project analysis acknowledges that an increased number of recreators would use the North Coast as a result of the construction of the North Coast Rail Trail, in addition to the proposed increased in recreational opportunities that are planned along the North Coast of Santa Cruz County, including the San Vicente Redwoods and the Cotoni-Coast Dairies properties. Through implementation of the Project and future planned recreational projects, additional trails and amenities (e.g., parking and restrooms) would become available to support the growing population travelling to and using facilities in the area. The operators of each recreational facility would manage these lands

continuously, providing an ongoing evaluation as to the adequacy of amenities and maintenance for each area. The planning for each area includes the common goal of providing public access while maintaining resource protection, and operations and maintenance plans would be developed to meet these goals. In addition, the uses planned for recreation along the North Coast are passive (e.g., walking, hiking, biking) and are not expected to physically degrade facilities beyond expected use; nor would they require the addition of recreational facilities beyond those planned through each project.

No revisions to the Draft EIR are necessary.

Response 12.18

The commenter states that increased visitor use in the North Coast area will increase demand for public services, including police and fire. The commenter requests mitigation for erosion impacts and to discourage new trail building, encampments, and garbage; indicates that North Coast beaches will need more protection and patrolling; requests the addition of parking and restroom facilities; and suggests that access to North Coast beaches be limited from 10 p.m. to 6 a.m.

Impacts of the Project on police and fire services are discussed in Section 3.12, *Public Safety and Services*. As described under Impact PUB-2, impacts were identified to be less than significant. The project would not require the construction of additional facilities or the expansion of services currently provided, as increases in the need for services along the North Coast, including those associated with the project, have been anticipated. Refer to **Response 2.25** for additional discussion on homeless encampments and Mitigation Measures AG-3(c) and BIO-8(c).

Erosion is addressed under Impact GEO-3 in Section 3.6, *Geology/Soils*. As stated therein, the proposed trail would have a less than significant impact from soil erosion with implementation of Mitigation Measures HYD-1(c) and HYD-1(d) to control stormwater runoff.

As noted in Section 2.4, *Project Characteristics*, the Project would include improvements to three existing parking areas: Davenport Beach, Bonny Doon Beach, and Panther/Yellowbank Beach. Restroom facilities would be included at the Davenport and Panther/Yellowbank Beach lots.

The proposed parking lots and restrooms are anticipated to be closed at night, possibly from 12:00 a.m. to 5:00 a.m. or from sunset to 8:00 a.m. consistent with State Parks hours. In addition, the trail would be closed at night to support existing agriculture adjacent to the trail and to protect the public from pesticide spraying necessary for the continued viability of agricultural use. The exact hours of parking lot, restroom, and trail closure would be determined through coordination with State Parks, the Coastal Commission, and Caltrans, as well as through consultation with other affected property owners. These clarifications have been made in Section 2.4 of the EIR. Also refer to **Master Response C** and **Response 16.6** for additional detail.

No further revisions to the Draft EIR are necessary.

Response 12.19

The commenter states that the recreation analysis doesn't capture the potential to create demands on local fire and rescue services, and they request information on MOUs with those service providers. The commenter is also concerned about safe access across Highway 1 from the rail trail to non-coastal recreation land.

The potential impacts on local fire and rescue services are addressed in the Public Safety and Services analysis in Section 3.12.4, under *Impacts PUB-1* and *PUB-2*. As described in these impact discussions, service would continue to be provided by a combination of providers including those mentioned by the commenter (Santa Cruz County Sheriff, California Highway Patrol, State Parks, and CAL FIRE). The impacts were determined less than significant based on consultation with the service providers. If the Project is approved, a memorandum of understanding (MOU) is not likely required.

The Project includes improvements to the existing Highway 1 crossing in Davenport, which would improve access to non-coastal recreation land in the Davenport area. Other non-coastal recreational lands would be accessed from existing informal parking along Highway 1. Improving parking and access to these lands on the inland side of Highway 1 is outside the scope of this Project, requires further study, and would need to be implemented by BLM. Further, it is unlikely that Caltrans would support an additional at-grade crossing.

No revisions to the Draft EIR are required.

Response 12.20

The commenter states an opinion that the Draft EIR underestimates the number of visitors that may be attracted to the proposed trail, which leads to a faulty assumption that the shoulders of Highway 1 can easily accommodate overflow parking. The commenter also claims that more people park on both sides of Highway 1 than shown in the aerial images of Highway 1 on which the Draft EIR relies. In addition, the commenter asks where the Draft EIR provides evidence that the Project would not require safe crossings of Highway 1.

Please refer to **Response to Comment 12.16** for a discussion of the basis for the Draft EIR's estimates of trail use on the North Coast Rail Trail. The Transportation Impact Analysis prepared for the Draft EIR (Appendix K) relies on aerial images taken by Google Earth on a sunny day at the start of Labor Day weekend (Friday, September 1, 2017). These images were recorded at a midday period, based on the position of shadows. Parking counted in the aerial images is representative of peak existing parking demand.

Based on field surveys of parking activity and a review of Google Earth imagery, it is evident that although some people park on the inland side of Highway 1 in the North Coast, most parking activity occurs on the coastal shoulder of Highway 1. As acknowledged by Draft EIR Section 3.14, *Transportation/Circulation*, the proposed trail would generate additional demand for overflow parking along the Project corridor. However, several miles of unpaved shoulder on Highway 1 parallel to the Project corridor would provide sufficient parking capacity to accommodate increased use. It should also be noted that roadway and parking facilities are designed to accommodate typical use, not the highest peak demands. Planning for the highest peak demands would result in too much capacity for conditions that exist the vast majority of the time.

An incremental increase in shoulder parking on Highway 1, near access points to the proposed trail, would not substantially increase the existing risk to traffic safety from pedestrian crossings. Nonetheless, at the Davenport Lot: North, the Project would introduce design features to reduce existing traffic hazards for pedestrians crossing Highway 1. These features would improve existing safety conditions for pedestrians.

No revisions to the Draft EIR are necessary.

Response 12.21

The commenter quotes a statement in the Draft EIR that “Intersection delays are expected to improve slightly with this reduction in proposed parking capacity and subsequent turning volumes at the driveways.” The commenter disputes this statement, asserting that drivers would not be aware of reduced capacity in parking lots and would still access them to search for parking spaces, which would increase turning numbers compared to what is presented in the Draft EIR. In addition, the commenter states that the Draft EIR’s assumption of an average vehicle trip length of 10.7 miles does not accurately reflect the Project corridor’s setting.

The commenter acknowledges that the lots are “already overflowing at peak times,” which suggests that this fruitless search for parking – and the resulting increased turning movements – is an existing condition. The Project would not necessarily worsen this existing condition, despite the reduction in parking spaces. Although the capacity of the parking lots may not be visible from the highway, it is anticipated that over time regular visitors would become familiar with the number of spaces and understand that the lots may be at capacity during peak periods. As such, they may choose to park elsewhere, thus avoiding a fruitless search for a parking space. It should also be reiterated that the Draft EIR’s analysis of intersection delay is based on an earlier design of the Davenport Lot: North and the Panther/Yellowbank Beach Lot, which retained more parking spaces. Relative to that earlier version of design plans for the parking lots, the currently proposed designs would have fewer parking spaces and would result in less intersection delay than presented in the Draft EIR. Therefore, the EIR’s intersection analysis is conservative. It is not anticipated that any additional trips by visitors searching for parking would alter the LOS presented in the Draft EIR.

Section 3.14.3 of the Draft EIR addresses trip length as part of a background discussion of vehicle miles traveled, which is provided for informational purposes. As acknowledged by the commenter, this analysis of vehicle miles traveled is not currently required under the State CEQA Guidelines. The Draft EIR assumes that the average vehicle trip to and from the proposed trail would be 10.7 miles long, based on a national travel survey conducted by the Federal Highway Administration. Although this data source is not specific to the Project corridor’s locale, it is the most reliable currently available information on social and recreational trip length. Furthermore, the assumed trip length of 10.7 miles is similar to the distances between the midpoint of the Project corridor and nearby cities from which many trail users would travel: it is approximately 7.25 miles to the city of Santa Cruz and 13.5 miles to Soquel and Scotts Valley. Therefore, the average vehicle trip length assumed in the Draft EIR is appropriate. No revisions to the Draft EIR are necessary.

Response 12.22

The commenter notes that the water treatment plant was operational long before Cemex ceased operations, and that water meters and new water lines are already installed in 97 percent of Davenport. The commenter additionally states that the EIR does not address heavy equipment, hauling, or burning fossil fuels for septic servicing, or the hauling of creosoted railroad ties as much as 60 miles away.

The statement in the Draft EIR about the water treatment plant being operational in 2011 is from Davenport County Sanitation District (DCSD) 2015 *Davenport Recycled Water System Feasibility Study*. The commenter does not provide an alternative source for this information, and the operational date is provided for background information and is not germane to the analysis. Therefore, no revisions are made in response to this comment.

The commenter's statement that new water lines are installed in 97 percent of Davenport does not pertain to the adequacy of the EIR or CEQA process.

It should be clarified that the proposed restroom facilities would not rely on septic systems. Rather, the restroom at the Davenport Beach North lot would either have flush toilets or waterless vault toilets, and the restroom at the Panther/Yellowbank Beach lot would include waterless vault toilets. Waterless vault toilets would be emptied via septic truck. The need for the expansion of existing facilities to accommodate the generated wastewater is analyzed under Impact UTIL-1 in Section 3.16, *Utilities/Service Systems*. In addition, the potential air quality and GHG impacts of truck trips related to Project restroom maintenance are addressed in Section 3.3.4 under Impact AIR-2 and in Section 3.7.4 under Impact GHG-1. Both analyses assume one two-way truck trip would be required approximately every four weeks for emptying of restroom facilities.

Alternative 1 would require the disposal of thousands of railroad ties that were treated with creosote, also referred to as treated wood waste (TWW). As stated in Section 3.8, *Hazards and Hazardous Materials*, the closest facility that would accept TWW would be the Corinda Los Trancos Landfill located in Half Moon Bay, approximately 35 miles north of the Project corridor. However, if the concentration of contamination found in the soil and ballast hauled off-site would require disposal at a Waste Discharge Requirement (WDR) Class II facility, the contaminated soil and ballast would be hauled to the Altamont Landfill or the Vasco Road Sanitary Landfill, both located in Livermore, approximately 60 miles northeast of the Project corridor.

The potential impact of hauling railroad ties to Livermore is addressed in Section 3.3.4 under Impact AIR-2. This analysis assumed that contaminated materials would require disposal in specialized facilities ranging from 35 miles to 80 miles from the Project site. As shown in Table 3.3-10, emissions would not exceed the MBARD significance threshold, regardless of this required hauling distance.

No revisions to the Draft EIR are necessary.

Response 12.23

The commenter would like the analysis of cumulative impacts of the Project in conjunction with other planned recreation opportunities (including the California State Park Beaches, BLM's Cotoni-Coast Dairies National Monument, and San Vicente Redwoods) to be expanded to include a broader area through the year 2040.

As described in Sections 3.12, *Public Safety and Services*, 3.13, *Recreation*, and 4.1.14, *Cumulative Impact Analysis/Recreation* of the Draft EIR, the project analyses acknowledge that an increased number of users would recreate along the North Coast as a result of the construction of the North Coast Rail Trail, in addition to the proposed increased in recreational opportunities that are planned along the North Coast of Santa Cruz County. Through implementation of the Project and future planned recreational projects, including San Vicente Redwoods and the Cotoni-Coast Dairies properties, additional trails and public services, including parking and restrooms, would become available to support the growing visitor population using the area. The operators of each recreational facility would manage these lands continuously, providing an ongoing evaluation as to the adequacy of amenities and maintenance for each area. The planning for each area includes the common goal of providing public access while maintaining resource protection, and would be operated to meet these goals, regardless of the population or geographic area that is utilized to analyze impacts. First response providers would also continue to monitor changes in use throughout the North Coast and provide ongoing changes in staff and/or services to continue to provide first response services throughout Northern Santa Cruz County. The local Sheriff's Department and

CALFIRE have already increased staffing and services throughout the North Coast as a result of the expected increase in the population that would utilize the expanded recreational facilities throughout the North Coast.

The Draft EIR adequately addresses the cumulative impacts. No revisions to the Draft EIR are necessary.



September 24, 2018

Cory Caletti, Senior Transportation Planner
 Santa Cruz County Regional Transportation Commission
 1523 Pacific Avenue, Santa Cruz, CA 95060
 Delivered via email to: NCRTDraftEIR@sccrtc.org

Re: North Coast Rail Trail - Draft Environmental Impact Report (DEIR)

Ecology Action supports the proposed North Coast Rail Trail project alignment presented by the Santa Cruz County Regional Transportation Commission (RTC) rather than any of the alternatives described in the DEIR for many reasons, some of which are included in the comments below.

13.1

- 1) The proposed North Coast Rail Trail project is consistent with the Monterey Bay Sanctuary Scenic Trail Network Master Plan.
- 2) Ecology Action supports the proposed Rail Trail project as we agree with the DEIR conclusion that the proposed North Coast Rail Trail project is the environmentally superior alternative using the following three measures: 1) focus on no significant and unavoidable project impacts, 2) focus on key resource topics, and 3) environmentally superior for most resource topics.

This section of the bike and walking Rail Trail may largely be for recreational use, but it is of significance in terms of advancing health, safety, and environmental mobility choices by giving locals and visitors access to a car-free paved path. This section of trail is crucial for preventing any more injuries and deaths to people riding bikes on the section of Highway One from Wilder State Park to Davenport. Over the past 12 years 10 people have been severely injured and one has died while biking on this section of Highway 1. At least 3 cyclists have died on this section of Highway 1 over the last 20 years. If we can save one life, if we can prevent one life altering injury, then the North Coast Rail Trail will be a good investment and come none too soon.

We believe the Proposed Project alignment which is mostly on the coastal side of the railroad corridor, will provide the greatest environmental benefits compared to the other alternative routes. We strongly support the Project alignment for the following reasons.

- This section of Rail Trail will attract many active transportation users including a growing number of ebikes riders as this mode of biking, these bikes are pedal assist, become more popular and their range increases (current range is 30 to 120 miles) more people will use them to avoid the worsening car congestion.
- Recreational value of a trail on the coastal side of the tracks is higher than a trail next/adjacent to Highway 1. A significant greater number of people will be attracted to a trail with views of the ocean and stunning coast than one adjacent to a highway or a trail located at the bottom of an embankment.

- The trail is a mitigation measure as it gets more people using sustainable and active transportation. Although those using the North Coast section of the Rail Trail for transportation will only be a small percentage of the overall users, most will be recreational users, a paved bike paths encourage more biking in general including on street bike trips for transportation purposes.

13.1
(cont'd)

Consideration of environmental enhancements to include in the EIR:

- Consider increased ebike use in traffic modeling as more mountain bikers are riding ebikes that can easily be ridden to the trailhead, instead of driving. This will have an impact as San Vicente Open Space (scheduled to open in a couple of years) will attract mt bikers to the Davenport area. Ebikes trips will reduce car trips to other North Coast attractions such as popular beaches, Davenport, the soon to open
- To mitigate additional cumulative vehicle traffic install ebike (110 volt) charging stations/outlets at Davenport parking lot, at least one rest stop location between Davenport and Santa Cruz, one at Wilder Ranch State Park. These charging stations will encourage and support ebike users to ride to the trail rather than drive. This measure will help reduce ghg emissions associated with driving to the trail.
- Consider the increase of transit service to the few Rail Trail entrance points as a mitigation to increase vehicle traffic.

13.2

Sincerely,



Piet Canin
VP of Transportation
Ecology Action

Letter 13

COMMENTER: Piet Canin, VP of Transportation, Ecology Action

DATE: September 24, 2018

Response 13.1

The commenter expresses support for the Proposed Project rather than the alternatives provided in the Draft EIR. The commenter states that the Proposed Project is consistent with the MBSST Network Master Plan and is the environmentally superior alternative. The commenter lists benefits of the Proposed Project, including health, cyclist safety, mobility options, traffic decongestion, and recreational value.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the commenter's support of the Project is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 13.2

The commenter would like consideration of e-bike use in traffic modeling, installation of e-bike charging stations, and increased transit service at trail entrance points.

The National Cooperative Highway Research Program methodology used in the traffic analysis assumes e-bikes.

The comments regarding installation of e-bike charging stations and increased transit service are noted and will be forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

***Build the Trail – Keep the Rail***

September 24, 2018

Cory Caletti, Senior Transportation Planner

Santa Cruz County Regional Transportation Commission

1523 Pacific Avenue, Santa Cruz, CA 95060

Delivered via email to: NCRTDraftEIR@scrtc.org

Re: North Coast Rail Trail - Draft Environmental Impact Report (DEIR) - Comments

The Santa Cruz County Friends of the Rail & Trail (Friends) is fully supportive of the proposed North Coast Rail Trail project as presently described by the Santa Cruz County Regional Transportation Commission (RTC) rather than any of the alternatives described in the DEIR for many reasons, some of which are included in the comments below.

14.1

- 1) The proposed North Coast Rail Trail project is consistent with the Monterey Bay Sanctuary Scenic Trail Network Master Plan as approved in 2013 by all three cities traversed by the Rail Trail, the County of Santa Cruz and the RTC.
- 2) Friends supports the proposed Rail Trail project as we agree with the DEIR conclusion that the proposed North Coast Rail Trail project is the environmentally superior alternative using the following three measures: 1) focus on no significant and unavoidable project impacts, 2) focus on key resource topics, and 3) environmentally superior for most resource topics.
- 3) Friends is delighted the proposed North Coast Rail Trail project could be constructed and open for use in 2020 as the North Coast Rail Trail project will greatly improve accessibility in the presence of increased demand to local state parks such as Wilder Ranch State Park, to the many north coast beaches, to the Cotoni-Coast Dairies National Monument and to the San Vicente Redwoods.
- 4) Friends is supportive of the proposed Rail Trail project moving forward ASAP as doing so prevents the likely loss of \$6.3 million in funding earmarked for the North Coast Rail Trail project, funding that will simply disappear if the project is delayed too much longer. Loss of funding will result in a substantial delay, perhaps indefinite, preventing the planned North Coast Rail Trail from ever being built and opened to the public for use.
- 5) Friends is strongly opposed to both Alternative 1, Trail Only, and Alternative 3, Farmer's Alternative, as both of these alternatives would result in:



- a) Significant and unavoidable impact to cultural resources as both of these alternatives would remove the historic Davenport Branch Line, an irreplaceable relevant resource.
 - b) Delaying construction of any trail until 2028 or later, a delay that will very likely result in the loss of \$6.3 million of earmarked federal funding with a 2020 year end sunset date.
 - c) A lower quality trail because of factors including exposure to Highway 1, a narrower trail, decreased access to the seashore and more complicated route finding.
- 6) Because of the increase in adverse impacts of constructing Alternative 2 (rail trail on the inland side of the tracks) Friends prefers the proposed project (rail trail on the coastal side of the tracks).
- 7) The proposed North Coast Rail Trail project satisfies the following project objectives as set forth in Section 2.3 of the Executive Summary (enumerated below to match the numbering in the DEIR):
1. Provide a continuous public trail along the Santa Cruz Branch Line railroad corridor and connecting spur trails in Santa Cruz County.
 - Self evident
 3. Develop the trail so future rail transportation service along the corridor is not precluded.
 - Because the proposed North Coast Rail Trail keeps the existing tracks in place it does not preclude future rail transportation service along the corridor. Passenger rail service along the north coast out to Davenport (San Vicente Redwoods) with key stops at Wilder Ranch State Park, Yellow Bank (Cotoni-Coast Dairies National Monument) and other locations to be determined would enable and/or greatly extend the range/reach of totally car-free cycling/pedestrian trips and will substantially reduce the number of car trips to and from these frequently visited attractions. Alternatives 1 and 3 take away the benefits of rail service as both require the existing railroad tracks be abandoned and/or removed. Although not specifically addressed in the DEIR, future passenger rail users would provide substantial environmental benefits including a) effectively and substantially reduce Vehicle Miles Traveled (VMT) and the associated GHG emissions that are causing global warming, b) reduce traffic on Highway 1 and all associated feeder streets and, c) reduce the surface area required for parking lots to serve those visitors. As these benefits to the environment would be categorically unavailable to Alternatives 1 and 3 these benefits must be properly analyzed and included in DEIR.
 - Similarly not addressed / included in the DEIR, are the environmental benefits future rail transportation service along the corridor would provide when the old Cemex plant is demolished and all hazardous materials associated with the Cemex plant are removed from the site. It has been estimated that 40,000 to 60,000 highway truckloads of

14.1
(cont'd)



material will need to be hauled away using Highway 1, through the City and County of Santa Cruz and on to a suitable hazardous materials disposal site located elsewhere in the State of California. Given that 1 rail car replaces 4 highway trucks and assuming a single train would consist of a dozen rail cars, simple math tells us that 50,000 truckloads could be replaced with about 1,000 trains. Put more simply, removing the Cemex plant eyesore from our County will be at least 50 times more efficient if done by rail than by highway truck. Common sense tells us the environmental benefits of replacing 50,000 truck trips with 1,000 train trips is quite relevant and significant and should therefore be included when comparing the proposed North Coast Rail Trail project to both Alternatives 1 and 3.

4. Maximize ocean views and scenic coastal vistas along a coastal alignment for experiencing and interpreting the Monterey Bay National Marine Sanctuary (sanctuary), and historical and agricultural landscapes.

- The location of the proposed North Coast Rail Trail on the higher ground adjacent to the coastal side of the tracks offers far superior access to the spectacular ocean views and scenic coastal vistas than Alternatives 1 and 3 which would both be located largely down in the “ditch” where the existing tracks are located or in the case of Alternative 3, located alongside the unsightly ribbon of asphalt known as Highway 1. While this aesthetic benefit may be difficult to quantify, determining the length of trail down in the “ditch” or along Highway 1 could be determined and should be included when evaluating the aesthetic impacts of Alternatives 1 and 3. Given the relatively rare and unspoiled nature of the views and vistas along the proposed North Coast Rail Trail, we find this impact to be of extraordinary importance in considering the alternatives.

5. Maximize safety and serenity for experiencing and interpreting the sanctuary and landscapes by providing a trail separate from roadway vehicle traffic.

- The proposed North Coast Rail Trail certainly satisfies this objective. On the other hand, Alternative 3, the “Farmer’s Alternative”, plans to have large portions of the trail located immediately adjacent to Highway 1, duplicating bike lanes and ensuring all users will be adversely impacted by the visual and noise impact of vehicles using Highway 1. The length of trail immediately adjacent to Highway 1 under Alternative 3 could be determined and included in the comparative analysis.

11. Complete Project construction by 2020 to maximize funding for the Project, and meet current funding obligations.

- Clearly, funding for the proposed North Coast Rail Trail project is subject to “use it or lose it” provisions with the \$6.3 million in Federal funding currently earmarked for the trail project. Friends further understands the Land Trust of Santa Cruz County has committed approximately \$4 million in funding that, if the project is delayed, would be

14.1
(cont'd)



rescinded as the Land Trust anticipated prompt construction of the plan and has many other worthwhile projects in which they want to invest. Staying the course and keeping the proposed North Coast Rail Trail on schedule avoids the irrevocable loss of over \$10 million in funding for the project and the adverse effects this loss of funding would have on delaying the many environmental benefits of the proposed project.

- In addition to losing over \$10 million of funding for this project, because both Alternatives 1 and 3 involving abandoning and/or removing the rail line there would be substantial additional costs resulting from the certain multiyear delays and expensive litigation associated with a formal abandonment of an active rail line.

In summary, the Friends of the Rail and Trail are fully supportive of the proposed North Coast Rail Trail project and strongly opposed to all alternatives 1 through 3 as well as the no project alternative.

Respectfully submitted,

Mark Mesiti-Miller, P.E.

(831) 818-3660

Board Chair, Santa Cruz County Friends of the Rail and Trail

cc: Santa Cruz County Friends of the Rail and Trail Board of Directors

14.1
(cont'd)

Letter 14

COMMENTER: Mark Mesiti-Miller, Board Chair, Santa Cruz County Friends of the Rail and Trail

DATE: September 24, 2018

Response 14.1

The commenter expresses support for the Proposed Project rather than the alternatives provided in the Draft EIR, including the No Project alternative. The commenter states that the Proposed Project is consistent with the MBSST Network Master Plan, is the environmentally superior alternative, and prevents the loss of earmarked funds. The commenter states that the Proposed Project meets several of the project objectives listed in the Draft EIR Executive Summary. The commenter states opposition to Alternative 1 and Alternative 3, due to the following considerations: impacts to cultural resources; potential loss of earmarked funding; lower trail quality, due to exposure to Highway 1, narrower width, lower scenic view quality, and decreased seashore access; loss of future rail use, which could result in loss of future benefits to traffic, GHG emissions, and parking; loss of the potential for future rail use to be utilized in removing hazardous material from the Davenport Cement Plant; and less safe and serene conditions for trail use due to proximity to vehicle traffic.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.



Letter 15

September 24, 2018

Ms. Cory Caletti , Senior Transportation Planner
Santa Cruz County Regional Transportation Commission
1523 Pacific Ave.
Santa Cruz, CA 95060

RE: North Coast Rail Trail

Dear Ms. Caletti:

I'm writing on behalf of the board of directors of Friends of Santa Cruz State Parks (Friends), nonprofit partner to the Santa Cruz District of California State Parks, with their unanimous support for the Proposed North Coast Rail Trail Project.

15.1

The 7.5-mile multi-use bike and pedestrian trail along the rail corridor from Wilder Ranch State Park to Davenport will provide a safe and vital link between several state parks and beaches, providing important access to natural and cultural resources and promoting active recreation.

This large section of the Monterey Bay Sanctuary Scenic Trail is much-anticipated and will provide important amenities, parking improvements and ADA access at three parking areas, including Panther/Yellow Bank Beach.

In particular, the board stated their support for development of the trail to proceed in such a way that future rail transportation service along the corridor is not precluded.

Thank you for the opportunity to comment. If we can provide any further information, please don't hesitate to contact me.

Sincerely,

Bonny Hawley, Executive Director
Friends of Santa Cruz State Parks

BH:me

Cc: Superintendent Chris Spohrer, California State Parks



Letter 15

COMMENTER: Bonny Hawley, Executive Director, Friends of Santa Cruz State Parks

DATE: September 24, 2018

Response 15.1

The commenter expresses support for the Proposed Project. The commenter states that the Project would provide amenities, parking improvements, improved ADA access, and a link between several parks and beaches. The commenter expresses support for development that does not preclude future rail transportation service.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

HORAN | LLOYD

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File No. 7569.01

September 24, 2018

Via Electronic & Regular Mail (NCRTDraftEIR@sccrtc.org)

Santa Cruz Co. Reg. Trans. Commission
Attn: Cory Caletti, Senior Transportation Planner Cory <ccaletti@sccrtc.org>
1523 Pacific Avenue
Santa Cruz, CA 95060

RE: Comments to the Draft Environmental Impact Report – North Coast Rail Trail SCH#2017092034

Dear Commissioners:

This firm represents various farmers with active farming operations along the North Coast Rail Trail right-of-way. This letter is to comment on the Draft Environmental Impact Report (“DEIR”) for the North Coast Rail Trail project (“Proposed Project”). The farmers have been actively involved in the Santa Cruz County Regional Transportation Commission (“RTC”) process and ask that the comments herein be carefully considered. There could be a successful rail trail project if all of the parties are willing to work together.

16.1

Overall, the DEIR is wholly deficient, and RTC abused its discretion by omitting information required by law and that error is prejudicial. Due to its prejudice and bias toward approving the Proposed Project, which conduct is well documented, RTC failed to comply with the basic substantive requirements of CEQA; thus, obstructed CEQA's goals of informed public participation and informed agency decision making. [See, e.g., *Friends of the Eel River v Sonoma County Water Agency* (2003) 108 CA4th 859, 882 (EIR's failure to examine key environmental issue prevented meaningful assessment of project's potentially significant impacts.)]

A. The Farmer’s Alternative Is the Environmentally Superior Alternative that Meets All of the Project’s Objectives and Must be Selected.

16.2

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The goals of the farmers are to alleviate impacts to agriculture and to critical and sensitive habitats within and surrounding the railroad right-of-way from the RTC rail trail project, while at the same time desiring to work collaboratively with RTC to ensure that there is a successful project that meets the project objectives. Accordingly, the farmers proposed a trail route that is the least impactful to agriculture as well as to critical and sensitive habitats for thoughtful consideration by the RTC.

16.2
 (cont'd)

It is important to point out the Farmers' Alternative focuses only on the trail alignment, not the rail operation. That is, the farmers support this alternative trail alignment, regardless of whether the rail operation occurs or not. The farmers do not and will not oppose the rail operation so long as RTC acts consistently with the CEQA and National Environmental Policy Act (which it has not to-date) and stops its prejudicial and bias conduct that thwarts the public deliberation processes.

The DEIR admits the Farmers' Alternative would pose less impacts to agriculture, biological resources, archeological and paleontological cultural resources and climate change than the Proposed Project. The DEIR states,

There would be less sensitive habitat affected in the southern portion, less for agricultural resources because the northern half of the alignment would be on the existing rail bed and not along farm roads, less for archeological and paleontological cultural resources because there would be less likelihood for discovering resources in or beneath the rail bed in the northern portion, and slightly less for GHG/climate change because the trail would be further setback from coastal erosion and sea level rise.

The Farmers' Alternative would also pose less impacts to health and safety of the trail users as well as to the general public (due to food safety reasons) which were not included in the alternative's discussion. (See further discussion below.) Moreover, because a portion of the trail route is located adjacent to or on the Highway 1 right-of-way¹, the alternative would cause lesser

¹ It appears that RTC may be hesitant to promote the trail on the Highway 1 right-of way due to the difficulty in working with California Transportation Agency ("Caltrans"). The trail could be evaluated to be adjacent to the Highway 1 right-of-way, where appropriate and feasible. Nonetheless, the RTC should remind Caltrans that SB 908, which is codified in Public Resources Code sections 31408 & 31409, mandates all state agencies and departments to cooperate on not only making lands available for the California Coastal Trail but also assisting in the management of the trail. Section 31408(b) states, "To the extent feasible, and consistent with individual mandates, each agency, board, department, or commission of the state with property interests or regulatory authority in coastal areas shall cooperate with the conservancy with respect to

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(bluff) erosion and sedimentation impacts.

In summary, the Farmers' Alternative is the environmentally superior alternative for the following reasons:

- There would be less impact to biological resources, including species listed under the federal Endangered Species Act and its associated critical habitat and other protected sensitive habitats, particularly in the southern portion and in the farm drainages and other areas within or adjacent to the railroad right-of-way because a portion of the trail would be adjacent to or on the Highway 1 right-of-way.
- There would be less impact to agricultural resources because the northern half of the alignment would be on the existing rail bed and not along farm roads. All existing crossings and farm roads would/should remain, and food borne illnesses and exposures to normal active farming, such as to pesticides and particulates, would be reduced. The loss of productivity reducing the viability of farming from these direct, indirect and cumulative impacts of the Proposed Project would result in significant loss of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance. The alternative lessens these direct, indirect and cumulative impacts because the alternative is less disruptive to existing ongoing agricultural operations.
- There would be less impact to archeological and paleontological cultural resources because there would be less likelihood for discovering resources in or beneath the rail bed in the northern portion and adjacent to or on the already developed Highway 1 right-of-way.
- There would be less impact from GHG/climate change because a portion of the trail would be adjacent to or on the Highway 1 right-of-way and would be further setback from coastal erosion and sea level rise.
- There would be less impact to health and safety of trail users from normal farming operation, including pesticide and particulate exposures, because a portion of the trail would be adjacent to or on Highway 1 right-of way and would be further setback from the agricultural operations.
- There would be less impact to public health and safety because a portion of the trail would be adjacent to or on the Highway 1 right-of-way and would be further

planning and making lands available for completion of the trail, including constructing trail links, placing signs and managing the trail.”

16.2
(cont'd)

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Page 4

setback from agricultural operations, thus limiting trespass, garbage and other human activities that could result in public food safety-related impacts.

- There would be less (coastal bluff) erosion, sedimentation and flooding impacts because a portion of the trail would be along or on Highway 1 right-of-way and would be further setback from the coastal bluffs. There would also be less ground disturbance because a portion of the trail would be located along or on an already developed Highway 1 right-of-way.
- There would be cumulatively less noise impact in the rural setting because a portion of the trail would be along or on the Highway 1 right-of-way.

16.2
(cont'd)

Yet, the alternative discussion in the DEIR fails to admit the same due to RTC's prejudicial bias in favor of the Proposed Project. The bias is obvious from the discussion of the alternative. For example, on one hand, the DEIR states that the Proposed Project does not include improvements to rail line or its related construction and operation impacts. The DEIR states, "The railroad tracks would remain in place, and would not be improved as part of this Project. In light of possible future uses of the rail for freight or passenger service, the Proposed Project includes safety fencing described under Fencing below." That is, only safety fencing appears to be evaluated in the DEIR for the rail operation as part of the Proposed Project.

On the other hand, the DEIR includes as part of its analysis of the Farmers' Alternative, the impacts related to rail improvements and concludes significant and unavoidable impacts to the historical Davenport Branch Line. The DEIR states,

Alternative 3 would result in a change to the significance determination for the impact on cultural resources, from less than significant with mitigation (under the Proposed Project) to significant and unavoidable, because it would adversely affect the historical Davenport Branch Line (now called the Santa Cruz Branch Line).

It is clear this additional analysis for the rail improvement, which was done for the Farmers' Alternative, but not for the Proposed Project, was to make this alternative less attractive. Following the same bias and prejudicial conduct, the DEIR includes the following conclusionary determination without substantial evidence in the record: "The impacts [of the Farmers' Alternative] would be similar, with some less and some more but no difference in the impact determination."

The RTC made their bias known by promoting the rail operation ahead of the release of this DEIR, which has already tainted the process. Please see the letters to RTC regarding RTC's conduct included as **Exhibits A and B**. RTC's past conduct of entering into a ten (10) or twenty

16.3

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Page 5

(20)-year² agreement for rail operation (**Exhibit C**) is bad faith and in violation of CEQA and NEPA because it foreclosed an unbiased consideration of certain alternatives that removed the rail. RTC also invalidly breaks the rail trail project into smaller pieces in an attempt to avoid significant impacts. The RTC is currently being sued for committing itself to a definite course of action by entering into a long term agreement with a rail operator, and by committing itself to making improvements to certain portions of the rail line under the agreement prior to completing an environmental impact report (“EIR”).

16.3
(cont'd)

16.4

The discussion of the Farmers’ Alternative in the DEIR is perfunctory and prejudicial. It is clear the RTC’s recent agreement with a rail operator ahead of the release of the DEIR was a de facto approval of the Proposed Project which invalidly foreclosed the selection of the Farmers’ Alternative, even though it is clearly this alternative is environmentally superior.

16.3

Due to RTC’s prejudicial and bias conduct in favor of the Proposed Project, which is well documented, the RTC failed to comply with the basic substantive requirements of CEQA; thus, obstructed CEQA’s goals of informed public participation and informed agency decision making.

If the court finds that a specific project activity will prejudice the consideration or implementation of project alternatives and could result in an adverse physical environmental change, the court would mandate that the agency suspend specific activity until the agency complies with CEQA. (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1266.)

Because the Farmers’ Alternative is the environmentally superior alternative and meets the objectives of the rail trail project, this alternative must be selected.

16.2

B. The DEIR Fails to Adequately Analyze the RTC’s Proposed Land Use Change and the Land Use Conflict as a Result of the Proposed Project, Which Would Cause Significant Direct, Indirect and Cumulative Health and Safety Impacts.

16.5

Although the rail trail project itself would not cause pesticide emissions, the Proposed Project proposes a physical and land use change by constructing a public trail for recreational use adjacent to active agricultural operations. Active agricultural operations are strictly regulated (often over-regulated) not only to protect the general public, but also to protect ongoing agricultural operations. The change in the human use of the land by the RTC would pose significant health and safety impacts, which must be adequately mitigated pursuant to CEQA

² The proposal from Progressive Rail Incorporated states, “We recommend increasing the operating term to 20 years or, conversely, a 10-year term with a 10-year renewal feature that is contingent upon PGR’s being in full compliance and good standing.”

Guidelines section 15126.2, which states in relevant part:

The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project... Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical change...

16.5
(cont'd)

Due to this change in human use of land as a result of the Proposed Project, a buffer is required between agricultural operations and the proposed public recreational use to protect human exposures to pesticide as well as to protect ongoing agricultural operations. For example, as stated in the DEIR, Telone II is a restricted-use pesticide due to high acute inhalation toxicity and carcinogenicity. Due to its toxicity, Telone II is regulated and the regulations prohibits spraying within 100 feet of any occupied structure. To limit exposure, this buffer must be maintained for seven days following its application.

The Santa Cruz County General Plan and Municipal Code requires a 200-foot buffer between active agricultural operations and public use, not only to protect public health and safety, but also to protect the important coastal farming operations. Policy 5.13.23 of the Santa Cruz General Plan (LCP) requires a 200-foot buffer area between commercial agricultural and non-agricultural land uses to prevent or minimize potential land use conflicts, between either existing or future commercial agricultural and nonagricultural land uses. Santa Cruz County section 16.50.095 requires a 200-foot buffer between active agricultural operation and “outdoor areas designed for human use.” The buffer is clearly needed to protect public health and safety and to protect ongoing agricultural operations as explained in section 16.50.010 of the Santa Cruz County Code:

16.6

(A) The Board of Supervisors of Santa Cruz County finds that commercially viable agricultural land exists within the County, that it is in the public interest to preserve and protect this land for exclusive agricultural use and to enhance and encourage agricultural operations within the County, and that certain agricultural land in the County, not presently of commercial value, also merits protection. The Board of Supervisors of Santa Cruz County also finds that nonagricultural development adjacent to certain of these lands often leads to restrictions on the County’s agricultural industry as a whole. It is the determination of the Board of Supervisors that residents living near agricultural land should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a County with a strong rural character and healthy

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agricultural sector so long as the agricultural operations are conducted in accordance with Federal, State, and local laws and regulations.

(B) The purposes of this chapter, therefore, are to promote the public health, safety and welfare; to support and encourage continued agricultural operations in the County, to implement the policies of the Santa Cruz County General Plan, the Local Coastal Program Land Use Plan, and the 1978 Growth Management Referendum (Measure J) by designating those commercial agricultural lands the County intends to preserve and protect for exclusive agricultural use, and by protecting noncommercial agricultural land; to support and encourage continued agricultural operations in the County; to maintain in exclusive agricultural use commercial agricultural land which is located within utility assessment districts, while recognizing that equitable compensation may be due because of the assessment district-caused encumbrances; and to forewarn prospective purchasers and residents of property adjacent to agricultural operations of the necessary sounds, odors, dust and hazardous chemicals that accompany agricultural operations. It is an additional purpose of this chapter to ensure the maximum protection of commercially viable agricultural land by weighting decisions, in cases where there is not clear evidence of the unsuitability of the agricultural land, in favor of the preservation of the land for agricultural use. (Emphasis added.)

Simply put, the Board of Supervisors of the Santa Cruz County finds that nonagricultural development adjacent to active agricultural operations often leads to restrictions on the County's agricultural industry as a whole and a 200-foot buffer is necessary to protect public health, safety and welfare from typical agricultural operations. Farmers have been operating the coastal agricultural lands for decades and have implemented protective measures to ensure that their operations are safe and protective of the general populations.

In spite of the clear need for the buffer to protect the health and safety of recreational trail users and the adjoining agricultural operations, the Proposed Project would provide 0 foot of buffer in some places from active cropland. In reality, the DEIR only proposes "paper" mitigation measure (e.g., warning signs) that will do nothing to mitigate health and safety impacts, even though the impacts could result in harm to children and other sensitive population, who would use the trail, as a result of the RTC's proposed conflicting land use.

Interestingly, the DEIR takes the position that the County ordinances are preempted, but then relies on them, such as the Santa Cruz Right-to-Farm Ordinance, to determine less than significant impact to public health and safety. Relying on the Right to Farm Ordinance is a legal remedy which provides no physical solution – the physical solution is the buffer to address the conflicting land uses proposed by the Proposed Project. The DEIR picks and chooses which County General Plan policies and code provisions to support its prejudicial and biased arguments while precluding others under the guise of preemption. If the RTC, Santa Cruz County and

16.6
 (cont'd)

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Federal Highway Administration (and any other responsible agencies) honestly believe that its proposed mitigation measures, such signage, would fully protect the health and safety of trail users, then they should be willing to provide an indemnification and hold harmless agreement to the adjoining farmers for RTC's proposed land use change.³

16.6
(cont'd)

The RTC-approved Monterey Bay Sanctuary Scenic Trail Network Master Plan's ("Master Plan") programmatic EIR⁴ does a better job of describing the impacts and actually proposes a physical solution rather than paper mitigation to reduce the health and safety impacts:

16.7

Impact HAZ-3 Adjacent agricultural, commercial, and industrial activities may include the use of pesticides, herbicides, petroleum-based fuels, chlorinated solvents, or other chemicals considered to be a human health threat. Trail users and maintenance personnel could be exposed to these chemicals during and after their application to the adjacent orchards and row crops, or in the event of soil contamination or emission of hazardous materials into the air. This is a Class II, significant but mitigable impact.

The following mitigation measure is required to further reduce human health impacts during operation of the proposed trail. HAZ-3(a) Trail Closure. A communication system shall be established between the Santa Cruz County Agricultural Commissioner's office, the RTC and/or implementing and managing entities, to convey any notices of intent to spray chemicals in a timely manner. The Trail Manager Ranger or its designee shall be responsible for closing trail segments during and following application of agricultural chemicals, and posting additional warning signs, as appropriate. (Emphasis added.)

RTC is legally bound by the mitigation measure in the Master Plan EIR because it adopted a Mitigation Monitoring and Reporting Program. That is, RTC cannot make a binding commitment under its Mitigation Monitoring and Reporting Program and then disregard it later on. (See, e.g., *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252.)⁵ The purpose of Public Resources Code section 20181.6 is to ensure that

³ Since RTC is relying on a legal solution (i.e., Right to Farm Ordinance), the farmers ask that they also be provided a legal solution.

⁴ Interestingly, the DEIR first states that the Master Plan EIR is programmatic. It later states that this EIR is not formally "tiering" from the Master Plan EIR. It is clear the DEIR is legally manipulated to achieve a certain outcome, including changing the mitigation measures from the Master Plan EIR to be lesser protective.

⁵ Pub Res C § 20181.6 requires monitoring program to be designed to ensure compliance during project implementation. The *Federation of Hillside* court clarified that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions,

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feasible mitigation measures are implemented as a condition of development, not merely adopted then neglected or disregarded. (*Ibid.* at p. 1261.) Yet, this DEIR attempts to provide lesser and logistically infeasible protective measures (e.g., warning signs) with zero buffer in some areas, which would result in significant health and safety impacts from trail users' direct exposures to pesticide as a result of the RTC's proposed conflicting land use.

16.7
 (cont'd)

Again, active agricultural operations are strictly regulated (often over-regulated) not only to protect the health and safety impacts, but also to protect agricultural operations. Farmers have acted consistent with these regulations; RTC must be obligated to do the same rather than rely on "paper" mitigation measures that would logistically fail. Based on these "paper" mitigations, it is clear that neither the consultants, nor RTC staff, understands agricultural operations. Nor do they acknowledge people's general conduct to ignore warning signs.

Logistically, the concept that the farmers will notify the ag commissioner, the ag commissioner will then notify the Trail Manager, the Trail Manager will then, within a very short window of time, install warning signs during the spraying operation, and the public will then abide by the signs is unrealistic and logistically infeasible. The ag commissioner is well aware of the sometimes emergency nature of the spraying operations, which could and have occurred outside of routine spraying activities when pests, diseases, etc. are discovered on crops and immediate remedy is needed. The Trail Manager's response during such an event may need to occur in the evenings. The chain of events described above would need to occur frequently due to different agricultural operators cultivating different crops. And of course, the trail users must abide by the signs, otherwise they could be harmed. Depending on the trail users to abide by the warning signs is either naïve or manipulative in order to promote the Proposed Project.

It is truly amazing that the RTC, Santa Cruz County, Federal Highway Administration and other responsible agencies would willingly and knowingly put the public in harm's way by changing the land use adjacent to active agricultural operations without willing to abide by the buffer required under the Santa Cruz County General Plan and Code. Farmers have been required to abide the buffer requirements, why should RTC be exempt? Governmental agencies' number one goal and objective for any project should be to protect public health, safety and welfare, not to put the public in harm's way by implementing a project that disregards public health and safety. As part of the EIR process, RTC must consult with U.S. and Environmental Protection Agencies prior to RTC approving a land use change that would potentially result in

agreements, or other measures pursuant to Cal. Pub. Res. Code §21081.6(b). The local agency must adopt a monitoring program to ensure that the mitigation measures are implemented under §21081.6(a). Failure to act consistent with the mitigation measure could result in the court suspending specific activity until the agency complies with CEQA. (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1266.)

pesticide exposures to trail users due to its decision not to abide by the buffer requirements.

16.7
(cont'd)

Finally, there is no assurance that funding for the Trail Manager and for the implementation of the number of mitigation measures set forth to address health and safety and agricultural impacts would be available, particularly given the uncertain nature of governmental budget year after year. Like most governmental trails, once constructed, the responsible agency may walk away leaving the trail vulnerable to vandalism, garbage, homeless encampments, etc. and forcing the adjoining landowners to fix the problems while incurring additional liability. All of the mitigation measures are "paper" mitigations because there is no real commitment of funds to ensure that the mitigation measures would be implemented.

16.8

To provide additional assurances to the farmers, the farmers request the following should the Proposed Project be selected:

16.9

- An indemnification and hold harmless agreement between RTC and each agricultural operator along the rail right-of-way, stating that the RTC will indemnify and hold harmless the agricultural operator from the trail and its associated public use of the trail. Specifically, under such an agreement, RTC shall indemnify, defend, and save harmless the agricultural operators, their employees and agents, and each of them, of, from, and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees and disbursements (including, without limitation, any incurred in connection with appeal), losses, or liabilities, in law or in equity, of every kind and nature whatsoever directly or indirectly arising out of or in connection with (a) the trail; (b) the public use of the trail; and/or (3) any user of the trail, to the greatest extent permitted by law.
- A trail fund that commits a minimum of Two Hundred Fifty Thousand Dollars (\$250,000) every fiscal year to implement the mitigation measures, including the retention of a Trail Manager, routine maintenance of the trail, fencing, signage and bathrooms (weekly cleanout), security patrol and weekly garbage removal. Should there be insufficient funding available to perform these mitigation measures, the trail would close until the necessary funds become available.

As described in the foregoing, the conflicting land uses is in and of itself a significant impact. The Proposed Project would result in harm the trail users by RTC knowingly placing a public trail with zero buffer in some areas next to active agricultural operations with known pesticide usage. Again, farmers have been abiding by the buffer and pesticide usage requirements for decades to ensure protection of the general public; RTC must abide by the same rules and regulations:

16.5

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Although closing the trail consistent with the Master Plan EIR would be more protective to the trails users, it still has the same logistical problems that could make the mitigation measure infeasible and fail. The most protective approach would be to select the Farmers' Alternative which would largely increase the buffer between active agricultural operations and the public trail. In implementing the Farmers' Alternative, additional measures would need to include the mitigation measures in the DEIR and the Master Plan EIR, in addition to the two bulleted items discussed above.

16.10

C. The Proposed Project's Direct, Indirect and Cumulative Impacts to Agriculture are Significant and Considerable, and the DEIR Failed to Adequately Analyze and Mitigate the Impacts to Agriculture.

16.11

The RTC does not adequately analyze the direct, indirect, and cumulative impacts to agriculture. The Master Plan EIR acknowledges,

The proposed MBSST Network project would impact Prime Farmland, Unique Farmland, and Farmland of Statewide Importance, as discussed in Impact AG1. As a result, it would contribute to the cumulative loss of agriculture within the County arising from continuing urbanization. The project may also contribute to increasing conflicts between agricultural and non-agricultural uses. Long-term agricultural viability within the County could be adversely affected by such conflicts. The County of Santa Cruz and City of Watsonville's Right-to Farm Ordinances are regulatory mechanisms intended to ensure the viability of agriculture within the County and would provide some degree of mitigation for this impact. It should be noted that the viability of agriculture involves more than merely prohibiting development in areas designated for agriculture. For agriculture to remain viable as an industry in the County, farmers must be able to farm, which necessitates the use of pesticides and equipment, with associated nuisance effects.

This DEIR downplays the impact:

While cumulative development in the North Coast area would not convert agricultural land to nonagricultural use, several cumulative projects would contribute to increased conflicts between agricultural and non-agricultural uses because they may increase the number of visitors to the North Coast area. Long-term agricultural viability in the North Coast area could be adversely affected by such conflicts. The County of Santa Cruz Right-to-Farm Ordinance is a regulatory mechanism intended to ensure the viability of agriculture in the county and would provide mitigation for this cumulative impact. Where cumulative development

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abuts agricultural land, additional project specific mitigation would also be anticipated. As such, cumulative impacts related to agricultural land use conflicts would be significant but mitigable.

16.11
 (cont'd)

As noted previously, the DEIR first takes the position that the County ordinances are preempted, but then relies on them, such as the Santa Cruz Right-to-Farm Ordinance, to determine less than significant impact. Again, the DEIR picks and chooses only those County code provisions that suits its biased and prejudicial argument. As discussed previously, the Santa Cruz County section 16.50.095 requires a 200-foot buffer between active agricultural operation and “outdoor areas designed for human use” not only to protect public health and safety, but also to protect agricultural operations. The Board of Supervisors of Santa Cruz County made that objective clear in section 16.50.010 of the Santa Cruz County Code, which states in relevant part as follows:

The Board of Supervisors of Santa Cruz County also finds that nonagricultural development adjacent to certain of these lands often leads to restrictions on the County’s agricultural industry as a whole.

The Proposed Project would cause direct, indirect and cumulatively considerable impacts to agricultural resources by reducing the availability of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance. The DEIR’s assertion that only 7.0 to 7.6 acres of farmland would be converted is prejudicially understated, and the 1 to 1 mitigation disregards the historical uses of these particular coastal farmlands which have been in operations for decades by generations of families who have contributed significantly to Santa Cruz County. Similar to Davenport’s historical railroad use, the historical coastal farming operations within Santa Cruz County deserve the same analysis and protection.

The DEIR fails to consider the cumulative impacts to agriculture from the implementation of the rail trail project along the entire rail corridor as set forth in the Master Plan, which would cumulatively reduce the availability of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance, which loss may individually be considered minor but collectively would be considered significant.

The CEQA Guidelines define cumulative impacts as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (14 Cal Code Regs §15355.) The individual effects may be changes resulting from a single project or more than one project. (14 Cal Code Regs §15355(a).) Cumulative impacts may result from individually minor but collectively significant projects taking place over a period of time. (14 Cal Code Regs §15355(b).) Cumulative impact is an impact created by the combination of the project reviewed in the EIR together with other projects causing related impacts. (14 Cal Code Regs §15130(a)(1).) The cumulative impact from several

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projects is the change in the environment that results from the incremental effect of the project when added to other past, present, and probable future projects. (14 Cal Code Regs §§15065(a)(3), 15130(b)(1)(A), 15355(b).)

16.11
(cont'd)

Indirect effects to agriculture by placing the trail next to active agricultural operations were also not adequately analyzed in the DEIR, which when taken together for the entire rail trail project to implement the Master Plan would result in considerable loss of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance. The cumulatively considerable loss of farmland would result from (1) increasing the buffer by taking farmland out of production to protect health and safety of trail users; (2) the loss of productivity and viability of farmlands resulting in fallowing of farmlands due to loss of farm roads and crossing areas and due to food safety issues resulting from the Proposed Project; (3) increased liability risk to farmers from trail users' exposures to pesticides due to the Proposed Project making the operation nonviable; (4) increased use of informal trails, which would be formalized as part of the Proposed Project, resulting in loss of farmlands from buffer, food safety, and other impacts; and (5) the general urbanization of the area as generally analyzed in the Master Plan EIR (and requires further analysis in the revised/amended DEIR), all of which would play a factor in increasing the likelihood of fallowed agricultural lands and the loss of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance.

An indirect environmental impact is a change in the physical environment that is not immediately related to the project but that is caused indirectly by the project. (14 Cal Code Regs §15064(d)(2).) Indirect effects are changes to the physical environment that occur later in time or farther removed in distance than direct effects. (14 Cal Code Regs §15358(a)(2).) Both short-term and long-term effects should be included in the analysis. (14 Cal Code Regs §15126.2(a).) Indirect effects include secondary effects. (14 Cal Code Regs §15358(a)(2).) If a direct change in the physical environment resulting from a project causes another change in the environment, the secondary effect is treated as an indirect effect of the project. (14 Cal Code Regs §15064(d)(3).)

While economic and social effects ordinarily need not be discussed in an EIR, physical changes to the environment caused by a project's economic or social effects are secondary impacts that must be included in an EIR's impact analysis if they are significant. (14 Cal Code Regs §15064(e).) An EIR may trace the effects of economic or social changes resulting from a project to physical changes caused by the economic or social changes. (14 Cal Code Regs §15131(a).) A social or economic effect resulting from a project may be found to cause a significant physical impact that must be analyzed in the EIR. [See *Bakersfield Citizens for Local Control v City of Bakersfield* (2004) 124 CA4th 1184, 1215 (EIR improperly dismissed possibility that large shopping center could drive other retailers out of business as an economic effect when urban decay and other blight-like conditions could result); *El Dorado Union High Sch. Dist. v City of Placerville* (1983) 144 CA3d 123 (while increased student enrollment and

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potential for overcrowding by itself is likely insufficient to implicate CEQA, such effects are relevant when they will lead to construction of new facilities). See also *City of Hayward v Board of Trustees of Cal. State Univ.* (2015) 242 CA4th 833, 842 (EIR properly analyzed potential environmental impacts of constructing new fire station needed to serve project while also recognizing that cost of meeting increased need for fire protection services is economic impact).]

16.11
 (cont'd)

As discussed previously, a 100 to 200-foot buffer is required between agricultural operations and the public in order to protect public health and to protect agriculture because the “Board of Supervisors of Santa Cruz County ... finds that nonagricultural development adjacent to certain of these lands often leads to restrictions on the County’s agricultural industry as a whole.” The buffer has been maintained by farmers for decades consistent with the County rules and regulations; RTC is obligated to do the same for its project to protect public health and safety and agriculture.

Yet, the Proposed Project proposes to place the public trail next to the agricultural operations with no buffer in certain locations despite its actual knowleg of the usage of certain pesticides on these lands and the rules and regulations mandating buffers to protect public health and safety. Certain pesticides are known to pose high acute inhalation toxicity and carcinogenicity. Due to its known toxicity, hoping that signage would deter trail usage is a high risk willingly taken by RTC, Santa Cruz County, Federal Highway Administration and other responsible agencies as part of the Proposed Project at the objection of the farmers who have abided by these protective rules and regulations for decades. As part of the EIR process, RTC must consult with U.S. and Environmental Protection Agencies regarding the RTC’s proposed (conflicting) land use change prior to RTC’s approval of such land use change that would potentially result in harm to trail users. Signage is insufficient mitigation, which would result in a later mandate for a buffer, triggering the loss of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance. One alleged injury along the trail would trigger such an outcome, which is unacceptable since there are alternatives and mitigation measures available to protect against such harm.

Similarly, the lack of bathrooms along the trail, in addition to trash from trail users, would result in public food safety impacts. Under labor laws, farmers must provide bathrooms to its employees at a walking distance of no less than five (5) minutes. Yet, this portion of the trail is 7.5 miles in length without sufficient number of bathrooms along the trail. Trail users would end up using the trail or the adjoining agricultural land as a bathroom.

The trail adjacent agricultural lands would invite trespassers onto these lands, again increasing public food safety impacts. A fence with a height of four feet six inches is insufficient to stop trespass from the trail onto adjacent agricultural lands. The fence height must be six feet or taller to avoid people from hopping over the fence. The food safety impacts would economically impact agriculture, which would make farming less viable, and as a result, Prime

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Farmland, Unique Farmland, and Farmland of Statewide Importance would be lost. As a mitigation, portable restrooms must be placed every mile along the trail to avoid impacts to farmlands.

16.11
(cont'd)

Additionally, the loss of the crossings and farm roads as a result of the Proposed Project would stymie the agricultural operations to the point where farming would no longer be viable. For example, the loss of the crossing marked as “to be closed” in Sheet 9 of 10 (Exhibit B) is used by the farmers about 100 times a day. Farming would not be viable without that crossing. The farm roads and crossings are used frequently by the agricultural operators and are essential for their operations. The farm roads parallel to the rail right-of-way also provide an additional buffer. It makes no difference if portions of the roads and crossings are encroaching into the railroad right-of-way for the purposes of CEQA. These roads and crossings have been used by the farmers for decades and their closure would result an indirect impact that would result in cumulatively considerable loss of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance.

Finally, the “Proposed Project would improve and formalize most existing informal trails that cross the rail corridor and provide scenic vistas of coastal resources”, yet the impacts to the to agricultural lands were not analyzed in the DEIR. Once formalized, the increased public uses resulting in increased trespass and food safety impacts, and the need for buffer would all result in direct, indirect and cumulatively considerable impacts to agriculture and cumulatively considerable loss of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance. All of the environmental impacts associated with formalizing the existing informal trails must be analyzed in the revised/amended DEIR.

It is clear that the land use incompatibility as a result of the Proposed Project would in and of itself cause significant direct, indirect and cumulative impacts that were not adequately analyzed, nor properly mitigated, in the DEIR. To mitigate these impacts, the following mitigation measures must be considered in addition to those impacts already set forth in the Master Plan EIR and DEIR:

- Bathrooms must be placed at every mile interval and cleaned out on a weekly basis.
- Without impacting active agricultural lands, two hundred (200) foot buffer must be provided between active agricultural operation and the trail in order to protect agriculture and the health and safety of trail users.
- The fence barrier between agricultural lands and the trail must be six feet or taller and regularly maintained to limit trespass onto adjoining agricultural lands.

- All of the crossings and farm roads must remain and available for use by farmers.
- An indemnification and hold harmless agreement between RTC and each agricultural operator along the rail right-of-way, stating that the RTC will indemnify and hold harmless the agricultural operator from the trail and its associated public use of the trail. Specifically, under such an agreement, RTC shall indemnify, defend, and save harmless the agricultural operators, their employees and agents, and each of them, of, from, and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees and disbursements (including, without limitation, any incurred in connection with appeal), losses, or liabilities, in law or in equity, of every kind and nature whatsoever directly or indirectly arising out of or in connection with (a) the trail; (b) the public use of the trail; and/or (3) any user of the trail, to the greatest extent permitted by law.
- A trail fund that commits a minimum of Two Hundred Fifty Thousand Dollars (\$250,000) every fiscal year to implement the mitigation measures, including the retention of a Trail Manager, routine maintenance of the trail, fencing, signage and bathrooms (weekly cleanout), security patrol and weekly garbage removal. Should there be insufficient funding available to perform these mitigation measures, the trail would close until the necessary funds become available.

16.11
(cont'd)

The Farmers' Alternative is the environmentally superior alternative because it provides greater buffer from the trail to adjacent agricultural operations and it protects the productivity of the agricultural operations so that there would not be a cumulatively considerable loss of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance.

D. The Proposed Project's Direct, Indirect and Cumulative Impacts to Biological Resources are Significant and Considerable, and the DEIR Fails to Adequately Analyze and Mitigate the Impacts.

16.12

Amazingly, the DEIR *presumes* without adequate analysis or substantial evidence in the record that the cumulative impacts to biological resources would not be considerable. It states, "*Presumably*, permanent losses of sensitive habitats, including wetlands, associated with each public access project listed in Table 4-1 would be mitigated within each project's planning purview, as with the Proposed Project and therefore would not be considered cumulative impacts." (Emphasis added.) That is clearly an inadequate analysis and does nothing to address and mitigate the continued and cumulative loss of critical and sensitive habitats as a result of the Proposed Project and the Master Plan. In essence, the RTC relies on unsubstantiated opinion and speculation in order to promote the Proposed Project and downplay the benefits of the Farmers' Alternative.

Again, cumulative impacts are "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (14 Cal Code Regs §15355.) As applicable here, cumulative impacts may result from individually minor but collectively significant projects taking place over a period of time. (14 Cal Code Regs §15355(b).) Just for this north coast segment of the rail trail project, which does not consider the cumulative biological impacts for the entire length of the rail trail project in the Master Plan, the following impacts to biological resources (in addition to others) were recognized in the DEIR:

- The trail alignment and surrounding areas provide breeding and non-breeding aquatic habitat, hydration points, riparian habitat, as well as upland and dispersal habitats.
- The most notable stand of coast live oak woodland occur close to the Proposed Project trail alignment, immediately adjacent on the coastal side of the railroad tracks south of the northern terminus of Scaroni Road.
- Ditch wetlands are located in manmade ditches and swales immediately adjacent to either side of the existing railroad tracks, and occasionally connect directly to larger natural drainages intersecting the study area.
- The Project corridor intersects Laguna Creek and Baldwin Creek, and the estuaries of these creeks are known to support the tidewater goby and are within designated critical habitat for the species.
- The trail alignments fall within designated critical habitat for the CRLF. (USFWS 2010). During 2018 surveys, egg masses and subsequently, tadpoles and metamorphs were observed along an inundated portion of the tracks, identified as a palustrine emergent wetland, and in an irrigation ditch wetland adjacent to the alignment which all meet the primary constituent elements for upland and dispersal critical habitat. The Proposed Project alignment would result in the permanent loss of 0.2 acres of breeding and non-breeding aquatic habitat and 6.83 acres of upland/dispersal habitat within CRLF Critical Habitat. The greatest permanent losses of CRLF Critical Habitat and greatest potential for take of CRLF are along the portions of the trail alignment confined to the relatively narrow rail cut with embankments on either side. In these locations, the Proposed Project trail alignment leaves little of the rail cut for retaining the aquatic features and arroyo willow or other scrub vegetation that currently resides in the rail corridor and supports CRLF.
- San Vicente, Liddell, Laguna, Baldwin, and Wilder Creeks allow for fish passage and limited wildlife movement (smaller species) through culverts beneath Highway 1 and the rail corridor. The Proposed Project would result in the permanent loss of 5.85 acres of

16.12
(cont'd)

wildlife movement habitat, increased fragmentation of habitat patches, and degradation of the functions and values of wildlife movement habitat, especially in those portions of the rail alignment that are located with the trail corridor.

16.12
(cont'd)

- The Proposed Project rail alignment would result in the permanent loss of 5.85 acres (Shark Fin Cove Option A) or 5.26 acres (Shark Fin Cove Option B) of potential nesting habitat for birds and of San Francisco dusky-footed woodrat habitat.

Table 3.4-4 Temporary and Permanent Impacts to Sensitive Habitat from the Proposed Project

Habitat Type ^a	Shark Fin Cove Option A			Shark Fin Cove Option B		
	Temporary Impacts (acres)	Permanent Impacts (acres)	Total (acres)	Temporary Impacts (acres)	Permanent Impacts (acres)	Total (acres)
Coastal scrub	3.03	3.01	6.04	2.01	3.11	5.12
Arroyo willow scrub	1.73	2.26	3.99	1.54	1.57	3.11
Arroyo willow riparian	0.56	0.32	0.88	0.57	0.32	0.89
Coastal dune	0.12	0.08	0.20	0.12	0.08	0.20
Coast live oak forest	0.13	0.26	0.39	0.13	0.26	0.39
Total	5.57	5.93	11.5	4.37	5.34	9.71

^aThese habitat types, except coastal dune, are considered potential nesting bird habitat

Despite the significant direct, indirect and cumulative considerable impacts to biological resources as a result of the Proposed Project, the DEIR does not analyze the cumulative considerable impacts and instead, brushes off the cumulative impact analysis by concluding that *presumably*, the impacts would be mitigated some way or another. Such conclusionary statements in the DEIR discredit it and the RTC. The DEIR is wholly deficient, and the RTC abused its discretion by omitting information required by law and that error is prejudicial. The RTC, in essence, failed to comply with the basic substantive requirements of CEQA; thus, obstructed CEQA's goals of informed public participation and informed agency decision making.

E. The Whole of the Action Was Not Analyzed and Instead, the Project Was Invalidly Chopped Up into Bite Size Pieces to Avoid the Responsibility for Considering the Environmental Impacts of the Project as a Whole.

16.13

One of the objectives included in the DEIR for the rail trail project is as follows: "Develop the trail so future rail transportation service along the corridor is not precluded." Prior to the release of the DEIR, the RTC entered into a long-term agreement with a rail operator for the rail operation with an obligation under that agreement to improve the rail infrastructure. The

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agreement includes passenger services between “Watsonville Junction and Santa Cruz” and coastal “excursions on the west and north of Santa Cruz” as well as freight services. The significant rail expansion would require substantial improvements to the rail line, including improvements to bridges, in order to make the line safe for travel. Please see **Exhibit C**. Significant environmental impacts as a result of the rail improvements and the expanded rail operations would occur as the whole of the action.

16.13
 (cont'd)

Yet, the DEIR fails to consider the impacts from the improvements and the expanded operation of the rail line. Instead, the DEIR divides the whole of the action into smaller individual subprojects to avoid responsibility for considering the environmental impacts of the project as a whole. The DEIR limits the evaluation of the rail trail project to trail construction and fencing for the rail, but the actual rail improvements and expanded operations were not included in its analysis.

The term "project" refers to the whole of an action and to the underlying activity being approved, not to each governmental approval. (14 Cal Code Regs §15378(a), (c)-(d).) The definition of "project" is broad to enable maximum protection of the environment. CEQA requires that environmental considerations not be concealed by separately focusing on isolated parts, overlooking the cumulative effect of the whole action. Under the statute and Guidelines, CEQA applies to activities that may cause "either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub Res C §21065; 14 Cal Code Regs §15378(a).) An EIR must include future activities that are a "reasonably foreseeable consequence" of a proposed project. This rule implements CEQA's prohibition against dividing a single large project into a series of smaller projects, resulting in “piecemeal” environmental review that fails to consider the impacts of the whole undertaking.

By chopping up the Proposed Project into bite-sized pieces, the RTC prejudicially avoids significant direct impacts to biological resources, agriculture, noise, erosion, sedimentation, flooding and other impacts as the result of the rail improvements and expanded rail operations. By not adequately considering the Master Plan implementation, the DEIR fails to recognize the cumulatively considerable impacts to agriculture, public health and safety, biological resources, noise, erosion, sedimentation, flooding and other impacts. Direct, indirect and cumulative impacts to agriculture, public health and safety and biological resources were discussed above in this letter. Noise, erosion, sedimentation and flooding impacts are discussed below.

Direct and cumulative considerable noise and vibration impacts as a result of the whole of the action were not adequately analyzed in the DEIR. The DEIR’s conclusion that the noise impact would not be cumulatively considerable is based on pure speculation and unfounded opinions. The DEIR states, “It is assumed that passenger excursion trains would operate summer weekends, plus occasional holiday trips. On this schedule, excursion trains would infrequently generate noise on weekends and holidays, resulting in a modest increase in average daily noise

16.14

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levels. Rail service could also include freight service, but the extent of future freight service in the Project corridor is unknown, particularly given the lack of current and anticipated freight needs in the Davenport area.”

16.14
 (cont'd)

The U.S. Department of Transportation prepared a 277-page Handbook for Railroad Noise Measurement and Analysis. The California Transportation Agency developed a 190-page Transportation and Construction Vibration Guidance Manual. The U.S. Department of Transportation has a 261-page Transit Noise and Vibration Impact Assessment.

Yet, this DEIR has one-page worth of speculative and unfounded cumulative impact discussion on the noise and vibration impacts for the whole of the action and concludes, without substantial evidence in the record, that the Project’s contribution to ambient noise would not be cumulatively considerable.

Similarly, the erosion (particularly to the coastal bluffs), sedimentation and flooding impacts as results of the whole of the action were not adequately analyzed in the DEIR.

16.15

For example, the DEIR states,

- At the cove on the north end of Panther/Yellowbank Beach, the rail bench would need to be widened in an area with very steep slope.
- At the eroding bluff near Davenport, three construction techniques are being considered to support the trail... For all three techniques, coastal armoring would need to be established at the base of the slope to minimize or eliminate further erosion that would compromise the trail.
- Across the 7.5-mile corridor, grading activity would disturb an estimated 37.6 acres, with approximately 32,000 cubic yards of soil to be excavated and 23,000 cubic yards of soil to be imported as fill material for embankments.
- Slope stabilization activities are currently proposed for Majors and Baldwin creeks.
- Implementation of the Proposed Project would place a paved trail in a 100-year flood hazard area.

The rail improvements along with the vibration impacts resulting from the whole of the action would result in significant direct, indirect and cumulative considerable impacts to erosion, sedimentation and flooding, which would worsen due to climate change. Additionally, because the “Proposed Project would improve and formalize most existing informal trails that cross the rail corridor and provide scenic vistas of coastal resources”, the additional visitation of those

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informal trails adjacent to agricultural lands, once formalized, would result in direct, indirect and cumulatively considerable impacts to (agriculture), erosion, sedimentation and flooding, which impacts were not analyzed in the DEIR. All of the environmental impacts associated with formalizing the existing informal trails must be analyzed in the environmental document as the whole of the action.

16.15
(cont'd)

It is obvious that the DEIR assertion that “0.03 acre would potentially be exposed to coastal erosion hazards” is not only an understatement but is wrong. Such prejudicial statements in the DEIR, including the Proposed Project “would not exacerbate coastal erosion or other impacts of climate change related to sea level rise, extreme storm events, bluff erosion and fire risk”, are prejudicially conclusionary without substantial evidence in the record.

The Farmers’ Alternative would pose lesser cumulative impact to noise, erosion, sedimentation, flooding and other environmental impacts because a portion of the trail is along or on the Highway 1 right-of-way, which is an already developed road or is adjacent to a developed road and is located further inland away from the coastal bluffs.

E. Federal Preemption Does Not Apply to the Proposed Project Where the Lead Agency is the RTC, and the RTC Prepared an EIR Under CEQA.

16.16

The RTC cannot take the position that the project is a federal project⁶ and thus, Santa Cruz County General Plan/Local Coastal Program (“LCP”) and its implementing ordinances are preempted while at the same time claim it is the lead agency for the purpose of preparing an EIR. Since the RTC rightfully prepared an EIR under CEQA, it must follow the requirements under CEQA and CEQA Guidelines. CEQA Guidelines requires the following: “The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans”. (14 CCR 15125(d).) RTC cannot pick and choose to follow only certain CEQA provisions and guidelines and disregard others in preparing the DEIR.

The RTC properly prepared an EIR because it is the lead agency for implementing the Master Plan, and the Proposed Project implements a portion of the Master Plan. Additionally, funding sources are not only from the federal government but also from local and state sources. Since CEQA is found to apply to the Proposed Project, the DEIR must discuss any

⁶ Presumably, the RTC likely took the position that local general plan policies and ordinances are preempted based on its interpretation of *Japanese Vill., LLC v. Fed. Transit Admin.* (2016) 843 F.3d 445, 450 in an attempt to avoid performing a consistency analysis. In *Japanese Vill., LLC*, the court took the position that NEPA applies to state transportation projects with significant federal funding; thus, no separate EIR needed to be prepared. Here, the RTC rightfully prepared an EIR as the lead agency for the Master Plan and thus, must act consistent with CEQA. The ruling of *Japanese Vill* does not apply to the case at hand.

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inconsistencies with the Santa Cruz County General Plan/LCP and its implementing ordinances consistent with the CEQA Guidelines.

16.16
 (cont'd)

Case law makes clear a direct conflict with a mandatory provision of an LCP usually amounts to an inconsistency that will preclude project approval. Overall consistency with LCP policies is not sufficient to excuse a project's consistency with plan standards that are specific, mandatory, and fundamental. (Emphasis added; *Spring Valley Lake Ass'n v City of Victorville* (2016) 248 CA4th 91, 101.) Any inconsistencies would also evidence that the inconsistent project feature will result in a significant environmental effect.

The Proposed Project is clearly inconsistent with the Santa Cruz County General Plan/LCP and its implementing ordinances, some of which were identified in this letter. The most important specific, mandatory, and fundamental inconsistencies that would need to be cured for the Proposed Project are as follows:

- Policy 2.22.1 Priority of Uses Within the Coastal Zone (LCP) Maintain a hierarchy of land use priorities within the Coastal Zone:
 First Priority: Agriculture and coastal-dependent industry;
 Second Priority: Recreation, including public parks; visitor serving commercial uses; and coastal recreation facilities; and
 Third Priority: Private residential, general industrial, and general commercial uses.
- 2.22.2 Maintaining Priority Uses (LCP). Prohibit the conversion of any existing priority use to another use, except for another use of equal or higher priority.
- Policy 5.2.5 - Setbacks from Wetlands. Prohibit development within the 100 foot riparian corridor of all wetlands. Allow exceptions to this setback only where consistent with the Riparian Corridor and Wetlands Protection ordinance, and in all cases, maximize distance between proposed structures and wetlands. Require measures to prevent water quality degradation from adjacent land uses, as outlined in the Water Resources section.
- 5.13.23 Agricultural Buffers Required (LCP). Require a 200 foot buffer area between commercial agricultural and non-agricultural land uses to prevent or minimize potential land use conflicts, between either existing or future commercial agricultural and nonagricultural land uses.

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The project selected must be found to be consistent with the above policies which are specific, mandatory, and fundamental. The Proposed Project is clearly inconsistent with these Santa Cruz General Plan/LCP policies and its implementing ordinances. Of particular concern is the Proposed Project's inconsistencies with mandatory provision of the General Plan/LCP associated with the 200-foot buffer which is needed to protect public health and safety and agriculture. The Proposed Project cannot proceed until these inconsistencies are resolved. Additionally, all inconsistencies with the Santa Cruz General Plan/LCP must be evaluated to determine if they pose significant impacts as a result of the Proposed Project.

16.16
(cont'd)

Conclusion

16.17

In conclusion, the DEIR is wholly deficient, and the RTC abused its discretion by omitting information required by law and that error is prejudicial. The RTC, in essence, failed to comply with the basic substantive requirements of CEQA; thus, obstructed CEQA's goals of informed public participation and informed agency decision making. The EIR must be substantially revised/amended in order to correct its deficiencies and the revised/amended DEIR must be recirculated for further public deliberation.

In the end, the Farmers' Alternative is clearly the environmentally superior alternative that meets the project objectives and must be selected.

Additional mitigation measures that must be incorporated to the selected project to address significant indirect, direct and cumulative considerable environmental impacts include, but are not limited to, the following:

- Bathrooms must be placed at every mile interval and cleaned out on a weekly basis.
- Without impacting active agricultural lands, two hundred (200) foot buffer must be provided between active agricultural operation and the trail in order to protect agriculture and the health and safety of trail users.
- The fence barrier between agricultural lands and the trail must be six feet or taller and regularly maintained to limit trespass onto adjoining agricultural lands.
- All of the crossings and farm roads must remain and available for use by farmers.
- An indemnification and hold harmless agreement between RTC and each agricultural operator along the rail right-of-way, stating that the RTC will indemnify and hold harmless the agricultural operator from the trail and its associated public use of the trail. Specifically, under such an agreement, RTC

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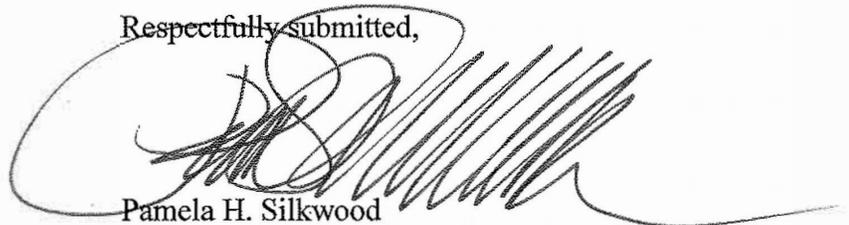
shall indemnify, defend, and save harmless the agricultural operators, their employees and agents, and each of them, of, from, and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees and disbursements (including, without limitation, any incurred in connection with appeal), losses, or liabilities, in law or in equity, of every kind and nature whatsoever directly or indirectly arising out of or in connection with (a) the trail; (b) the public use of the trail; and/or (3) any user of the trail, to the greatest extent permitted by law.

16.17
(cont'd)

- A trail fund that commits a minimum of Two Hundred Fifty Thousand Dollars (\$250,000) every fiscal year to implement the mitigation measures, including the retention of a Trail Manager, routine maintenance of the trail, fencing, signage and bathrooms (weekly cleanout), security patrol and weekly garbage removal. Should there be insufficient funding available to perform these mitigation measures, the trail would close until the necessary funds become available.

Thank you for this opportunity to comment on the DEIR.

Respectfully submitted,



Pamela H. Silkwood

Encl.

Cc: Jack Gilbert & Vince Auriemma, Federal Highway Administration
Larry Simon, California Coastal Commission
Bill Stevens, National Marine Fisheries Service
Scott Wilson, California Department of Fish & Wildlife
Dana McRae, Santa Cruz County Counsel
George Dondero
T. Brooke Miller
Luis Mendez
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Exhibit A
Comment to DEIR

16.18

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File No. 7569.01

April 6, 2018

Via Electronic and Regular Mail

Santa Cruz County Regional Transportation Commission
Attn: Yesenia Parra, Administrative Services Officer
1523 Pacific Avenue
Santa Cruz, California 95060

**Re: North Coast Rail Trail Project EIR Alternative Analysis and Potential Bias
and Conflict of Interest**

Honorable Commissioners:

This firm represents farmers in the coastal zone ("Coastal Farmers") who farm adjacent to the 7.5-mile segment of RTC-owned railroad corridor from Wilder Ranch State Park to Davenport in an unincorporated area of Santa Cruz County. My clients have recently been informed that the RTC staff coordinating the EIR for the North Coast Rail Trail Project has directed their consultant to place *minimal* attention to the "Farmer's Alternative." The Coastal Farmers have expended significant resources and time in developing this alternative. Dismissing it without any thorough consideration in the EIR would be a violation of CEQA and a disservice to the public process.

The California Supreme Court has described the discussion of alternatives (and mitigation) as "the core of an EIR." (*Citizens of Goleta Valley v Board of Supervisors* (1990) 52 C3d 553, 564.) The requirement that EIRs identify and discuss alternatives to the project stems from the fundamental statutory policy that public agencies should require the implementation of feasible alternatives (or feasible mitigation measures) to reduce the project's significant environmental impacts. (Pub Res C §21002). As set forth in our comments on the scope of the

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EIR, the Farmer's Alternative would substantially lessen the project's significant environmental effects as compared to the proposed project.

My clients also were told that portions of the trail being analyzed in the EIR as part of the Farmer's Alternative run along Caltrans' right-of-way rather than on agricultural lands as originally proposed by the Coastal Farmers. Whether intentional or unintentional, involving Caltrans' right-of-way creates unnecessary complications which would result in the alternative becoming less attractive for selection and implementation.

Finally, my clients have concerns that the RTC staff in direct communication with the EIR consultant, may have pre-committed/pre-determined the outcome of the EIR, precluding meaningful consideration of the Farmer's Alternative, which is prohibited under CEQA. The full consideration of environmental effects CEQA mandates must not be reduced "to a process whose result will be largely to generate paper, to produce an EIR that describes a journey whose destination is already predetermined." (*Save Tara v. City of West Hollywood* (2008) 45 Cal. 4th 116, 135-136.) **Simply put, the CEQA process should not be a sham to cover the predetermined selection of a project.**

The concern over predetermined outcome of the EIR, as influenced by RTC staff, is further supported by the direct involvement of Cory Caletti, Rail Trail Program Manager, in the Project. As we understand it, Ms. Caletti and her husband own Caletti Cycles¹. Caletti Cycles has also publicly promoted their support for the Rail Trail Project. (See Exhibit B.) Ms. Caletti is an Ex-Officio Board Member of Santa Cruz County Friends of the Rail & Trail.² The mission of the Santa Cruz County Friends of the Rail and Trail is to promote, support, and enable the development of a rail with trail transportation system in Santa Cruz County.

Public employees are thought of by the citizens they serve, as "public servants." "Bias," by a public servant might affect the fairness, impartiality, or integrity of the agency's decision making. Therefore, bias involves predisposition toward a particular project and includes matters such as conflicts of interest, separation of agency functions, and inappropriate efforts to influence an agency decision. To preserve the public's trust in the CEQA process, the EIR must be prepared without bias and with the highest scientific and ethical standards. This is particularly important when public funds (e.g., federal and state grant funds) are being used for the project.

A conflict of interest between a public official's responsibilities to the public and his or her personal interest where the he/she stands to gain or lose from the outcome is a source of

¹ Her ownership information was confirmed by the newspaper article included as Exhibit A. If the ownership information is incorrect, please let us know.

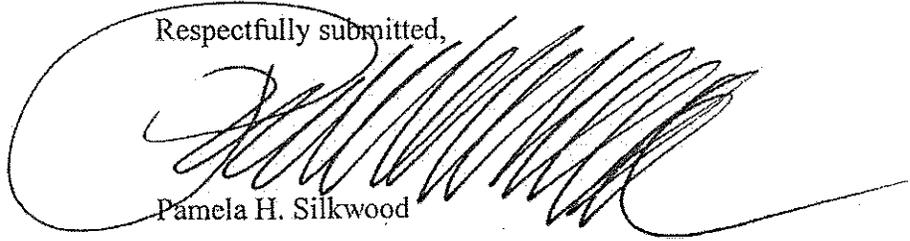
² The Santa Cruz County Friends of the Rail & Trail website also notes affiliations with "Sr. Transportation Planner/MBSST & Bicycle Programs Manager at the Santa Cruz County Regional Transportation Commission."

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Page 3

potential bias. A conflicting interest has been defined as arising when the public official has an interest not shared in common with the other members of the public and tilts a decision in a certain direction. Even a perceived conflict of interest is damaging to the CEQA process.

We hope the above concerns will be addressed prior to the release of the Draft EIR in order to allow for a fair and impartial public process in accordance with CEQA.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to be 'P. Silkwood', is written over the typed name. The signature is enclosed within a large, hand-drawn oval.

Pamela H. Silkwood

Enclosures

cc:

David Sett, Federal Highway Administration
George Dondero
T. Brooke Miller
Cory Caletti
Luis Mendez
Clients

4842-5851-4001, v. 1

Exhibit A



Diana Holm keeps an office on the ground floor of her live/work space at Delaware Addition. (Dan Coyro — Santa Cruz Sentinel)

By Jondi Gumz, Santa Cruz Sentinel

Posted: 01/26/15, 4:30 PM PST | Updated: on 01/26/2015

5 Comments



Diana Holm and Sanford Bingham, owners of document security company FileOpen, are moving into a large, live/work space in the newly opened Delaware Addition, bringing part of their business with them. (Dan Coyro — Santa Cruz Sentinel)

SANTA CRUZ >> Sanford Bingham and Diana Holm christened their new live-work space in the Delaware Addition with a party Saturday for 100 people, complete with a mirror ball, a conference table that converts to a pool table and a movie projected on a wall that a viewer said was bigger than most of the screens at The Nickelodeon theater.

And they are anticipating neighbors: Caletti Cycles, a custom bike-maker founded by John Caletti, and his wife Cory, a transportation planner, plus a studio featuring the work of internationally known photographer Frans Lanting.

Four years ago, Bingham and Holm were new in town and did not know anybody. They discovered the Santa Cruz live-work development online while they were living in New York and called Santa Cruz developer Craig French, deciding the project was a perfect fit.

"If we would have designed a project, this would have been it," Holm said.

"Obviously they were attracted to the building design I did because it matched their aesthetic," said architect Mark Primack, the visionary who spent eight years on the Delaware Addition.

"I feel very much like neighbors," he added, noting his office is a short walk from the site.

The first small-business owner to occupy the revolutionary live-work 20-acre Delaware Addition, is a company that came from New York.

Bingham, 52, and Holm, 41, both originally from the Bay Area, chose Santa Cruz as the place to raise their family — a son, 9, and a daughter, 7 — and to grow their tech company, FileOpen, which they started in 1997.

The two met at Columbia University, where they were liberal arts majors with interests in digital publishing, not easy before the World Wide Web came in vogue.

When Adobe Acrobat was developed in 1993, Bingham sensed this would become the standard in PDF publishing and saw a need for a security layer, which Adobe opted not to build.

"So we did that," he said.

FileOpen's security tool gained wide acceptance, paving the way for growth, with the firm adding six full-time employees, several being graduates of UC Santa Cruz.

"Most would have been commuting over the hill," said Bingham, noting FileOpen now competes with Adobe, making the case that security should be an independent function.



Carmel, CA: This Unbelievable, Tiny Company is Disrupting A \$200 Billion Industry

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Bootstrapping the company, Bingham and Holm only recently began getting to know other local entrepreneurs, joining the campaign to showcase local tech firms looking for talent.

"Santa Cruz Works was the first step outside our preserve," said Holm.

For their live-work space, they collaborated with Primack, producing a sleek and ultra-modern look.

"We like his style," said Holm, hoping the results will attract the attention of Dwell magazine.

Bingham appreciates how Primack's design with its intentional angles is not only interesting, but also efficient and less expensive to build.

To finance the project, the couple obtained a U.S. Small Business Administration-backed loan along with a loan from Lighthouse Bank. They purchased two building shells, which were built by Devcon Construction, then hired Schultz Construction to do the improvements.

The 5,000-square foot space, wide open and full of natural light, has meeting and office space downstairs with the kitchen and dining room. The bedrooms upstairs have a view of the rooftop herb garden at Rainbow Light Nutritionals next door.

The room's cement floor does double-duty as an indestructible play area for the children.

"My son roller-blades in a circle here, he loves it, and my daughter uses her scooter," Holm said.

The price of a shell is \$545,000, according to French, the developer, who said he has been in discussion with small and large users and expects the next phase of construction to start next year.

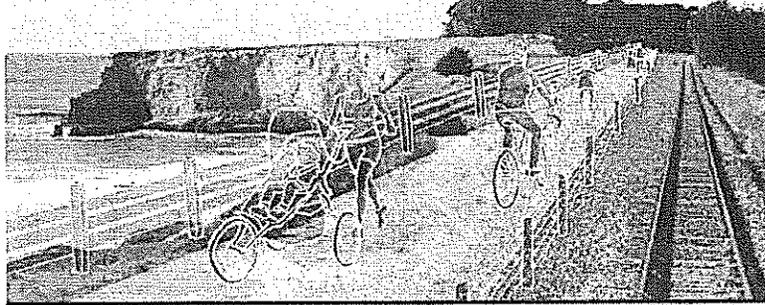
"The more interest I get, the more I can build," he said. "It's market-driven."

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About the Author

Exhibit B

TOP 10 REASONS TO BUILD THE RAIL TRAIL



1. The Central Valley Rail Authority has a \$2 billion bond issue for the county's transportation.
2. More than \$40 million has already been allocated to bond, and Measure E provides another \$0 million.
3. The proposed trail is located in a rural area with a scenic view and a wide view of the valley.
4. A more mile from the Coastline and Walkway of the 2-mile trail corridor in four years.
5. About 100,000 people will be employed.
6. The current trail plan has been approved by all levels of government after a three-year public process.
7. At the end of the century, all the rail lines will be converted to a multi-use trail corridor from the coast to the valley.
8. The bike and pedestrian trail will be 12 to 15 feet wide, the widest paved trail in the county.
9. The trail will preserve the agricultural land for the future, the trail will be a great place to walk.
10. The trail will be a great place to walk.



To learn more visit:
LandTrustSantaCruz.org
OR.RailAndTrail.org



Exhibit B
Comment to DEIR

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psilkwood@horanlegal.com

File No. 7569.01

June 8, 2018

Via Electronic and Regular Mail

Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, California 95060

Re: Draft Rail Service Operator Agreement

Honorable Commissioners:

This firm represents farmers in the coastal zone (“Coastal Farmers”) who farm adjacent to the 7.5-mile segment of railroad corridor from Wilder Ranch State Park to Davenport in an unincorporated area of the County of Santa Cruz. This letter is to comment on the Draft Rail Service Operator Agreement (“Draft Operator Agreement”) to be considered at the June 14, 2018 meeting of the Santa Cruz County Regional Transportation Commission (“SCCRTC”).

As further detailed in the body of this letter, the SCCRTC must complete its environmental impact report (“EIR”) before it commits itself to a definite course of action by entering into an operator agreement with Progressive Rail, particularly since the Draft Operator Agreement obligates the SCCRTC to repair the Freight Easement Property, including all damaged bridges, overpasses, trestles, culverts, and track. Significant portions of the Freight Easement Property consist of environmentally sensitive habitat areas (“ESHA”) under the California Coastal Act and Critical Habitats under the federal Endangered Species Act. The California Supreme Court has made clear that the application of California Environmental Quality Act (“CEQA”; Pub. Resources Code §21000et seq.) to a public entity’s railroad project is not federally preempted under the Interstate Commerce Commission Termination Act of 1995 (“ICCTA”) (49 U.S.C. §10101 et seq.). (*Friends of the Eel River v. North Coast Railroad Authority* (2018) 3 Cal. 5th 677.) To put it another way, CEQA applies to a public agency’s project to repair and upgrade a railroad, irrespective of federal preempted regulation. Finally, the agreement with Progressive Rail must not proceed due to the SCCRTC executive staff’s biased and prejudicial conduct prior to and

June 8, 2018
Page 2

during the request for proposal (“RFP”) process, which tainted the process by giving an unfair advantage to Progressive Rail.

A. The SCCRTC Must Complete Its Environment Impact Report Consistent with CEQA Prior to Entering into an Agreement with Progressive Rail.

Under the Draft Operator Agreement, the SCCRTC commits to “pay[ing] for (or cause payment for) repairs to the Freight Easement Property, including all damaged bridges, overpasses, trestles, culverts, and track...” (p. 11, Draft Operator Agreement.) By entering into this agreement, the SCCRTC would be committing itself to a definite course of action. As you are aware, significant portions of the Freight Easement Property consist of environmental sensitive habitat areas and critical habitats. For example, the Staff Report references repair of the winter storm damage and a washout near Harkins Slough. Harkins Slough is home to endangered and threatened species, including native population of the Santa Cruz tarplant (*Holocarpha Macradenia*), California red-legged frog, and white tailed kite in addition to variety of other wetlands and riparian species, including special status species such as the southwestern pond turtle, tri-colored blackbird, white-faced ibis and yellow warbler. Moreover, what the SCCRTC staff characterizes as washout may be Coastal wetlands under the Coastal Act.¹

Under the Coastal Act, any development adjacent to environmentally sensitive habitat areas is limited. Section 30240 of the Coastal Act states as follows:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Development under the Coastal Act includes “construction, reconstruction, demolition, or alteration of the size of any structure” and “change in the density or intensity of use of land.” (Coastal Act §30106.) By approving the Draft Operator Agreement, the SCCRTC is committing itself to a development adjacent to or within environmentally sensitive area without environmental

¹ California Coastal Act section 30121 defines the term “wetland” as:

[L]ands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

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 Page 3

review, and such development and increase in use (of the rail service) are not compatible with the continuance of those habitats.

Repair activities by the SCCRTC, using public funds, would cause significant impacts to these habitats that must be analyzed and mitigated. The SCCRTC cannot commit itself to repairing the Freight Easement Property, which would cause significant impacts to ESHA and critical habitats, by entering into this agreement without first complying with CEQA. Since the SCCRTC began its preparation of an EIR, it should complete that process prior to any agreement that commits itself to repairing the Freight Easement Property.²

The CEQA Guidelines provide that public agencies may not undertake actions that could have a significant adverse effect on the environment, or limit the choice of alternatives or mitigation measures, before complying with CEQA. (14 Cal Code Regs §15004(b)(2).) The term "approval" in the CEQA Guidelines is defined broadly so that an agency's commitment to a "definite course of action" on a project (such as through an agreement) is treated as an approval. (14 Cal Code Regs §15352(a).) Under this standard, an agency cannot formally approve a project, or commit itself to approve it, without complying with CEQA before doing so. (See, e.g., *County of Amador v City of Plymouth* (2007) 149 CA4th 1089, where city's adoption of municipal services agreement with Indian tribe for proposed casino was project approval because agreement committed city to make improvements to public structures and other public facilities and to vacate a public road.)

Although CEQA actions *might* cross the line into federal preempted regulation, in the context of addressing competing federal and state interests in governing rail-line owned by a transportation agency of the state, "such a line is not crossed by recognizing CEQA causes of action brought against a state public entity to enforce environmental rule" for its own development projects. (*Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal. 5th 677, 731.)

² SCCRTC cannot rely on a categorical exemption to approve the Rail Service Operator Agreement. Only those projects having no significant effect on the environment are categorically exempt from CEQA review. (Pub. Resources Code, §§ 21080, subd. (b)(9), 21084, subd. (a).) If a project may have a significant effect on the environment, CEQA review must occur and only then are mitigation measures relevant. (citing *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1199–1200 [61 Cal. Rptr. 2d 447] (*Azusa*).) Mitigation measures may support a negative declaration but not a categorical exemption. (*Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal. App. 4th 1098, 1102.) In *Salmon Protection*, the court ruled the county's findings that the project had possible adverse impacts on the habitat of threatened or endangered species and created possible disharmonies with a creek disqualified the project for a categorical exemption.

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The *Friends of the Eel River* case is factually similar to the case at hand. In *Friends of Eel River*, North Coast Railroad Authority ("NCRA"), a state public entity, was responsible for restoring all portions of the rail-line to a certain level of utility and committed public funds for restoration and improvement. Although NCRA began the environmental review process under CEQA due to threatened serious environmental harm, especially harm to water in rivers and coastal areas, it later determined that the ICCTA preempted CEQA's application over railroad operation on the line.

The California Supreme Court disagreed with NCRA's interpretation of the federal preempted regulation and made clear the application of CEQA to a public entity that owned a railroad was not inconsistent with the ICCTA and its preemption clause, because it is presumed Congress did not and does not intend to disrupt state self-governance without clear language to that effect. The Supreme Court explained,

The severability clause establishes a presumption that the Legislature intended that the invalid (here, the preempted) applications be severed from the valid (nonpreempted) ones. Insofar as CEQA governs projects "directly undertaken" by public entities (Pub. Resources Code, § 21065, subd. (a)), its provisions appear to be capable of operating independently. And to sever the preempted applications of CEQA from the nonpreempted applications is consistent with our repeated recognition that CEQA is to be interpreted 'to afford the fullest possible protection to the environment' within the reasonable scope of the statutory language. (*Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal. 5th 677, 739-740.)

That is, CEQA governs projects directly undertaken by public entities (Pub. Resources Code, §21065, subd. (a)) and its provisions are capable of operating independently. The Supreme Court recognized that applying CEQA and its remedies to NCRA may have some impact on the private operator but reasoned that this is merely derivative of the state's efforts at self-governance in this marketplace. (*Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal. 5th 677, 740.)

As applicable here, the SCCRTC cannot rely on the federal preemption under the ICCTA to avoid its obligation under CEQA. To put it another way, the SCCRTC must comply with CEQA before it commits itself to a definite course of action by approving this agreement with Progressive Rail. The California Supreme Court made clear CEQA applies to public agencies' activities independent of the federal preemption available under the ICCTA. Accordingly, the SCCRTC must complete its obligation under CEQA, which is to complete the EIR process, before entering into an agreement with a rail operator.

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B. The SCCRTC Executive Staff's Biased and Prejudicial Conduct Gave Progressive Rail an Unfair Advantage Over Other Bidders; Thus, Progressive Rail's Contract Must Not Proceed.

To put the below concern in context, please find the below timeline gathered from various sources including those documents received from the SCCRTC as a result of a Public Records Act request:

On or around September 27, 2012, the SCCRTC entered into Administration, Coordination, and License Agreement ("Railway Agreement") with Santa Cruz and Monterey Bay Railway Company ("Railway").

In or around September 2017, Railway's employee/agent, Mark Westerfield, introduced the executive officers of the SCCRTC to Progressive Rail, prior to the termination of the Railway Agreement. An e-mail from Craig McKenzie to Executive Director George Dondero and Deputy Director Luiz Mendez, dated September 15, 2017 (**Exhibit "A"**), states, in relevant part, as follows: "Dave will take the lead on our thoughtful and tireless marketing efforts that will include inviting you and your colleagues to the Midwest to see us in action with our customers. I will bring to the fore a stepwise business plan that captures a base case and growth options with specific commitments and quantifiable targets.... Also, again my many thanks to Mark for his conscientious actions that led to our introductory meeting yesterday. I did not include him on this email given his current circumstances." (See also e-mail between Mark Westerfield and George Dondero and Luis Mendez, dated September 15, 2017; **Exhibit "A"**.)

Around the same time, Deputy Director Mendez sent an e-mail correspondence to Kevin Busath of Railway seeking the status of overdue payments due to the SCCRTC by Railway. Mr. Busath stated, "We are painfully aware of how overdue they are but cash remains in short supply." (September 7, 2017 e-mail between Kevin Busath and Luis Mendez.; **Exhibit "B"**.) [Note: Director Dondero, in a May 29, 2018 article in *Good Times*, is quoted as saying that Railway will not likely pay the amounts due to the SCCRTC. The article states, in relevant part, the following: "Dondero won't be holding his breath or wait for a check to come in through the RTC's mail slot. 'When a check comes in, I'll give you a call,' Dondero says. 'I haven't seen any money.'"]

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Subsequently, more meeting(s) may have been held by and between Executive Director Dondero, and Deputy Director Mendez of the SCCRTC and Mr. Westerfield of Railway(?) and Mr. McKenzie, and Dave Felton of Progressive Rail to discuss "growth options for the line." (See E-Mail chain, starting from between Craig McKenzie and Luis Mendez, dated September 22, 2017; **Exhibit "C"**).

In October 2017, Executive Director Dondero notifies Mr. McKenzie of Progressive Rail of an upcoming closed session meeting with the Commission. (October 27, 2017 e-mail communication between George Dondero and Craig McKenzie with a copy to Luis Mendez; **Exhibit "D"**.)

The SCCRTC issued a Notice of Default to Railway on November 2, 2017. The Notice of Default identifies Railway's breach of Paragraph 5³, entitled *Maintenance and Operation of Railroad Facilities*, of the Railway Agreement and demanded that Railway cure the default within 30 days or the SCCRTC may terminate the Agreement. Interestingly, Railway has been in default for some time. yet the SCCRTC only decided to issue a notice of default, *after* the SCCRTC executive officers met with Progressive Rail, which meeting was initiated by Railway's personnel.

Railway responded to the SCCRTC in a letter, dated December 4, 2017, by recommending that the SCCRTC seek another operator rather than proceed with the abandonment process. In accordance with Paragraph 8.2 of the Railway Agreement, the proper action should have been to initiate the abandonment process through the Surface Transportation Board ("STB"). Section 8.2 of the Railway Agreement states, in relevant part, "Upon expiration or termination of this Agreement by either party, Railway shall proceed to abandon Freight Service in accordance with section 8.3..."

The SCCRTC terminated the agreement with Railway. It does not appear that the SCCRTC recovered payments owed to the SCCRTC from Railway.

The RFP is released on December 8, 2017, and Progressive Rail submits its proposal on January 4, 2018. Executive Director Dondero sends an e-mail to Mr. McKenzie of Progressive Rail on January 13, 2018 (**Exhibit "E"**), which states in part the following:

³ The Agreement requires Railway, at its sole expense, to keep the railroad facilities in good repair and good and safe condition.

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Well, you now have a clearer picture of the local passion around the corridor. Some of the council members – especially the mayor – were making political hay out of the situation. The Greenway proponents are really an anti-rail group, with no vision for solving the county's transportation needs. From what I've heard, almost every county with a rail line that was considered for passenger service has or had an equivalent group. Even after a service is introduced, and is successful, the train haters continue to espouse fear and loathing.

Progressive Rail is subsequently selected as the rail operator.

As we understand it based on newspaper articles and other sources, Mr. Westerfield, who had initially introduced the SCCRTC executive officers to Progressive Rail, left Railway for employment with Progressive Rail prior to or around the time Progressive Rail was selected as the rail operator by the SCCRTC.

There is a significant concern that these private meetings and negotiations by and between Progressive Rail Inc., Railway, and the SCCRTC executive staff prior to the termination of the Railway Agreement and prior to the release of the RFP by the SCCRTC. Their conduct has tainted the RFP process.

It is Railway's employee, Mark Westerfield, who purportedly initially introduced Progressive Rail to the SCCRTC executive officers. The parties met well ahead of the termination of the Railway Agreement and prior to release of the RFP. After these private meetings between the SCCRTC, Progressive Rail and Railway representatives, the SCCRTC issued a Notice of Default to Railway on November 2, 2017. Under the Railway Agreement, if there is a failure to cure, then an abandonment proceeding must follow. Instead, Railway responded by expressly recommending that the SCCRTC seek another operator rather than proceed with the abandonment proceeding. All of this occurred after Railway's employee introduced the SCCRTC executive officers to Progressive Rail.

Shortly thereafter on December 8, 2017, the SCCRTC releases an RFP, which states in part the following:

The purpose of the Request for Proposals (RFP) is to solicit proposals from operationally and financially qualified firms which will be evaluated by SCCRTC to select a proposer to provide rail service for the Santa Cruz Subdivision. All proposers will be considered by the SCCRTC. SCCRTC encourages prospective

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proposers to be creative in their response to this request for proposals. SCCRTC will consider all proposals submitted.

Based on the language of the RFP, bidders responding to the RFP were led to believe that the SCCRTC would provide an unbiased and non-prejudicial review of the proposals and select an operator based on the ranking using the criteria set forth in Attachment A of the RFP, when in fact, private meetings and negotiations began prior to and throughout the RFP process with Progressive Rail, which provided an unfair advantage to Progressive Rail and prejudiced the other bidders.

Not surprisingly, all parties involved in these private meetings and ex parte communications received what they sought: (1) Railway was relieved of liability from the SCCRTC under the Railway Agreement; (2) Progressive Rail was awarded the contract with the SCCRTC; and (3) SCCRTC staff can push for "continued" rail operation despite the "train haters [who] continue to espouse fear and loathing."

The SCCRTC chose to proceed with a public contract process and by doing so, subjected itself to the Public Contract Code. Courts have made it clear the letting of public contracts universally receives close judicial scrutiny because of potential for abuse. (See, e.g., *Eel River Disposal & Resource Recovery, Inc. v. County of Humboldt* (2013) 221 Cal. App. 4th 209.) The importance of maintaining integrity in government and the ease with which policy goals underlying the requirement for open competitive bidding may be surreptitiously undercut, mandate strict compliance with bidding requirements. (*Ibid.*)

The conduct of the SCCRTC executive officers tainted the RFP process. The SCCRTC executive staff acted in a biased and prejudicial manner prior to and during the RFP process. As a result, the other bidders were at a disadvantage. Their bias for the rail project over any other alternatives considered in the EIR is clear and their conduct prejudiced the EIR process. For those reasons, the agreement with Progressive Rail must not proceed.

Thank you for this opportunity to comment on the Draft Operator Agreement.

Respectfully submitted,



Pamela H. Silkwood

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Enclosures

cc: Mitchell Weiss, California Transportation Commission
Victoria Rutson, Surface Transportation Board
Danielle Gosselin, Surface Transportation Board
David Sett, Federal Highway Administration
Larry Simon, California Coastal Commission
Bill Stevens, National Marine Fisheries Service
Scott Wilson, California Department of Fish & Wildlife
Dana McRae, Santa Cruz County Counsel
George Dondero
T. Brooke Miller
Luis Mendez
Brian Peoples
Clients

4842-5851-4001, v. 1

Exhibit A

From: Craig McKenzie
To: George Dondero; Luis Mendez
Cc: Dave Fellon
Subject: Progressive Rail
Date: Friday, September 15, 2017 10:36:57 AM
Attachments: NCDOT 99 Proposal 2.pdf

Dear George and Luis,

I would like to thank you again for meeting with Mark and me yesterday. I appreciate the open exchange and the opportunity to be considered by SCCRTC as a future rail operator. By copy of this note, I include Dave Fellon, owner of PGR. Rest assured both Dave and I are both extremely committed to rail excellence and making industrial investments that support our customers where we operate; in this light, we hope to be in a position to help revitalize rail in Santa Cruz county. What we have seen over and over when we implement this approach is not only continuous rail volume growth, but also a sustainable expansion of the broader base that includes warehouse and rail employment, real estate, local tax base, local trucking, light commercial and industrial outfitting, and the list goes on.

Beyond the words, we would like to demonstrate to you and your colleagues what we stand for, how we operate, and what our key external stakeholders think of us. As a first step, I would like to provide you with a copy of our bid submission to the North Carolina Department of Transportation that we submitted last spring, which enabled us to win that bid. While this bid followed a prescribed format that is not relevant in this case, I offer it to show, among other things, a sampling of reference letters. Dave will be very pleased to provide more information, including customers who have already provided their interest in expanding their operations to include Santa Cruz, as well as provide the UP point of contact that you requested yesterday. Under separate cover I will make an introduction to Allan Paul, Director of NCDOT, who I believe will make himself available to answer any questions you might have about PGR's endeavors on the ground in Charlotte.

In the coming weeks, you will hear more from PGR. Dave will take the lead on our thoughtful and tireless marketing efforts that will include inviting you and your colleagues to the Midwest to see us in action with our customers. I will bring to the fore a stepwise business plan that captures a base case and growth options with specific commitments and quantifiable targets. Together we will provide these deliverables and request another visit to continue the dialogue.

For now, I will pause and close by saying I very much look forward to next steps. Also, again my many thanks to Mark for his conscientious actions that led to our introductory meeting yesterday. I did not include him on this email given his current circumstances.

If you ever have any questions, please do not hesitate to contact me.

Kind regards,

Craig

Craig M. McKenzie

Chairman

mobile: 1.218.324.2001



Progressive Rail Incorporated

21778 Highview Avenue

Lakeville, MN 55044

www.progressiverail.com

From: [Mark Westerfield](#)
To: [George Dondero](#); [Luis Mendez](#)
Cc: cmckenzie@progressiverail.com; dfellon@progressiverail.com
Subject: Yesterday's Meeting
Date: Friday, September 15, 2017 7:19:46 AM

George and Luis,

Thanks for taking the time to meet with us and; your detailed explanation of the railroad and its' relationship with the commission.

You will be hearing more from Progressive in the near future.

MHW

Exhibit B

From: [Kevin Busath](mailto:Kevin.Busath)
To: [Luis Mendez](mailto:Luis.Mendez)
Cc: [George Dondero](mailto:George.Dondero)
Subject: RE: Santa Cruz Washout
Date: Thursday, September 07, 2017 7:52:08 AM

Luis:

Thanks for your e-mail.

No payments have been sent to SCCRTC. We are painfully aware of how overdue they are, but cash remains in short supply. I can't give you a specific date for payment, but the current expectation is that it will be this month.

Kevin

From: Luis Mendez [<mailto:lmendez@sccrtc.org>]
Sent: Thursday, September 07, 2017 9:43 AM
To: Kevin Busath <BusathK@IowaPacific.com>
Cc: George Dondero <gdondero@sccrtc.org>
Subject: RE: Santa Cruz Washout

Hello Kevin,

We do not yet have a timeline for repair of the washout. Most, if not all, of the downed trees have already been removed by contractors hired by the RTC.

Has Iowa Pacific sent payment to the RTC for amounts owed? If so, when was the payment sent, what is the amount of the payment and what owed amounts would it cover? If not, please send payment to the RTC right away for any and all amounts owed.

.....
[Luis Pavel Mendez](mailto:Luis.Pavel.Mendez), Deputy Director
[Regional Transportation Commission](http://www.sccrtc.org)
831.460.3212 | 408.838.2392

From: Kevin Busath [<mailto:BusathK@IowaPacific.com>]
Sent: Wednesday, September 06, 2017 9:44 AM
To: George Dondero; Luis Mendez
Subject: Santa Cruz Washout

George/Luis:

We have a customer interested in using the Davenport trackage for storage-in-transit. Do you have a timeline for having the washout repaired?

As you know, there are other issues that need to be addressed (down trees, drifted sand) but these are a moot point until the washout is repaired.

Thanks.

Kevin W. Busath
Vice President – Strategic Planning
Iowa Pacific Holdings, LLC
118 South Clinton Street, Suite 400
Chicago, Illinois 60661
312-348-6086

Exhibit C

From: George Dondero
To: Craig McKenzie
Cc: Luis Mendez; Dave Fellon; Mark Westerfield
Subject: RE: Progressive Rail
Date: Tuesday, September 26, 2017 10:37:17 AM

Sounds good, Craig.

- George

From: Craig McKenzie [mailto:cmckenzie@progressiverail.com]
Sent: Tuesday, September 26, 2017 8:55 AM
To: George Dondero
Cc: Luis Mendez; Dave Fellon; Mark Westerfield
Subject: RE: Progressive Rail

George,

We would like to confirm the morning of October 26th. It will be Dave Fellon, Mark Westerfield (who has now signed up with PGR), and me. We will be arriving midafternoon of the 25th and staying at Dream Inn.

If you have any questions, please let me know. We will be in touch in advance of the meeting.

Thank you,

Craig

From: Craig McKenzie
Sent: Monday, September 25, 2017 5:28 PM
To: George Dondero <gdondero@scrtc.org>
Cc: Luis Mendez <lmendez@scrtc.org>; Dave Fellon <dfellon@progressiverail.com>
Subject: RE: Progressive Rail

George,

As an update, the 19th is no longer available for Dave. He and I will come back to you tomorrow with a confirmation of one of your other dates that you offered.

Kind regards,

Craig

From: Craig McKenzie
Sent: Saturday, September 23, 2017 2:15 PM
To: George Dondero <gdondero@scrtc.org>
Cc: Luis Mendez <lmendez@scrtc.org>; Dave Fellon <dfellon@progressiverail.com>
Subject: Re: Progressive Rail

Thank you George.

From what I know about Dave's calendar, the afternoon of the 19th would work best. I will confirm this to you and revert by Monday.

Kind regards

Craig

Craig McKenzie
+1 218 324 2001

Sent from my iPhone

On Sep 23, 2017, at 13:53, George Dondero <gdondero@sccrtc.org> wrote:

Hello Craig,

Thank you for the follow up info and the introduction. We will connect with NC DOT next week.

I've looked at Luis' and my calendars, and can offer the following openings for your next visit. We are willing to commit a half day of time to meet with you, Dave and any others you may bring. Here are some dates, all in October:

2 - all day

4 - AM

9 - all day, except 2-3pm

17 - all day

18 - all day

19 - PM

24 - 8 - 2

25 - all day

26 - all day

Please let us know as soon as possible what date(s) work for you, as I cannot hold this much of my calendar.

Luis, I referred to your online calendar, but if I missed anything please let us all know if any of the above are problematic for you.

Also, there are GIS maps available of the entire line, which may prove informative for you. You may find them here:

http://gis.co.santa-cruz.ca.us/map_gallery/

I look forward to further discussion with you, Craig.
Best regards,

- George Dondero

From: Craig McKenzie [<mailto:cmckenzie@progressiverail.com>]
Sent: Friday, September 22, 2017 5:02 AM
To: Luis Mendez
Cc: Dave Felton; George Dondero
Subject: RE: Progressive Rail

Good morning, Luis-

I appreciate your email. I combed your website last weekend, but was unable to find the agreement. I did see the RTC/UP transaction and process, which was informative, along with the IP presentation and bid that were submitted in 2012.

Our team is now focused on growth options for the line. We continue to believe there are exciting possibilities, which includes ag. Notwithstanding some of the comments that you pass along below, we like Watsonville. We don't buy into the reference to mainline over short line, but understand that perception. Once we get the facts on the table, then we can revisit that thought.

Under separate cover, I will introduce you and George to NCDOT. They look forward to speaking to you.

Thank you,

Craig

From: Luis Mendez [mailto:lmendez@sccrtc.org]
Sent: Thursday, September 21, 2017 9:26 AM
To: Craig McKenzie <cmckenzie@progressiverail.com>
Cc: Dave Fellon <dfellon@progressiverail.com>; George Dondero <gdondero@sccrtc.org>
Subject: RE: Progressive Rail

Hello Craig,

It was a pleasure to meet you and learn about Progressive Rail. You asked about the agreement between the RTC and Santa Cruz & Monterey Bay Railway. The agreement is located on the RTC website at <http://sccrtc.org/wp-content/uploads/2011/04/ACIAgreement20121012.pdf>. Additional documents and information associated with the Santa Cruz Branch Rail Line including the purchase and sale agreement between the RTC and Union Pacific, inspections, etc. can be found at <http://sccrtc.org/projects/rail/rail-line-purchase/rail-line-due-diligence/>.

We also discussed the possibility of transloading agricultural products to rail and I mentioned a study that was done for such a transload facility for the Salinas area just south of Watsonville. That study can be found at <http://www.ambag.org/pdf/AMBAG%20Intermodal%20Truck%20to%20Rail%20Terminal%20Report%20Final.pdf>. As part of the conversations on this study, the possibility of a transload facility in Watsonville for agricultural products came up. However, because most of the people involved in the study were from the Salinas area and from Monterey County, that was dismissed. It was also said that it was more desirable to have such a transload facility on the UP mainline as opposed to a branch line with a shortline operator.

If you would like any more information regarding the Santa Cruz Branch Rail Line or have any questions, please let me know.

.....
Luis Pavel Mendez, Deputy Director
Regional Transportation Commission
831.460.3212 | 408.838.2392

Exhibit D

From: [George Dondero](#)
To: [Craig McKenzie](#); [Luis Mendez](#)
Cc: [Dave Fellon](#)
Subject: RE: Follow Up
Date: Friday, October 27, 2017 10:23:30 AM

Craig,

Thanks for the followup – all sounds very positive. We are meeting in closed session with our board to discuss first steps next Thursday.

When you say “...reinstate the Suntan Special via Watsonville....” Do mean originating in Watsonville – or in San Jose (per the original operation)?

- George

From: Craig McKenzie [mailto:CMcKenzie@progressiverail.com]
Sent: Friday, October 27, 2017 10:08 AM
To: George Dondero; Luis Mendez
Cc: Dave Fellon; Mark Westerfield (mhwesterfield@hotmail.com)
Subject: Follow Up

George and Luis,

Yesterday afternoon we met with Marq, Ted, and Kirk in their office. It was most informational and inspired us to spend the balance of the day gathering reconnaissance on the ground and getting into action with regard to passenger excursions on your line. In particular, we think we have figured out how to reinstate the Suntan Special via Watsonville and how to develop the western (northern) end of the line to Davenport. We paid particular attention to salient issues, including the routing and integrity of the line, themes and attractions, land, parking, crossings, as well as noise through neighborhoods, and locomotive equipment selection. In sum, we think we can create a new world class rail tradition for Santa Cruz that will be acceptable to all stakeholders, including local residents. Needless to say we are excited about these developments.

My next steps are to execute an NDA with Santa Cruz Boardwalk and request a joint call where we can lay out our high-cut plans.

Thank you again for your time yesterday and we look forward to engaging the board with a compelling case to restore the Santa Cruz Branch Line and to realize its potential.

Kind regards,

Craig

Exhibit E

From: [Craig McKenzie](#)
To: [George Dondero](#); [Dave Fellon](#)
Cc: [Luis Mendez](#)
Subject: RE: Capitola Counsel
Date: Saturday, January 13, 2018 8:01:59 AM

Thank you George. Dave and I are working on the presentation and will have a draft ready in the next day or so.

Dave will not be able to be away on the 18th for family reasons. I will be making the presentation solo, but will have support on hand.

Kind regards,

Craig

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

From: George Dondero [<mailto:gdondero@scrtc.org>]
Sent: Saturday, January 13, 2018 9:47 AM
To: Craig McKenzie <CMcKenzie@progressiverail.com>; Dave Fellon <DFellon@progressiverail.com>
Cc: Luis Mendez <lmendez@scrtc.org>
Subject: Re: Capitola Counsel

Hello Craig,

Well, you now have a clearer picture of the local passion around the corridor. Some of the council members - especially the mayor - were making political hay out of the situation. The Greenway proponents are really an anti-rail group, with no vision for solving the county's transportation needs. From what I've heard, almost every county with a rail line that was considered for passenger service has or had an equivalent group. Even after a service is introduced and is successful, the train haters continue to espouse fear and loathing. Marin County north of us has such people writing nasty articles, even as SMART is adding a third car to their DMU trains to accommodate demand. They just started service last August.

Luis and I will handle the trestle inspection, and get it expedited soon. We both know that no trains will run over before the washouts are repaired. For your appearance next Thursday, focus on what you have to offer and the benefits to the community. I am happy to meet with you and Dave on Wednesday, or prior to the meeting Thursday morning. My calendar is clear Wed afternoon.

George

On Jan 12, 2018, at 5:20 PM, Craig McKenzie <CMcKenzie@progressiverail.com<<mailto:CMcKenzie@progressiverail.com>>> wrote:

Good evening, gentlemen-

I just wanted to log in that I watched the entirety of last night's Capitola meeting concerning the Greenway proposal vs. Rail Trail and the view of the Mayor regarding the trestle bridge and what he believes will be the outcome of your RFP process (immediate "200 ton" heavy trains over the trestle with no work on it). Seeing the audience speakers gives me a flavor of what the 18th may be like.

I was not prepared for how the Greenway proponents were not happy to have a trail next to the railroad. They wanted the entire corridor and didn't seem to care about non-bike riders, commuters of age, rain, cold, wind, hills, distance, handicapped.

Deep breath. We look forward to a constructive engagement, but it goes without saying we will appreciate your counsel and guidance.

Kind regards,

Craig

PS: -10 going to -31 tonight.

Craig M. McKenzie
Chairman & CEO

mobile: 1.218.324.2001

<image003.jpg>

Progressive Rail Incorporated
21778 Highview Avenue
Lakeville, MN 55044

www.progressiverail.com <<http://www.progressiverail.com/>>

Exhibit C
Comment to DEIR

ADMINISTRATION, COORDINATION, AND LICENSE AGREEMENT

This administration, coordination, and license agreement (the "Agreement") is dated as of _____, 2018, and is between the Santa Cruz County Regional Transportation Commission (the "Commission"), a public agency created under California law, and Santa Cruz Scenic Railway, a _____ limited liability company ("Railway").

The Commission purchased the Santa Cruz Branch railroad line (the "Property") from Union Pacific Railroad Company ("UP") via an August 20, 2010, Purchase and Sale Agreement (the "Purchase and Sale Agreement");

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 its right, title and interest in and to the Property to the Commission, as grantee;

UP quitclaimed all its right, title, and interest in and to the Freight Easement to a previous operator to act as the sole freight rail operator on the Freight Easement;

For the last few years, a previous operator operated on the Property pursuant to an agreement with the Commission;

The previous operator has agreed to cancel its current administration, coordination and license agreement to operate the Property and to convey the Freight Easement to the Railway;

The Commission has undertaken a study to help determine the best use of the Property by the Commission (the "Study");

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

Railway 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 "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.
- 1.2 The term "Coordination Committee" is defined as the committee established by the parties pursuant to Section 11.
- 1.3 The term "FRA" is defined as the United States Federal Railroad Administration or its regulatory successor.

- 1.4 The term "Freight Easement" is defined in the introductory paragraphs of this Agreement.
- 1.5 The term "Freight Easement Property" is defined as the portion of the Property subject to the Freight Easement consisting of any and 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.
- 1.6 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 2.5), transloading freight and dispatching.
- 1.7 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.
- 1.8 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.
- 1.9 The terms "include", "includes", and "including" are to be read as if they were followed by the phrase "without limitation."
- 1.10 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 Railway; 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 Railway, and any property in the Commission's or Railway's care or custody.
- 1.11 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.
- 1.12 The term "PUC" is defined as the California Public Utilities Commission.

- 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 "Railway" 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 "Study" is defined in the introductory paragraphs of this Agreement and refers to the Unified Corridor Investment Study anticipated to be completed by the end of calendar year 2018. For purposes of this Agreement, the Study shall be deemed to be "completed" on the date that it is presented, with a recommendation of Commission staff regarding the use of the Property, to the governing Board of the Commission.
- 1.17 The term "Transportation Service" is defined as the transportation of passengers by rail, including excursion trains. Transportation Service does not include regularly scheduled mass transit or commuter service.
- 1.18 The term "UP" is defined in the introductory paragraphs of this Agreement.

2. Commission Grants Rights

- 2.1. Freight Service (Phase I). Upon the effective date of this Agreement, the Commission grants Railway the exclusive right and obligation to provide Freight Service on the Freight Easement Property. Railway'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. The authorization to provide Freight Service under this Agreement shall be referred to as "Phase I" of this Agreement. Railway 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 Railway 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. No Material Interference with Freight Service. Notwithstanding the rights retained by the Commission under this Agreement, the exercise of such rights by the Commission may not materially interfere with Railway's Freight Service rights and obligations under federal law, or rights under the Freight Easement, unless first approved by the STB.

2.4. Transportation Service and Other Third-Party Licenses.

2.4.1. Railway Transportation Service (Phase II). If upon completion of the Study the Commission determines that all of the Freight Easement Property should be used for Transportation Service, the Commission immediately will grant Railway a non-exclusive license to use the Freight Easement Property and Railroad Facilities to provide Transportation Service on the Freight Easement Property; provided that prior to the commencement of operations (a) the Commission has approved in writing a detailed plan from Railway describing such Transportation Service, (b) the Transportation Service will not materially conflict with, and will be subject and subordinate to Freight Service, and (c) Railway has obtained any governmental authorizations required under applicable law for such Transportation Service. Within 12 months of the Commission determining that all of the Freight Easement Property should be used for Transportation Service, Railway will present a detailed plan describing the proposed Transportation Service, including a description of the proposed equipment to be used. The Commission shall have up to one hundred and twenty (120) days to review Railway's proposed plan, and in no case shall the Commission be required to complete its review of Railway's plan prior to the latest date it may grant a license to provide Transportation Service pursuant to Section 8.2.4. Failure to act on the proposed plan within such time period will result in the plan being considered approved by the Commission, provided, however, that any requirements of the California Environmental Quality Act applicable to the Transportation Service have been met. Railway agrees to act in good faith to incorporate the Commission's reasonable requests into its plan. The authorization to provide Transportation Service under this Agreement shall be referred to as "Phase II" of this Agreement.

2.4.1.1. Future Transportation Service. After the effective date of the grant of a license to Railway to provide Transportation Service (Phase II) pursuant to Section 2.4.1, subsequent changes to the plan for Transportation Service approved by the Commission shall be subject to the Commission's approval. The Commission shall have up to sixty (60) days to review such changes. Failure to act on the proposed amendment to the plan within such time period will result in the plan as amended being considered approved by the Commission provided, however, that any requirements of the California Environmental Quality Act applicable to the Transportation Service have been met. Railway agrees to act in good faith to incorporate the Commission's reasonable requests into its plan.

2.4.1.2. Third-Party Licenses. The Commission reserves the right to grant additional licenses over the Freight Easement Property and the Railroad Facilities (excluding licenses for temporary rail car storage or repairs on the Railroad Facilities), provided that any such licenses: (a) do not materially conflict with, and are subject and subordinate to, Railway's right to use, maintain, repair, and operate all of the Railroad

Facilities for all Freight Service purposes, (b) do not materially conflict with, and are subject and subordinate to, any other license granted Railway hereunder, (c) require the licensee to pay its proportionate share of Railway's prior (incurred within the preceding five years) and current costs (including labor costs, materials costs, equipment costs - using equivalent rental costs as a proxy for capital and maintenance and repair 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 adequate insurance based on the scope and potential risks of operations of the licensee, as determined by the Commission and (ii) indemnify and hold harmless Railway and the Commission as to any Loss arising out of or related to licensee's operations.

2.4.1.3. After the effective date of the grant of a license to Railway to provide Transportation Service (Phase II) pursuant to Section 2.4.1, any new third-party license for Transportation Service on the Freight Easement Property, other than special events as described in Section 2.4.1.10, will be deemed to materially conflict with Railway's Transportation Service license. The limiting provisions of this Section 2.4.1.3 are conditioned on the Railway meeting the following conditions:

- a. Levels of Service: Railway's Transportation Service shall carry the following numbers of revenue passengers beginning on the third anniversary of receipt of the license to begin Transportation Service (Phase II):
 - I. First Year of Service: 5,000 passengers.
 - II. Second Year of Service: 10,000 passengers.
 - III. Third Year of Service and Thereafter: 15,000 passengers.

2.4.1.4. If Railway or any third-party licensee ("Tourist Operator") fails to initiate and continue to operate Transportation Service substantially in accordance with its license and approved plan, then the applicable Tourist Operator's operations may, at the Commission's option, lose priority over any other operations, but only to the extent of such failure to operate.

2.4.1.5. If Railway constructs capital improvements to the portion of the Freight Easement Property and Railroad Facilities used by a third party licensee, the Commission shall promptly and reasonably determine (i) (a) the benefit of such improvements to such licensee or (b) the diminution of value to such improvements for Railway, (ii) the apportionment of benefit or loss for such improvements between Railway and such licensee, and (iii) the appropriate amortization period for such improvements (for

capital improvements the Commission shall make such determination concurrently with its approval of such capital improvements pursuant to Section 6.2). The Commission's contract with such licensee will (i) require the licensee to pay amounts due within 30 days following receipt of written notice from Railway and (ii) name Railway as a third-party beneficiary with rights of enforcement. As used in this Agreement, the term "capital improvement" means any improvement or repair that is subject to the capital depreciation rules of the Internal Revenue Service.

2.4.1.6. Each third-party licensee's proportionate share of Railway's costs shall be calculated in advance by Railway (based on the prior year's maintenance and repair costs plus any reasonably anticipated extraordinary maintenance and repair costs, and the parties' relative need or 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 such licensee. (As used in this subsection, "repair costs" refers to the cost of repairs that maintain property in good operating condition and not to repairs that are "capital improvements," which are dealt with in Subsection 2.4.1.5.) Such licensee shall pay its proportionate share of costs monthly in advance during the months of the licensee's operations. Railway shall at the end of each calendar year reconcile the amounts paid to the actual costs incurred. The Commission's contract with such licensee will (i) provide that if the actual costs exceed the amount charged to such licensee, such licensee will, within 30 days following receipt of written notice of such reconciliation from Railway pay the additional amount to Railway and (ii) name Railway as a third-party beneficiary with rights of enforcement. If the actual costs are less than the amount charged to such licensee, Railway will within 30 days following such reconciliation refund the balance to such licensee.

2.4.1.7. 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 Railway's costs that are subject to apportionment under this section, including any Records in the possession of any subcontractors, for monitoring, auditing, or otherwise verifying said costs. Railway 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. Railway further agrees to maintain such Records for a period of three years. The Commission acknowledges and agrees that these Records constitute Railway's confidential information and shall not be disclosed to any third-party without

Railway's prior written approval, except as otherwise required by applicable law.

2.4.1.8. The Commission, may elect to require a lower level of liability insurance coverage for the licensee than the level of coverage then required of Railway under Section 9, provided that Railway reasonably concurs with the Commission that the level of operations of a licensee providing a lower level of liability coverage than required of Railway under Section 9 justifies the reduced coverage.

2.4.1.9. Railway will reasonably cooperate with any third party holding rights to use the Property, including, without limitation, any third-party Transportation Service operator seeking to secure the necessary certification or qualification required by applicable law to operate on the Railroad Facilities, provided such cooperation does not require significant unreimbursed expense for Railway.

2.4.1.10. In addition to all other rights of Commission under this Agreement, and notwithstanding anything to the contrary in this Agreement, the Commission reserves the right to use the Freight Easement Property and Railroad Facilities for special events. Such special events shall be subject to the provisions of Sections 2.4.1.5 and 2.4.1.6, provided that such special events will only be deemed to materially conflict with another Transportation Service license if they operate during the same season, and on the same days and times of day, as Railway operations. The Commission will consult with Railway regarding Railway's willingness and ability to operate such special events.

Nothing in this paragraph shall preclude the Commission and Railway from negotiating arrangements for special events.

2.5. Temporary Rail Car Storage. Subject to the terms and conditions of this Agreement, Railway may undertake temporary rail car storage or repairs related to its own rail operations on the Railroad Facilities consistent with the provisions of Sections 2.5.1 and 2.5.2. For clarification, the staging of rail cars for unloading or loading in connection with transloading activities will not be considered rail car storage hereunder.

2.5.1. Unless otherwise expressly agreed by the Commission in writing, Railway will not (i) store more than 100 rail cars, or (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 two (2) months. Absent the Commission's prior written consent, which consent may be withheld in the Commission's sole discretion, Railway 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.

2.5.2. Railway shall not exercise its right to use the Freight Easement Property or Railroad Facilities for temporary rail car storage or repair in a manner that

materially affects the ability of any third party Transportation Service licensee to access the Railroad Facilities for the purpose of exercising its licensed rights.

2.6. Investigation.

2.6.1. Railway 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 Railway'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.

2.6.2. 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 Railway, Railway may terminate this Agreement, provided Railway provides at least ninety (90) days' prior written notice to Commission of the specific problem(s) and cause thereof, cooperates in good faith with Commission throughout such period to resolve such problem(s), and complies with the provisions of Section 8.3.

2.7. Warranties on Freight Easement Property. Other than as set forth herein, Railway shall take the Freight Easement Property 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.

2.8. Release. Railway, 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 of Railway 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.

2.8.1. Railway hereby grants to Commission, on behalf of any insurer providing property, general liability, or automobile liability insurance to either Railway or Commission with respect to the operations of Railway, a waiver of any right to subrogation which any such insurer of Railway may acquire against Commission by virtue of the payment of any loss under such insurance.

2.8.2. If any Loss described in Section 2.8 is caused by a third party under contract

with the Commission, the Commission shall, at its option, (i) pursue any claim it may have against the third-party contractor, or (ii) assign to Railway any such claim, provided that Railway shall not be obligated to pursue 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 of the following that are damaged or destroyed in connection with the subject Loss:

2.8.2.1. First, Freight Easement Property and Railroad Facilities;

2.8.2.2. Then, railroad equipment.

If Railway commences abandonment proceedings for the subject portion of the Property under Section 8.3, the Commission will not assign any such claim to Railway and neither party will have any further responsibility under this Subsection 2.8.2 as to such claim. If Railway's abandonment application is withdrawn, or not approved by the STB, the Commission may assign such claim to Railway, as provided above.

2.8.3. The provisions of this Section 2.8 shall survive the termination or expiration of this Agreement.

2.9. The rights granted by the Commission under Sections 2.1- 2.5 are subject to all existing licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Property and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

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 that is not inconsistent with this Agreement. 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 (including but not limited to a trail consistent with the Monterey Bay Sanctuary Scenic Trail (MBSST) Network Final Master Plan), 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 Railway for compensation or damages; provided, however, that the Commission may not materially interfere with Railway's rights and operations under this Agreement or Railway's Freight Service rights and obligations under federal law or under the Freight Easement, unless first approved by the STB; and provided, further, that the Commission shall to the extent possible notify Railway 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. Railway shall reasonably cooperate with the Commission in implementing the foregoing uses of the Property. If the Commission or its designee requests Railway's assistance to transport materials or to perform other transportation or construction

services for public projects, Railway 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 Railway, (i) inspect the Freight Easement Property and the Railroad Facilities, including any facility used in connection with Freight Service or Transportation 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 Railway, 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 Railway, 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 February 23, 2010, specifically includes a future at-grade roadway crossing of the Freight Easement Property at approximately Milepost 12.55. Railway 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 Railway 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 Railway and the applicable local government (which agreement shall become a Railway 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. Upon approval of Railway to operate the Freight Easement by the STB, the current operator will assign to Railway, 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 "Railway Agreements"), and (ii) 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"). For any assigned Railway Agreements that grant third-party rights of access to, or use of, the Freight Easement or Railroad Facilities, Railway will instruct the holders of such agreements to name the Commission as an additional insured on their insurance policies.
- 4.2. Subject to the provisions of Section 2.3, which prohibit material interference with

Railway's Freight Service rights and obligations under federal law or under the Freight Easement, unless first approved by the STB, any new Railway Agreement granting third-party rights of access to, or use of, the Freight Easement or Railroad Facilities, or contemplating alterations thereto, is subject to the Commission's prior written consent. Such Railway Agreements will be documented by Railway 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. Railway is not, without the Commission's prior written consent (subject to the provisions of Section 2.3, which prohibit material interference with Railway's Freight Service rights and obligations under federal law or under the Freight Easement, unless first approved by the STB), to execute any new Railway Agreements affecting the Freight Easement Property or Railroad Facilities for a term exceeding the term of this Agreement.
- 4.4. Railway is not, without the Commission's prior written consent, to terminate or modify any Railway Agreement granting third-party rights of access to, or use of, the Freight Easement or Railroad Facilities, or contemplating alterations thereto.

5. Maintenance and Operation of Railroad Facilities

5.1. Initial Rehabilitation and Repair Projects. During Phase I of this Agreement, the Commission agrees to pay for (or cause payment for) repairs to the Freight Easement Property, including all damaged bridges, overpasses, trestles, culverts, and track, necessary to allow Railroad to operate the Freight Easement to MP 7.0. During Phase II of this Agreement, the Commission will pay for (or cause payment for) repairs from MP 7.0 to MP 31.39 (up to Class 1 track classification) within the next three years following grant of the license to provide Transportation Service, provided that if the Commission fails to make the required repairs from MP 7.0 to MP 31.39 within the three years, the requirements for service provided by Section 2.4.1.3(a) will be extended accordingly. After these repairs are complete the Commission shall have no further obligation to maintain or repair the Freight Easement Property or Railroad Facilities.

5.2. Maintenance of Freight Easement Property and Railroad Facilities.

5.2.1. Freight Easement Property and Railroad Facilities. Railway, at its expense, shall keep the Freight Easement Property and Railroad Facilities used by Railway (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 Railway Agreement, and in substantially the same condition provided by the Commission. In the event Railway fails to meet this obligation, the Commission has the right but no obligation to correct or cause the correction of the deficiency, after no less than 10 days' written notice to Railway (except in an emergency, whereupon no notice is required)

and, if Railway does not correct the deficiency within 10 days, the Commission may bill the Railway and the Railway shall pay the actual cost of the correction within 30 days.

5.2.2. Weeds, Trash, Drainage and Graffiti. The parties agree that Railway shall be responsible for: (i) drainage and culvert maintenance and clearance on the entire Property unless a third person or entity is contractually responsible for such maintenance and clearance, and (ii) weed abatement, vegetation management, and trash collection over the Freight Easement Property as required by applicable law and in substantially the same condition provided by the Commission. If the Commission observes a condition that requires maintenance under these requirements or applicable law, Commission will notify Railway through a maintenance request. Railway shall resolve maintenance requests from the Commission within 30 days unless contested in good faith by the Railway. In the event Railway contests a maintenance request from the Commission, the request shall be submitted for resolution to the Coordination Committee pursuant to Section 11 and, if no resolution is met, the dispute may be submitted to mediation pursuant to Section 20. In the event Railway fails to meet an uncontested obligation, the Commission has the right but no obligation to correct or cause the correction of the deficiency, after no less than 10 days' written notice to Railway (except in an emergency, whereupon no notice is required) and, if Railway does not correct the deficiency within 10 days, the Commission may bill the Railway and the Railway shall pay the actual cost of the correction within 30 days. Railway's obligation to pay shall be secured by the security provided pursuant to Section 5.2.7. The Commission grants Railway a license to enter all portions of the Property as necessary to perform such maintenance; Railway shall be required to repair any damage caused as the result of Railway's performance of any such maintenance. Except as required by applicable law, Railway shall not be responsible for the prevention, removal, or abatement of graffiti wheresoever it may occur. Railway shall also not be responsible for drainage maintenance, weed abatement, vegetation management, or trash collection related to any construction by the Commission (except for Railroad Facilities that Railway is entitled to use), or necessitated by the actions of any third party authorized by the Commission to be on the Property, or caused by any actions, omissions, or situations off or outside of the Property, except to the extent caused by Railway.

5.2.3. Slopes, Trees and Other Conditions outside of Freight Easement Property. Railway 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 and efficiency of Railway's operations. The Commission grants Railway a license to enter all portions of the Property as necessary to perform such work; Railway shall be required to repair any damage caused as the result of Railway's performance of any such maintenance. The Commission shall have no liability to Railway for maintenance of portions of the Property outside of the Freight Easement Property and Railway'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 to the extent they result from the negligence or willful misconduct of the Commission or its officers, directors, employees, agents, contractors, or a third party under contract with the Commission, in which case Railway's exclusive remedies are those set forth in Section 2.8.2, 8.3 and 14.2.

5.2.4. Scope of Maintenance. For purposes of this section 5.2, the maintenance and repairs to be performed by Railway include, (a) inspections, testing, track profiling, adjustments, lubricating, welding, re-spiking 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, including the regulations set forth in 49 CFR Part 237; (c) weed and brush control and drainage management; and (d) compliance with all mandated reporting. Railway 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) Railway's failure to perform such replacement programs or upgrades does not violate applicable law or Railway's specific maintenance obligations under this Agreement, and (f) Railway 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 except as otherwise specifically required herein.

5.2.5. Concurrently with the execution of this Agreement, the required parties shall execute and deliver to the FRA a written notice of the assignment of track inspection and maintenance responsibilities, and bridge safety management responsibilities, to Railway in accordance with 49 CFR § 213.5(c) and 49 CFR § 237.3. The notice of assignment shall attach a copy of this Agreement.

5.2.6. 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 after completion of its obligations under Section 5.1. As used in this subsection, the term "improvement" excludes improvements made to the Railroad Facilities, unless such improvement is made at the request of a third-party, in which case such third-party shall be responsible for the incremental increase in the maintenance cost thereof. Notwithstanding the foregoing, maintenance responsibility for improvements to public crossings shall be governed by the provisions of Section 3.3.

5.2.7. Security. Railway shall provide a performance bond or alternative security acceptable to the Commission guaranteeing its financial responsibility for the performance of its obligations to provide maintenance of the Freight Easement Property and Railroad Facilities under Section 5.2 and pay all License Fees due under Section 7, in an amount no less than \$160,000, granting the Commission rights as an obligee under the bond or alternative security to cause the performance of these obligations in the event of Railway's failure to do so, after any applicable notice and cure period under the express terms of this Agreement. The exercise of its rights under the bond or alternative security shall not in any way limit the rights of the Commission to terminate this Agreement or any other rights or remedies hereunder or under applicable law.

5.3. Ownership of Track Materials. All track materials installed by Railway 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 Railway from the Railroad Facilities and replaced as part of maintenance, repairs, or capital improvements shall, if the decision to remove them was Railway's, become the property of Railway. Railway 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. Railway 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. Railway shall as soon as practicable clear any obstructions, derailments, and wrecks of railroad equipment on Railroad Facilities.

5.4.1. To the extent that any such obstruction, derailment, or wreck damages the Property, Railway 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 Railway fails to comply with the provisions of this section, the Commission may perform the required action and charge Railway the reasonable cost thereof. Notwithstanding the foregoing, the Commission shall not charge Railway for the restoration of any damage caused by any third party to any bridge if 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 either (A) such damage does not obstruct or interfere with any roadway or other property or facility used by the Commission or another third party, or (B) Railway abandons the subject portion of the Property under Section 8.3. In addition, the Commission shall not charge Railway for the restoration of any damage caused by the

Commission's contractors, or any third party granted access to the Property by specific agreement with the Commission.

- 5.4.3. Nothing in this section is intended to preclude legal action by Railway or the Commission 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. Except as otherwise set forth in this Agreement, Railway will be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by, or related to, Railway's operations.
- 5.5.2. Damage Caused by Commission. Railway will not be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by the Commission, its officers, directors, employees, agents, or contractors.
- 5.5.3. Damage Caused by Acts of God or Other Factors beyond Railway'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 Railway'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 Railway may (but, except to the extent covered by insurance required under this Agreement, 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 Freight Easement Property or Railroad Facilities; or (b) replace, or cause to be replaced, such portion of the Freight Easement Property or the Railroad Facilities. In the event Railway does not elect to repair or replace the damaged or destroyed portion of the Freight Easement Property or Railroad Facilities, Railway shall reasonably cooperate, at its own cost, with the Commission to seek funding and cause the repair or replacement of the damaged or destroyed Railroad Facilities, or otherwise to suspend or abandon Transportation Service or Freight Service over such portion of the Property as the parties mutually agree is necessitated by the damage or destruction.

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 Railway'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, Railway's rights and operations under this Agreement or Railway's Freight Service rights and obligations under federal law or rights under the Freight Easement, unless first approved by the STB. The Commission shall to the extent possible notify Railway as soon as practicable of any such planned or actual interference and take all practicable measures to minimize any such interference.
- 6.1.3. Railway 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 Railway's quote and having Railway 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 Railway'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 Railway shall have the right to so reuse them. Any Railroad Facilities not so reused on the Freight Easement Property shall be disposed of or otherwise removed at the Commission's expense.
- 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 Railway.~~ Railway may, at its cost and expense, modify or improve the Freight Easement Property and Railroad Facilities as needed to accommodate its Freight Service or Transportation Service; provided, however, that Railway first obtains the Commission's written approval of Railway's plans for such modifications and improvements. Subject to the provisions of Section 2.3, which prohibit material interference with Railway's Freight Service rights and obligations under federal law, or rights under the Freight Easement, unless first approved by the STB, Railway's modification or improvement of the Freight Easement Property and Railroad Facilities will be coordinated with existing or future legal public uses of the Property that the Commission may authorize. Railway 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 Railway, 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 Railway requires locations outside of the Freight Easement Property at which to store and maintain equipment and materials necessary for Railway's Freight Operations including a locomotive pit. The parties agree that Railway 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 Railway will need to identify and construct additional maintenance and storage locations on the Property, which Railway may do as needed, subject to applicable law and the Commission's prior written consent (subject to the provisions of Section 2.3, which prohibit material interference with Railway's Freight Service rights and obligations under federal law, unless first approved by the STB).
- 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, Railway shall pay the Commission the following fees as calculated on a quarterly basis:

7.1.1. Freight Service:

- 7.1.1.1. First 750 carloads per quarter: 3% of Railway's handling revenue for such carloads.
- 7.1.1.2. Any additional carloads per quarter: 5% of Railway's handling revenue for such carloads.
- 7.1.1.3. Storage: Fifty percent (50%) of Railway's storage revenue in excess of \$2.00 per car per storage day per quarter.

- 7.1.2. Temporary Use of Laydown Space. Railway may from time to time make arrangements with a temporary shipper by rail for the use of otherwise unused laydown space (open space outside of the Freight Easement Property next to railroad track). The parties agree that Railway will need to identify such temporary laydown locations on the Property, which Railway may do as needed, subject to applicable law and the Commission's prior written consent. Railway 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 Railway or its shipper, the Commission will make available an alternative laydown location reasonably acceptable to Railway and shipper, and Railway shall as soon as practicable discontinue that use of such laydown space and move to the alternative laydown location. Railway shall, in addition to the license fees set forth above, pay the Commission 20% of all revenue (if any) received by Railway by such shippers for such use of such laydown space.

- 7.1.3. Transportation Service: 3% of passenger ticket revenue on ticket revenue up to

\$500,000 per quarter, plus 5% of passenger ticket revenue on ticket revenue over and above \$500,000 per quarter.

- 7.2. Railway shall, within 60 days 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. Railway 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. Subject to Section 7.4, Railway shall, within 60 days following the end of each calendar quarter, pay the Commission all amounts due the Commission for the prior calendar quarter. Railway's obligation to pay license fees is specifically acknowledged to be secured by the security required under Section 5.2.7.
- 7.4. The requirement to pay the license fees for Freight Service as set forth in Section 7.1.1 will begin with the first quarter after the first anniversary of Phase I of this Agreement and the requirement to pay the license fees for Transportation Service as set forth in Section 7.1.3 will begin with the first quarter after the first anniversary of Phase II of this Agreement.

8. Term and Termination

- 8.1. This Agreement shall become effective when fully executed and delivered to the parties in accordance with Section 27.4 and shall continue in full force and effect for a period of 10 years unless otherwise terminated as provided herein.

8.2. Termination:

8.2.1. Default:

8.2.1.1. If Railway does not provide regular Freight Service, without the Commission's prior written approval, the Commission may forthwith terminate this Agreement by written notice. As used in this Section 8.2.1.1, the term "regular Freight Service" means revenue train operations for Freight Service consisting of a minimum of (i) 50 freight cars during the first full calendar year of service (beginning January 1); (ii) 150 freight cars during the second calendar year of service; (iii) 200 freight cars during the third calendar year of service; and (iv) 250 freight cars during the fourth calendar year of service and thereafter; or

8.2.1.2. If Railway does not provide regular Transportation Service during Phase II, without the Commission's prior written approval, the Commission may forthwith terminate this Agreement by written notice. As used in this Section 8.2.1.2, the term "regular Transportation Service" means revenue thematic excursion operation, consisting of a minimum of (i) one excursion during the first full calendar year of service after the third anniversary of the receipt of the license to begin Transportation Service (Phase II); (ii)

two excursions during the second calendar year of service after the third anniversary of Phase II; and (iii) five excursions during the third year of service after the third anniversary of Phase II and each year thereafter during the term; provided, that if the Commission fails to make required repairs under Section 5.1 during the first three years of Phase II, the commencement date for "regular Transportation Service" as defined herein shall be extended accordingly. For the avoidance of doubt, the Commission may not terminate this Agreement pursuant to this Section 8.2.1.2 if it has not approved the non-exclusive license to Railway to use the Freight Easement Property and Railroad Facilities to provide Transportation Service on the Freight Easement Property (Phase II).

- 8.2.1.3. Railway 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 Railway specifying such default, the Commission may, at its option, (i) cure the default and, at its option, invoice Railway for the cost thereof, withhold the cost thereof from any amount otherwise due to Railway, or call any available bond or security for the payment thereof; or (ii) 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 Railway begins to cure the default within the 30-day notice period and proceeds diligently to complete such cure.
- 8.2.2. Upon termination of this Agreement, whether through the expiration of the term or by the Parties as contemplated herein, Railway shall cooperate, at its expense, with the transfer or abandonment of Freight Service by the Commission; provided, that no termination shall be effective unless and until the STB has approved such transfer or abandonment.
- 8.2.3. The parties acknowledge that initiation of Freight Services by Railway will require Railway to invest substantial funds in anticipation of future revenues from both Phase I (Freight Service) and Phase II (Transportation Service) service. In recognition of Railway's investment, if after completion of the Study and prior to the grant of a license to provide Transportation Service (Phase II), the Commission determines that the Freight Easement Property should not be used for Freight Service from MP 7.0 to MP 0.0, the Commission will terminate this Agreement and pay Railway \$300,000.
- 8.2.4. The Railway can terminate this Agreement if by one hundred and twenty (120) days after completion of the Study, the Commission has not granted a license pursuant to Section 2.4.1 hereof to provide Phase II Transportation Service over all of the Freight Easement Property.
- 8.2.5. The Commission also agrees that it shall not terminate this Agreement due to Railway'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 over any regularly-used portion of the Freight Easement Property north of any unused segment.

- 8.3. Abandonment. Railway may at any time, in its sole and absolute discretion, immediately and without any liability to the Commission (except as expressly provided herein, including but not limited to Section 8.5): (a) abandon Transportation Service over all or such portion of the Property as Railway deems appropriate, and (b) seek STB approval to abandon Freight Service over all or such portion of the Property as Railway deems appropriate. In the event that Railway seeks to abandon Freight Service, Railway shall provide the Commission with 90 days advance notice of Railway's intention and shall, at its cost, 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 Railway intends to abandon Freight Service. Nothing in this Agreement is intended by the parties to limit these rights on the part of Railway and the Commission agrees that it will cooperate with Railway, at Railway's cost, in Railway's efforts to so abandon any Transportation Service or Freight Service. No such abandonment, transfer of Freight Service operations, or rail banking, shall be effective unless and until the STB has issued its approval thereof. In addition, this Agreement shall not terminate with respect to all or any portion of the Property unless and until the STB has issued such approval.
- 8.3.1. Any abandonment proceedings instituted by Railway shall comply with the abandonment provisions set forth in the Freight Easement, including the railbanking/OFA provisions thereof.
- 8.3.2. To the extent the STB approves abandonment or transfer of Freight Service over all or any part of the Freight Easement Property or Railroad Facilities, this Agreement and any other rights and obligations of Railway to the Commission, shall, at the time of consummation of such abandonment or transfer, terminate with respect to any abandoned or transferred portions of the Freight Easement Property and Railroad Facilities. Upon the effective date of such abandonment, Railway shall (i) assign to the Commission or new operator, as applicable, any Railway Agreements affecting the abandoned or transferred portions of the Freight Easement Property and Railroad Facilities, (ii) quitclaim the abandoned portion of the Freight Easement to the Commission or new operator, as applicable, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this Agreement.
- 8.4. Upon the effective date of termination of this Agreement, Railway shall, if so requested by the Commission, (i) assign to the Commission all Railway 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.
- 8.5. **LIQUIDATED DAMAGES.** The parties each acknowledge that, in the event Railway exercises its right to abandon Freight Service over the entirety of the Freight Easement and the Commission is unable, despite its reasonable efforts, to obtain a new operator to which Freight Service is transferred by the STB, then determining the resulting damages would be impracticable or extremely difficult, because the Commission has undertaken a commitment to operate Freight Service on the Freight Easement Property as a condition

of receipt of funds for purchase of the Property and is incapable of acting as a common carrier itself. Therefore, the parties agree that, in the event Railway exercises its right to abandon Freight Service over the entirety of the Freight Easement and the Commission is unable, despite its reasonable efforts, to obtain a new operator to which Freight Service is transferred by the STB, Railway shall be liable to the Commission in the amount of \$300,000 in liquidated damages and not as a penalty. Notwithstanding the foregoing, Railway will not be liable for any liquidated damages in abandoning Freight Service in connection with (i) the expiration of the term of this Agreement, (ii) the termination of this Agreement by the Commission pursuant to Section 8.2.1 or 8.2.3, or (iii) the termination of this Agreement by Railway pursuant to Section 8.2.4. In the event the Railway exercises its right to abandon Freight Service and has paid the amount due to the Commission pursuant to this Section 8.5, Commission shall not be entitled to any further damages of any kind, whether direct, special or consequential.

9. **Insurance.** Railway 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. **Railway Insurance:** Railway shall, provide and procure at its own cost and expense Railroad Liability insurance and Worker's Compensation insurance (to the extent required by law).

9.1.1. The liability 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 \$250,000 (as that value is periodically adjusted by the Consumer Price Index from and after the effective date of this Agreement.) Prior to the execution of this Agreement, Railway shall provide the Commission with a certificate of insurance on a standard ACORD form, or other form reasonably acceptable to the Commission, substantiating the required coverages and limits set forth herein. Upon request by the Commission, Railway 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 liability insurance policy must include the Commission as an "additional insured" and the property insurance policy shall name the Commission as a loss payee.

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

9.1.3.1. For any claims related to this Agreement, Railway'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 Railway'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 Railway, its directors, officers, employees, or agents, shall be in excess of Commission's insurance and shall not contribute to it.

9.1.3.2. Railway shall comply with all reporting or other provisions of the policies, as necessary to maintain coverage required hereunder, including coverage to be provided to the Commission, its directors, officers, employees, or agents. Railway shall notify Commission in writing of any claims submitted relating to the Property under any policy required under this Agreement.

9.1.3.3. Railway'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 insurance shall cover any statutory liability as determined to be applicable by the compensation laws of the State of California with a limit of at least \$1 million. The Railway represents and the Commission understands that all railroad workers are subject to the FELA and are not covered by Worker's Compensation insurance.

9.1.5. The fact that insurance is obtained by Railway or by the Commission on behalf of Railway will not be deemed to release or diminish Railway's liability, including liability under the indemnity provisions of this Agreement. Damages recoverable by the Commission from Railway 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 Workers' 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 Railway:

Santa Cruz Scenic Railway, LLC

Attn: [TBD]
Email:

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 Railway and the Commission.
- 11.2. Railway shall comply with all reasonable requests of the Commission for representatives of Railway to attend public meetings organized by the Commission to provide non-confidential information about Railway's operations under this Agreement.

12. Claims and Liens for Labor and Material

- 12.1. Railway 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 Railway or at Railway's request. Railway 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. Railway 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 for which it has a license to operate, 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. Railway shall indemnify, defend and hold harmless the Commission from any Loss which is due to or arises from: (a) Railway's operation, maintenance, repair, or use of the Freight Easement Property, Railroad Facilities, any appurtenances thereto, or any part thereof; (b) Railway's provision of Freight Service or Transportation Service; or (c) Railway'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 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 for a period of two years.
- 14.2. The Commission shall indemnify, defend and hold harmless Railway from any Loss to the extent caused by or arising from the negligence or willful misconduct of the Commission, its officers, agents, employees, and contractors. 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 Railway; or (b) damage to or loss or destruction of Railway's equipment, rolling stock and any items being transported on behalf of Railway'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 2.8. The provisions of this section shall survive the termination or expiration of the term of this Agreement for a period of two years.
- 14.3. Each party's obligations to the other under Sections 14.1 and 14.2 respectively are subject to the following conditions: (a) the party seeking indemnification (the "Indemnified Party") shall, following Indemnified Party's discovery of a Loss for which Indemnified Party seeks indemnification, or of circumstances that may reasonably result in such a Loss, promptly deliver notice to the other party (the "Indemnifying Party") describing such Loss or circumstances, (b) the Indemnified Party shall make reasonable efforts to mitigate the effect of such Loss or circumstances, (c) the Indemnified Party shall give the Indemnifying Party the opportunity to control the defense against such Loss, and shall not compromise or settle such Loss without the Indemnifying Party's prior written consent, and (d) in no event shall either party be liable to the other for consequential, incidental, indirect or punitive damages, even if notified of the possibility of such damages, unless such damages are included in any third-party claim against the Indemnified Party.

15. **Removal of Railway Equipment, Personnel, and Property upon Termination of Agreement.** Prior to, or upon, the termination of this Agreement, Railway 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 Railway to as good a condition as they were after the completion of rehabilitation and repairs by the Commission, including the projects specified in Section 5.1, if completed (or, if the Commission

does not complete rehabilitation and repairs, as good a condition as they were in at the beginning of this Agreement), excepting normal wear and tear. If Railway fails to do the foregoing, the Commission may do such work at the cost and expense of Railway. Railway 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. Railway 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 the commencement date of its operations on the Freight Easement Property, except to the extent Railway's activities exacerbate the contamination of any such pre-existing Hazardous Materials.
- 16.2. Railway 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), Railway shall not treat or dispose of Hazardous Materials on the Freight Easement Property or Railroad Facilities. Railway shall not release any Hazardous Materials on or at the Freight Easement Property or Railroad Facilities, including through any drainage or sewer systems. Railway assumes all responsibility for the investigation and cleanup of any such release or exacerbation by Railway 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 Railway. Railway 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 the commencement date of its operations on the Freight Easement Property, and the expiration or sooner termination of this Agreement, and related to Railway'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. Railway 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, Railway shall obtain any necessary permits, notify the proper authorities, and provide the Commission with copies of any such permits and notifications. Railway 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 the commencement date of its operations on the Freight Easement Property, 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 Railway 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 Railway 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, Railway 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 Railway.
17. **Trespassers and Dangerous Conditions.** Railway shall not be required to take any action or incur any expense (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 Railway personnel. If Railway becomes aware of any dangerous conditions on or about the Property, Railway 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; except as otherwise expressly provided herein, consent shall be deemed to have been withheld if a party fails to consent to the other party within 30 days of having been given written notice of 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, Railway 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 Santa Cruz County, California, with regard to claims arising under California law, and Santa Clara County, with regard to claims arising under Federal law, 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, directly or indirectly, forces beyond its control, including, without limitation, acts of God, natural disasters, atmospheric disturbance, earthquake, fire, flood, tornado, typhoon, tide, tsunami, lightning, storms, soil subsidence, landslides, rock slides, volcanic activity, governmental action or inaction, change of law or regulation, nuclear or chemical contamination, pressure waves from devices travelling at supersonic speeds, strikes, boycotts or other labor disturbances, labor shortage, plague, epidemic, quarantine, riots, invasion, demonstrations or other civil disturbances, sabotage, explosions, insurrections, war (declared and undeclared), terrorism, or threats of terrorism; provided, however, that performance shall only be excused for as long as the disruption persists and any delay resulting therefrom.
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 Railway 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 Railway 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.

SANTA CRUZ SCENIC RAILWAY, LLC

By: _____

SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION

By: _____

PUBLIC REVIEW DRAFT

EXHIBIT A

Map of Railroad Facilities

PUBLIC REVIEW DRAFT

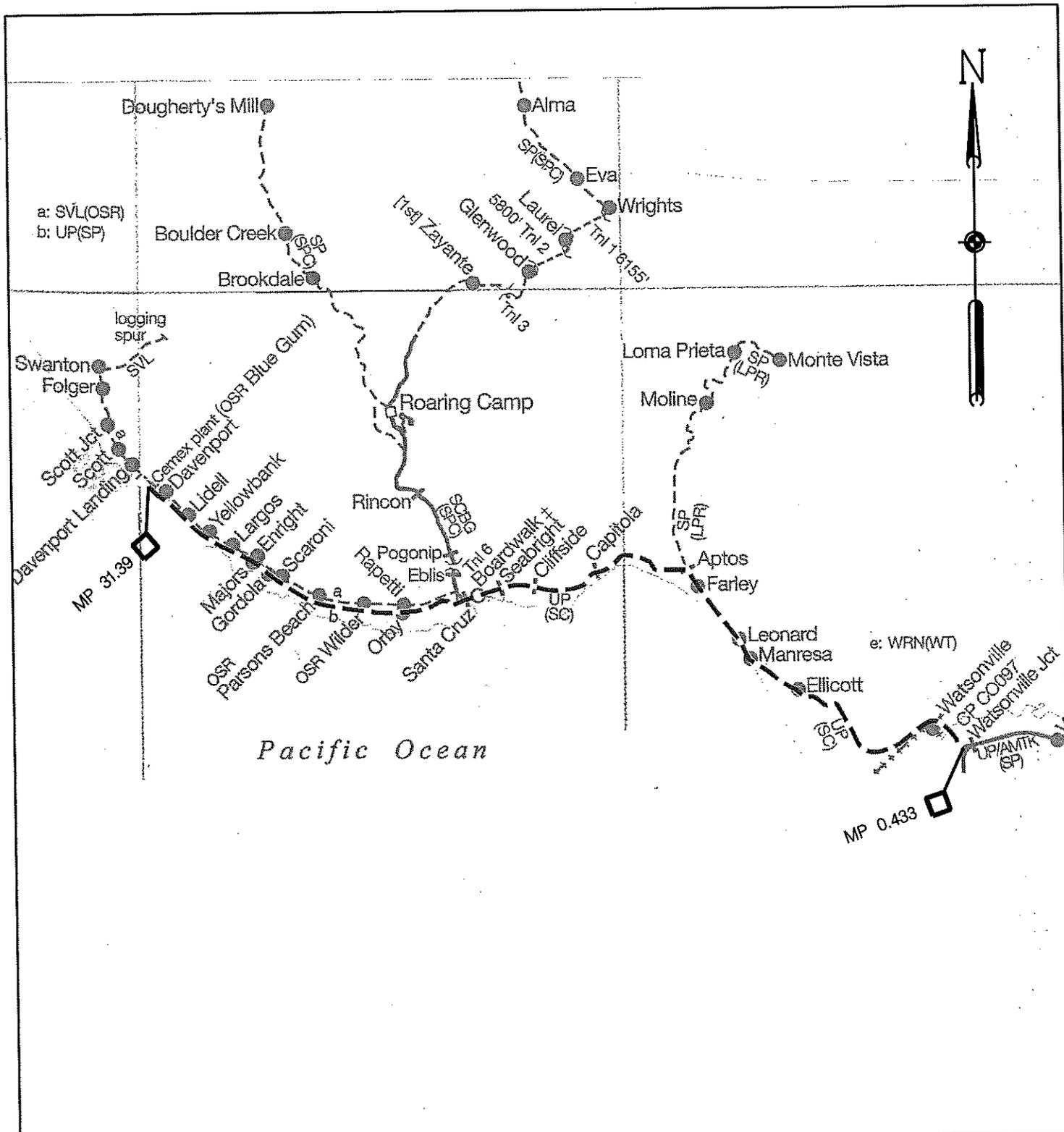


EXHIBIT B

Permitted Rail Car Storage Locations

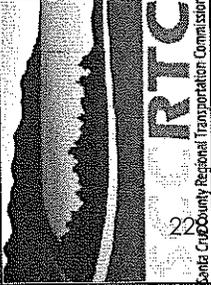
PUBLIC REVIEW DRAFT

Santa Cruz Branch Rail Line Rail Car Storage (Map A)



Legend

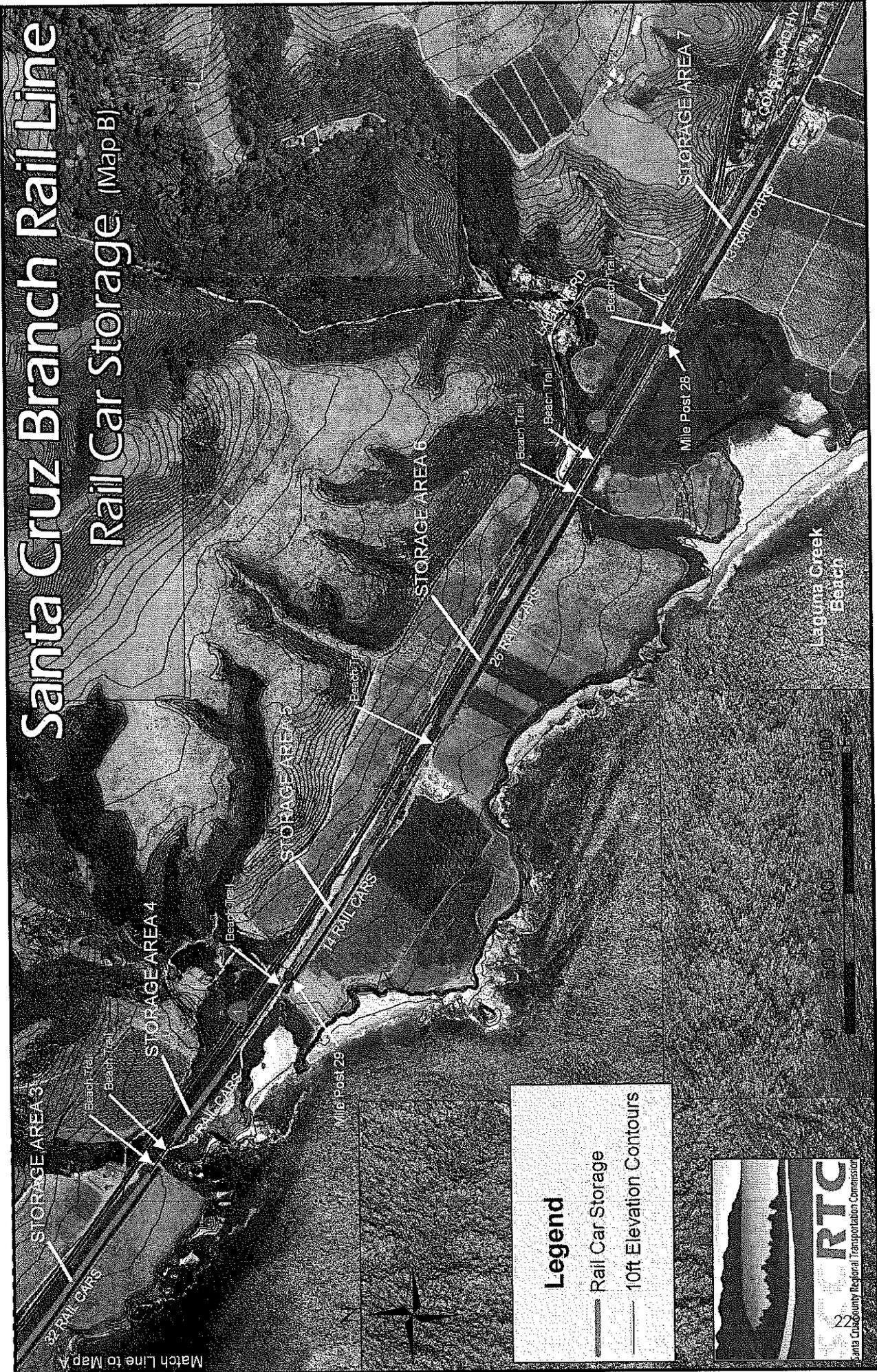
-  Rail Car Storage
-  10ft Elevation Contours



RTC
Santa Cruz County Regional Transportation Commission

Santa Cruz Branch Rail Line

Rail Car Storage (Map B)



Match Line to Map A

Legend

- Rail Car Storage
- 10ft Elevation Contours

RTIC
Regional Transportation Commission
Santa Cruz County

EXHIBIT C

Railway Agreements

PUBLIC REVIEW DRAFT

Assigned by U.P.R.R. Real Estate Department		MILE POST NO. 0.433		PROJECT FOLDER		PURPOSE		MANAGER		CITY		ST SUBDV		MP START		ANNUAL AMT.		DISPOSITION		CONTAINED							
PROJECT	FOLDER	# of ENCL	LEG STAT	PARTY NAME	PURPOSE	COUNTY	CITY	ST	SUBDV	MP START	ANNUAL AMT.	DISPOSITION	CONTAINED	PROJECT	FOLDER	# of ENCL	LEG STAT	PARTY NAME	PURPOSE	COUNTY	CITY	ST	SUBDV	MP START	ANNUAL AMT.	DISPOSITION	CONTAINED
186878	207416	158035	1	CITY OF WATSONVILLE	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	MoJave	102.62	\$0	Assigned	Totally	190837	202098	161195	1	SANTA CRUZ CITY OF	Warning Devices - Public Roadway	Santa Cruz	Watsonville	CA	SANTA CRUZ BRANNC	119.4	\$0	Assigned	Totally
200154	515723	1	1	SANTA CLARA COUNTY OF	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	APTOS	111.04	\$0	Assigned	Totally	200142	515593	1	1	APTOS SEASCAP CORP	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	APTOS	111	\$0	Assigned	Totally
200157	515778	1	1	SANTA CRUZ COUNTY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	108	\$0	Assigned	Totally	200155	515617	1	1	SANTA CRUZ COUNTY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	108	\$0	Assigned	Totally
200328	5158150	1	1	SANTA CRUZ CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	108	\$0	Assigned	Totally	200328	5158150	1	1	SANTA CRUZ CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	108	\$0	Assigned	Totally
200157	515778	1	1	SANTA CRUZ COUNTY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	108	\$0	Assigned	Totally	200157	515778	1	1	SANTA CRUZ COUNTY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	108	\$0	Assigned	Totally
207379	5163007	1	1	SANTA CRUZ PORT DISTRI	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	SEABRIGHT	119.05	\$0	Assigned	Totally	207379	5163007	1	1	SANTA CRUZ PORT DISTRI	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	SEABRIGHT	119.05	\$0	Assigned	Totally
210408	5189267	1	1	SANTA CRUZ COUNTY OF	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	CLIFFSIDE	118.1	\$0	Assigned	Totally	210408	5189267	1	1	SANTA CRUZ COUNTY OF	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	CLIFFSIDE	118.1	\$0	Assigned	Totally
211518	5012360	1	1	TOBEYS RASP SERVICE INC	Track	Santa Cruz	Watsonville	CA	SP Route Code EC	80.7	\$0	Assigned	Totally	211518	5012360	1	1	TOBEYS RASP SERVICE INC	Track	Santa Cruz	Watsonville	CA	SP Route Code EC	80.7	\$0	Assigned	Totally
235232	5191872	2	2	RESETAR, ANTHONY P / PLO, MARY	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	102	\$0	Assigned	Totally	235232	5191872	2	2	RESETAR, ANTHONY P / PLO, MARY	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	102	\$0	Assigned	Totally
238757	5182045	1	1	CALIFORNIA UNIVERSITY REGENTS	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	109.6	\$0	Assigned	Totally	238757	5182045	1	1	CALIFORNIA UNIVERSITY REGENTS	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	109.6	\$0	Assigned	Totally
239770	5161499	1	1	SULLIVAN, R & A.	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	109.07	\$0	Assigned	Totally	239770	5161499	1	1	SULLIVAN, R & A.	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	109.07	\$0	Assigned	Totally
245617	5171658	1	1	GARCIA, R.L.	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	115.6	\$0	Assigned	Totally	245617	5171658	1	1	GARCIA, R.L.	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	115.6	\$0	Assigned	Totally
245622	5212398	1	1	HOLCOMB CORPORATION	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	110.54	\$134.98	Assigned	Totally	245622	5212398	1	1	HOLCOMB CORPORATION	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	110.54	\$134.98	Assigned	Totally
252817	5157272	1	1	LORENZ, G. ILO & ZEHER, K	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EL	86.51	\$10	Assigned	Totally	252817	5157272	1	1	LORENZ, G. ILO & ZEHER, K	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EL	86.51	\$10	Assigned	Totally
253187	5184589	1	1	SANOVAL SALVADOR	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EL	80.2	\$0	Assigned	Totally	253187	5184589	1	1	SANOVAL SALVADOR	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EL	80.2	\$0	Assigned	Totally
256902	5192311	1	1	SANTA CRUZ COUNTY CA	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	117.1	\$0	Assigned	Totally	256902	5192311	1	1	SANTA CRUZ COUNTY CA	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	117.1	\$0	Assigned	Totally
257860	5211909	1	1	SANTA CRUZ CITY OF	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	120.41	\$80	Assigned	Totally	257860	5211909	1	1	SANTA CRUZ CITY OF	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SP Route Code EC	120.41	\$80	Assigned	Totally
263044	5708852	1	3	CASCADE REFRIGERATED NORTHERN CALIF., INC.	Track: Track Lease (Non-Haz)	Santa Cruz	Watsonville	CA	SP Route Code EC	102.01	\$2,160	Assigned	Totally	263044	5708852	1	3	CASCADE REFRIGERATED NORTHERN CALIF., INC.	Track: Track Lease (Non-Haz)	Santa Cruz	Watsonville	CA	SP Route Code EC	102.01	\$2,160	Assigned	Totally
367101	207254	1	1	MARTINELLI & COMPANY	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SYSTEM	0	\$130.48	Assigned	Totally	367101	207254	1	1	MARTINELLI & COMPANY	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	SYSTEM	0	\$130.48	Assigned	Totally
410634	5015548	2	2	DEL MAR FOOD PRODUCTS CORPORATION	Track: Industry Track Agreement	Santa Cruz	Watsonville	CA	WATSONVILLE	103.1	\$0	Assigned	Totally	410634	5015548	2	2	DEL MAR FOOD PRODUCTS CORPORATION	Track: Industry Track Agreement	Santa Cruz	Watsonville	CA	WATSONVILLE	103.1	\$0	Assigned	Totally
418232	5000771	2	2	PISTA, B.	Track	Santa Cruz	Watsonville	CA	WATSONVILLE	103.1	\$0	Assigned	Totally	418232	5000771	2	2	PISTA, B.	Track	Santa Cruz	Watsonville	CA	WATSONVILLE	103.1	\$0	Assigned	Totally
445702	5087624	1	1	CAPITOLA, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally	445702	5087624	1	1	CAPITOLA, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally
455863	5080177	3	3	COUNTY OF SANTA CRUZ	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally	455863	5080177	3	3	COUNTY OF SANTA CRUZ	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally
45723	5087624	1	1	CAPITOLA, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally	45723	5087624	1	1	CAPITOLA, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally
457497	5091557	1	1	CAPITOLA, CITY OF	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	DAVENPORT	112.8	\$	Assigned	Totally	457497	5091557	1	1	CAPITOLA, CITY OF	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	DAVENPORT	112.8	\$	Assigned	Totally
465104	508176	1	1	SANTA CRUZ COUNTY OF	Warning Devices - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally	465104	508176	1	1	SANTA CRUZ COUNTY OF	Warning Devices - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally
514595	211721	76287	1	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally	514595	211721	76287	1	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally
655249	227449	211468	2	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally	655249	227449	211468	2	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally
655250	227485	211469	3	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally	655250	227485	211469	3	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally
655251	228377	211470	1	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally	655251	228377	211470	1	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally
690996	242123	232126	1	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally	690996	242123	232126	1	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	APTOS	112.8	\$	Assigned	Totally
702125	253471	252215	1	SILVER CREEK YUBA I, LLC	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	WATSONVILLE	9.57	\$0	Assigned	Totally	702125	253471	252215	1	SILVER CREEK YUBA I, LLC	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	WATSONVILLE	9.57	\$0	Assigned	Totally
702128	253472	252218	1	SILVER CREEK YUBA I, LLC	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	WATSONVILLE	9.57	\$0	Assigned	Totally	702128	253472	252218	1	SILVER CREEK YUBA I, LLC	Crossing - Private Roadway	Santa Cruz	Watsonville	CA	WATSONVILLE	9.57	\$0	Assigned	Totally
716300	259047	267911	5	CALIFORNIA, STATE OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	DAVENPORT	31.28	\$0	Assigned	Totally	716300	259047	267911	5	CALIFORNIA, STATE OF	Crossing - Public Roadway	Santa Cruz	Watsonville	CA	DAVENPORT	31.28	\$0	Assigned	Totally
719596	261655	271611	1	SANTA CRUZ, BIG TREES & PACIFIC RAILWAY	Trackage Rights Interchange Agreement	Santa Cruz	Watsonville	CA	DAVENPORT	31.28	\$0	Assigned	Totally	719596	261655	271611	1	SANTA CRUZ, BIG TREES & PACIFIC RAILWAY	Trackage Rights Interchange Agreement	Santa Cruz	Watsonville	CA	DAVENPORT	31.28	\$0	Assigned	Totally

EXHIBIT D

Form of Railway Right of Entry Agreement

[To be provided by operator]

PUBLIC REVIEW DRAFT

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT (the "Agreement") is made and entered into as of this ____ day of _____, 20__ by and between _____ (hereinafter called "Contractor"), and **SANTA CRUZ SCENIC RAILWAY, LLC** (hereinafter called "Railroad"). Contractor and Railroad are each at times referred to herein as a "Party" and collectively as the "Parties".

The Parties hereto agree as follows:

Section 1. NOTICE OF COMMENCEMENT OF WORK-FLAGGING

Contractor agrees to notify the Railroad at least 72 hours in advance of Contractor commencing its work. Flagging services by Railroad will be required for any work by Contractor in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. Upon receipt of notice the Railroad will determine and inform Contractor whether Contractor will need to implement any special protective or safety measures. If the Railroad provides any flagging or other services Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein.

Section 2. NO INTERFERENCE WITH RAILROAD'S OPERATION

No work performed by Contractor shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in advance by the Railroad. Nothing shall be done or suffered to be done by Contractor at any time that would in any manner impair the safety thereof. When not in use, Contractor's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

Section 3. MECHANIC'S LIENS

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of the Railroad for any such work performed.

Section 4. COMPLIANCE WITH LAWS

In the progression of work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. Contractor shall use only such methods as are consistent with safety, both as concerns Contractor, Contractor's agents and employees, the officers, agents and employees, and property of the Railroad and the public in general. Contractor (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration ("FRA") regulations shall be followed when work is performed on the Railroad's property. If any failure by Contractor to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, Contractor shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. Contractor further agrees in the event of any

such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

Section 5. SAFETY INSTRUCTIONS

Safety of personnel, property, rail operations and the public is of paramount importance in the progression of the work pursuant to this Agreement. As reinforcement and in furtherance of overall safety measures to be observed by Contractor (and not by way of limitation), the following special safety rules shall be followed:

- a). Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. Contractor shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration ("OSHA") reportable injuries occurring to any person that may arise during the work performed on the job site. Contractor shall have a non-delegable duty to control its employees, while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug, narcotic or other substance that may inhibit the safe performance of work by the employee.
- b). The employees of Contractor shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective work boots and at least the following protective equipment:
 - (1) Protective headgear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Contractor's or subcontractor's company logo or name;
 - (2) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and
 - (3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.
- c). All heavy equipment provided or leased by Contractor shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Contractor's or any of its subcontractor's equipment is unsafe for use on the Railroad's right-of-way, Contractor, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

Section 6. INDEMNITY

- a). As used in this Section, "Railroad" includes its owner, its operator and all of their respective officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Railroad's officers, agents, and employees, Contractor's officers, agents, and employees, as well as

any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Contractor's property, damage to the roadbed, tracks, equipment, or other property of the Railroad, or property in its care or custody).

- b). As a major inducement and in consideration of the license and permission herein granted, Contractor agrees to indemnify and hold harmless the Railroad from any Loss which is due to or arises from Contractor's work performed under this Agreement, its breach of the agreement or its failure to observe the health and safety provisions herein, or any activity, omission or negligence arising out of its performance or nonperformance of this Agreement, except to the extent such Loss is caused by Railroad's gross negligence or willful misconduct.

Section 7. INSURANCE

Contractor shall at all times during its entry, use and occupancy of the right-of-way keep and maintain in full force and effect (a) commercial general liability insurance coverage of \$2,000,000 on ISO form CG 00 01, or equivalent, for (i) bodily injury and death, property damage and personal injury; and (ii) contractual liability; (b) business automobile and/or trucker's liability insurance coverage, including coverage for owned, hired and non-owned automobile liability, on ISO form CA 00 01, or equivalent, with an inclusive limit of not less than \$2,000,000 for any one occurrence in respect of the use or operation of motor vehicles owned, leased or controlled by Contractor; and (c) worker's compensation insurance coverage meeting the statutory requirements of the State of California covering all of Contractor's employees. This insurance shall name Railroad as an additional insured, and include a waiver of subrogation by insurer as to Railroad. Evidence of such insurance coverage on an ACCORD form has been or will be provided to Railroad prior to or upon entry.

Section 8. RESTORATION OF PROPERTY

In the event the Railroad authorizes Contractor to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed.

Section 9. MISCELLANEOUS

- a). Each provision, paragraph, sentence, clause, phrase, and word of this Agreement shall apply to the extent permitted by applicable law and is intended to be severable. If any provision, paragraph, sentence, clause, phrase or word of this lease is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the Agreement.
- b). This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts of law principles. Any cause of action ensuing out of the enforcement of these provisions shall be litigated in courts located in Santa Cruz County California.
- c). This Agreement may be modified or amended only by means of a written amendment executed by the Parties hereto.
- d). This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with

respect to such subject matter.

- e). This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. A facsimile or email transmission of a signed copy of this Agreement shall be deemed an original.
- f). The waiver by either Party of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the other Party shall in no way impair the right of the waiving Party to avail itself of any remedy for any subsequent breach thereof.

The Parties hereto have executed this Agreement in duplicate as the date first herein written.

RAILROAD NAME

CONTRACTOR

Printed Name, Title

Printed Name, Title

Signature

Signature

Date

Date

Search website

MEETINGS
& EVENTS

FUNDING &
PLANNING

PROJECTS

SERVICES

ABOUT
THE RTC

CRUZ511

NEWS ARCHIVE

- [2018 \(19\)](#)
- [2017 \(22\)](#)
- [2016 \(33\)](#)
- [2015 \(31\)](#)
- [2014 \(32\)](#)
- [2013 \(62\)](#)
- [2012 \(46\)](#)
- [2011 \(20\)](#)
- [2010 \(2\)](#)

RTC Approves Contract with Progressive Rail

June 15, 2018

The Regional Transportation Commission approved the Administration, Coordination and License Agreement with Progressive Rail for rail operations on the Santa Cruz Branch Rail Line at its June 14 meeting. The agreement will allow Progressive Rail to take over operations from current operator Iowa Pacific and provide freight service to customers in the south county.

With a vote of 8-4, commissioners approved the agreement with two amendments. The first amendment, to section 2.5.1 of the contract, says that rail cars may only be stored in locations approved by the commission. The second amendment was to section 6.3 of the contract and removed language saying the "Railway 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 agreement is structured in two phases. Phase one engages Progressive Rail to provide freight service on the south end of the line to existing freight customers in Watsonville. Winter storm damage and a washout near Harkins Slough prevent access to the remainder of the line until repairs are made.

Phase two of the agreement activates after the RTC completes the Unified Corridor Study and makes a decision on future use of the rail line. If the RTC decides to keep the tracks in place and pursue potential passenger rail service (consistent with existing policy), then the agreement remains in place for 10 more years and will include the entire length of the 32-mile rail line. If the RTC decides to remove the tracks beyond the Watsonville area, then Progressive Rail has the option to pull out of the agreement.

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MOVING YOU FORWARD

January 4, 2018

Proposal for Operator of Rail Service

Mr. Luis Pavel Mendez
Deputy Director
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, CA 95060-3911

Dear Mr. Mendez,

Progressive Rail Incorporated ("PGR") is pleased to submit a Proposal for Operator of Rail Service in accordance with the Santa Cruz County Regional Transportation Commission ("SCCRTC") Request For Proposals ("RFP") dated December 8, 2017. Please accept this letter as our Transmittal Letter and the enclosed booklet ("Booklet") as a detailed supplement of information that summarizes our vision and service plan for the Santa Cruz Branch Line. In preparation for this submittal, we have performed the following activities:

- An onsite inspection of the entire 32 miles of rail;
- An onsite inspection of all the bridges on the Branch Line with the assistance of A.R.E., an Irvine-based railroad bridge engineering firm;
- An onsite inspection of all the railroad crossings with a goal to work with the municipalities to evaluate Locomotive Horn Signal Quiet Zones from Grove Lane Crossing in Capitola to Swift Avenue in Santa Cruz;
- A meeting with the Santa Cruz Beach Boardwalk management to explore partnerships for passenger excursions;
- A meeting with Ms. Christina Watson of the Transit Authority for Monterrey County to understand their plans and progress in developing a fast rail corridor to Salinas and how the Santa Cruz Branch Line might benefit from their experiences and ongoing efforts;
- Meetings with potential freight customers in Watsonville;
- Engaging PGR's existing customers within its six-state network that would consider locating on the Santa Cruz Branch Line;
- Given that PGR is already a major handling carrier for Union Pacific, meeting with representatives to advise them of our aspirations to become the Operator of the Branch Line; and
- Retaining two rail advisors, one of whom is very familiar with the Branch Line operations, to meet with train manufacturers to explore environmentally friendly and California-compliant locomotives and train sets.

Our objective as Operator is to exceed all expectations of the SCCRTC, and to become a meaningful and well-respected company in California. We are passionate about the environment and continuously translate our values into demonstrable actions. For the Branch Line specifically, we appreciate how that railroad can provide meaningful relief to congested highways. Our plan is to aggressively build upon the freight service already in place and to reinstate passenger services to the entire Branch Line. We propose to do all this in a manner that is respectful to and accepted by the citizens of the municipalities where we operate.

It may be helpful for SCCRTC to know that the experiences with regard to operatorship of the Santa Cruz Branch Line are similar to those of the Piedmont & Northern Railway in Gastonia, North Carolina, owned by the North Carolina Department of Transportation ("NCDOT"). In that case, PGR was selected amongst a number of bidders in a competitive RFP and has subsequently become operator of the railroad. We invite SCCRTC to contact the NCDOT directly to discuss the matter. Contact information is provided on page 56 of the Booklet.

In accordance with your RFP, the following information is provided:

1. I, Craig McKenzie, Chairman and Chief Executive Officer of PGR, am authorized to obligate the company for the purposes of this proposal. My signature follows this letter. Our principal office location is 21778 Highview Avenue, Lakeville, Minnesota 55044.
2. As Operator, PGR will open an office in Santa Cruz County. In that office we will have a dedicated, full-time T&E team, reporting to a General Manager on location, and a Marketing Team. The size of the staff in Santa Cruz will expand commensurate with scope and scale of the activities and growth of the Branch Line.
3. PGR plans to operate as the Santa Cruz Scenic Railway ("SCSR").
4. PGR has support functions for the SCSR that are centrally located in its Lakeville headquarters. These functions will include Maintenance of Way, Mechanical, Signals & Crossings, FRA Compliance, HS&E, Legal, Finance, Administration, and T&E.
5. From time to time, contractors will be brought in to perform specific works under the direction of our functional team leaders. These contractors will include:
 - a. **MOW:** Railworks, 12740 Lakeland Road Unit B, Santa Fe Springs, CA 90670; et al.
 - b. **Bridge Engineering:** American Rail Engineers, 18 Technology Drive, Suite 205, Irvine, CA 92618
 - c. **Bridge Repairs:** Koppers, 6405 Metcalf, Suite 106, Mission, KS 66202; Ames Construction, 8333 E. Hartford Drive, Scottsdale, AZ 85255; et al.
 - d. **Signals & Crossings:** Midsouth Rail Services, 601 Old Sterlington Road, Sterlington, LA 71280.
6. All correspondence can be sent to me, Craig McKenzie, with my email address as cmckenzie@progressiverail.com
7. The structure of PGR and the relationship of a new, wholly-owned subsidiary, Santa Cruz Scenic Railway LLC, is presented on page 54 of the Booklet. The organization of the team and reporting relationships between key personnel on the ground in Santa Cruz and support staff is presented on page 55 of the Booklet. We anticipate the number of staff permanently located in Santa Cruz to expand significantly as progress is made in growing freight and passenger service. Our executive management who will oversee all the activities of SCSR are provided on page 8 of the Booklet.

8. PGR is fully compliant with all federal and state regulations. Our safety record is provided on page 18 of the Booklet. Our FRA and CPUC Compliance is provided on page 26 of the Booklet, and our forward-looking Safety & Compliance Plan is provided on page 35 of the Booklet.
9. Our Mobilization Plan is provided on page 57 of the Booklet.
10. Our Service Plan is provided on pages 27 through 47 of the Booklet and comprises a Master Operating Plan, a Freight Plan, a Resource Plan, a Maintenance Plan, a Safety & Compliance Plan, a Quiet Zone Plan, a Marketing Plan, and an Excursion Plan. Within these plans are details to the specific requests listed in the RFP on pages 5 and 6.
11. With regard to compliance with the provisions of the trackage rights agreement with the Santa Cruz, Big Trees & Pacific Railway Co, this confirmation is provided on page 53 of the Booklet.
12. A detailed Maintenance Plan is provided on pages 29 through 34 of the Booklet.
13. A projected 5-year financial plan for the SCSR is provided on pages 49 through 52 of the Booklet. A high-level summary of PGR's financial statements can be found on pages 14 through 17 of the Booklet. PGR's historical financial statements can be provided upon further request. For information, PGR carries \$50 million of liability insurance.
14. Concerning revenue sharing between PGR and SCCRTC, our recommendation is provided on page 53 of the Booklet. In essence, we are receptive to the terms of the previous agreement with IPH, but are open to further discussions with the SCCRTC and have a few provisos stated in our recommendation.
15. PGR can provide any number of references of parties willing to endorse our company. In response to a request for at least three references, PGR is pleased to submit four references provided on page 56 of the Booklet.
16. PGR acknowledges that all contents of this Transmittal Letter and supplemental Booklet can be made public.

In closing, PGR is very pleased to be considered as a candidate to become the Operator of Rail Service for the Santa Cruz Branch Line. Please do not hesitate to contact us if there are any questions.

Respectfully,



Chairman & Chief Executive Officer

Copy to Dave Fellon, Owner of Progressive Rail Inc.



PROPOSAL FOR OPERATOR OF RAIL SERVICE

January 4, 2018



TO THE MEMBERS OF THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION

Dear Members of the SCCRTC,

The difference between Progressive Rail Incorporated ("PGR") and other short line holding companies is our commitment to wholly focus on taking the long range view by way of investing, reinventing and creating quantifiable value back to our customers, communities and Class One railroads. PGR works day and night to allow stakeholders to benefit from the relationship and we believe this allows us to stand out amongst the competition. At PGR, we grow railroads -- through development and supporting customers of our service.

Progressive Rail is a proven turnaround artist that is wildly passionate about reconnecting the local citizens, businesses both big and small, and, our environment with a passionate partner that is well prepared to make history in a good way with the Santa Cruz County Regional Transportation Commission ("SCCRTC").

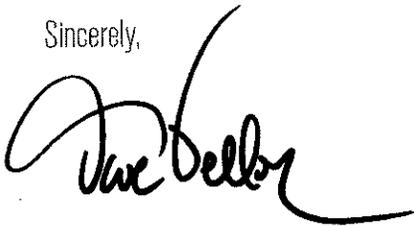
It's those exact tracks that PGR is at the ready to create a new legacy. For sure executing the successful resurrection of a underutilized railroad is precisely where PGR excels, having taken over several lines from the brink of abandonment which are now thriving conduits of commerce. In just one of more than a dozen examples is PGR's Wisconsin Northern Railroad where we acquired 37 miles of two rusty coat hangers in the mud and rotted ties that today generates over 70,000 rail cars a year rolling over some of the most heavy duty track in the State of Wisconsin.

Creating a compelling freight proposition goes well beyond rail service. Oftentimes we have found that the effort needs to be catalyzed, which is why PGR invests in the needs of shippers that includes real estate, securing warehouses for storage and transloading, and constructing equipment to facilitate work flow. Then, with its in-house expertise, PGR can help customers navigate the Class One railroads to efficiently and cost-effectively connect to the rest of North America.

Looking westward to California, PGR has always been highly interested in this geography and is why we are most interested to work with the SCCRTC to make a compelling and environmentally beneficial business case of how both freight and a renewed passenger service commitment can occur with a true level of professionalism and safety.

Not that long ago in railroad history the Suntan Special was a prime example of how carriers like the Southern Pacific Transportation Company were by far the absolute best conduits to commerce and the goodwill ambassadors for the communities served. History can and will repeat itself in a good way; let's work together to bring the good back along with the people too.

Sincerely,



DAVE FELLON
OWNER



Dear Members of the SCCRTC:

Five years ago the SCCRTC made a forward-looking and wise decision to purchase the Santa Cruz Branch Line. Today that rationale is even more compelling.

The Branch Line is perfectly situated to be further developed for freight and passengers. Highways in Santa Cruz county are congested at peak times and PGR can directly help relieve that stress by leveraging the rail infrastructure to take a number of trucks, commuters, and tourists off the highways. But it doesn't stop here.

PGR has an unblemished record spanning over two decades of providing comprehensively customer-focused freight rail service and fostering industrial development through direct investments in rail, real estate, buildings and equipment. Beginning in Watsonville, PGR is ready to enable the Branch Line to reach its full potential in freight.

PGR has successfully produced passenger excursions including Polar Express, Thomas the Tank, and other family oriented events. PGR also has an exclusive, close-knit alliance with American Heritage Railways the licensor for Polar Express. PGR's mission is to produce thematic shuttles and excursions that transport tourists to the Boardwalk beach area, including a revival of the spectacular Suntan Special, as well as launch westward to Davenport to showcase the natural beauty that includes sunsets on the cliffs above or picnics down on San Vicente Beach, Secret Beach, Bonny Doon, and Shark Fin Cove.

How we conduct business sets us apart. We live by our high standards on health, safety and the protecting the environment. We invest heavily in rail integrity and FRA compliance. For Santa Cruz urban areas we will pay particular attention to horn signal noise and the carbon footprint of our locomotives. For excursions we will orchestrate remarkable rail journeys and destinations that, in the case of Davenport, includes participation or oversight in cliff and beach safety, security, and waste management. Last, we welcome participating or even championing the Rail Trail project.

In closing, PGR aims to create a new positive legacy for the Branch Line and Santa Cruz county. All inquiries related to this proposal may be directed to me at 218.324.2001 or cmckenzie@progressiverail.com.

Sincerely,



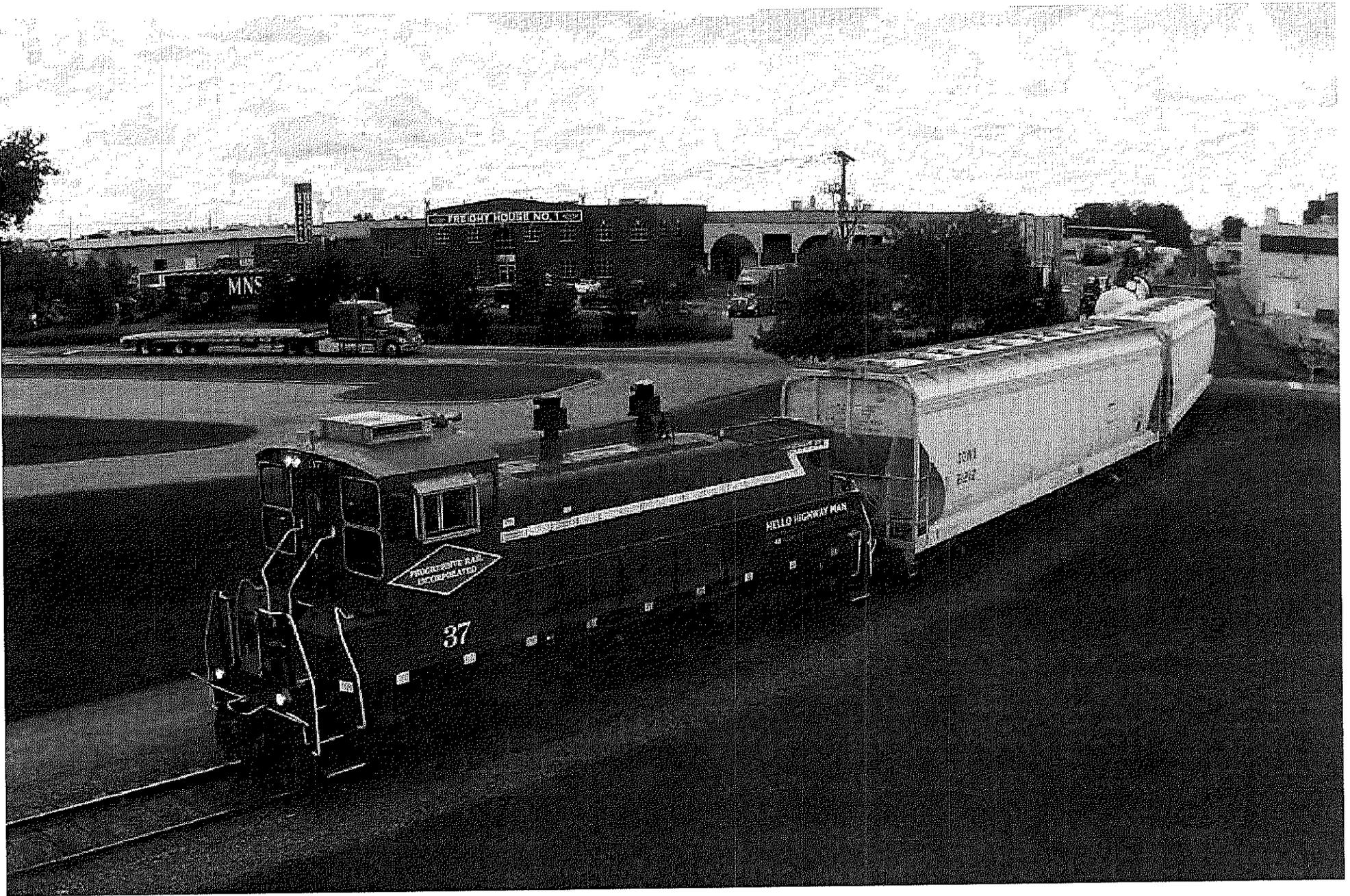
CRAIG MCKENZIE
CHAIRMAN & CEO



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OVERVIEW OF PGR



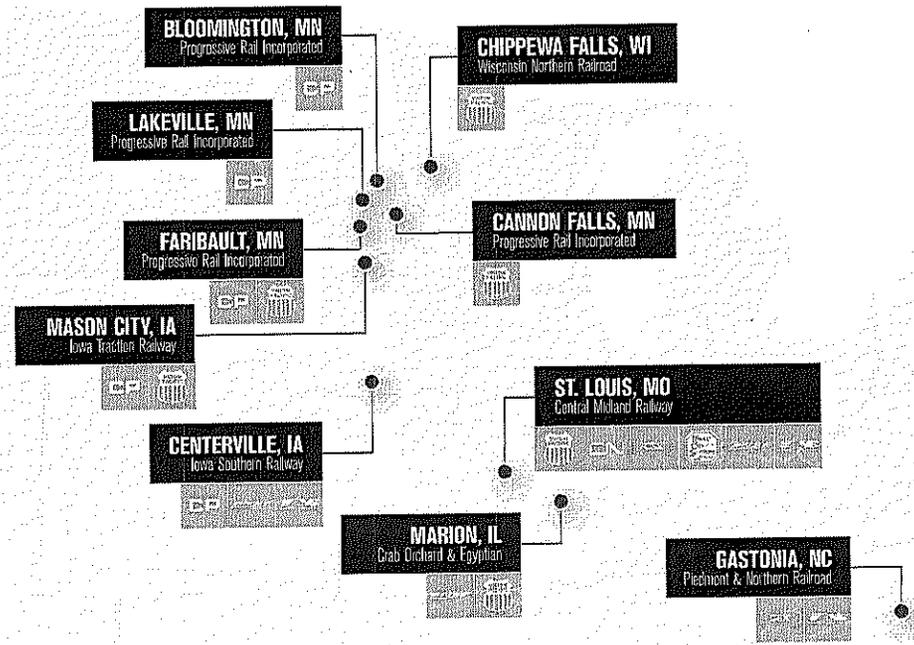
OUR HISTORY

- Progressive Rail Incorporated (PGR) is a shortline railroad operating several separate shortlines in Minnesota, Missouri, Illinois, Iowa, North Carolina, and Wisconsin.
- Headquartered in Lakeville, Minnesota, PGR was established in 1996 and expanded its operations in 2001 to include a second Minnesota line.
- In 2004, PGR leased 37 miles of nearly abandoned track running north from Chippewa Falls, WI and transformed it into the Wisconsin Northern Railroad, PGR's flagship asset.
- In 2007, PGR acquired the Central Midland Railway operating 60 miles of track from St. Louis to Union, MO.
- In 2010, PGR acquired the Iowa Traction Railway Company in Mason City, Iowa which is the last freight railroad in the United States that draws its power source from overhead electric lines.
- In 2012, the Crab Orchard and Egyptian Railroad in Marion, IL was added to the PGR family and in 2016 PGR expanded operations in southern Iowa with the acquisition of the Iowa Southern Railway operating out of Centerville, IA.
- In the summer of 2017 PGR made a move down south and is now operating the Piedmont and Northern Railroad in Gastonia, NC.
- Across PGR's network, we have seven rail and truck served warehouse storage facilities totaling over 800,000 square feet to facilitate our transloading businesses.
- This year PGR launched its newly branded business "Red Diamond Processing and Packaging" that focuses on handling and modifying food byproducts primarily for use as animal feed.
- Our philosophy has always been to provide a comprehensive rail service to our valued customers on our entire rail network. PGR many times takes the lead by focusing on economic development opportunities, including identifying Greenfield multi-modal transloading and storage facility projects for our existing and new customers, working with local municipalities and state governments to restore or build new infrastructure, and identifying ways to go beyond rail and help enterprises with their logistics needs.



PGR AT A GLANCE

- 300 miles of track owned and leased
- Primarily a handling carrier for Union Pacific and Canadian Pacific, but also interchange with BNSF, CSX, KCS, CN, and NS
- 75,000 carloads of freight per year
- Seven warehouses totaling 800,000 square feet
- 170 team members
- 2017 EBITDA (cash flow from operations) is \$14 million
- Deployed \$8 million in 2017 of capital into maintenance, upgrades, and new projects
- Current run rate EBITDA based on Q4 2017 is \$18 million per year
- Long-term debt is \$18 million
- \$50 million in liability insurance with XLCatlin, Indian Harbor Ins Co.



PGR AT A GLANCE

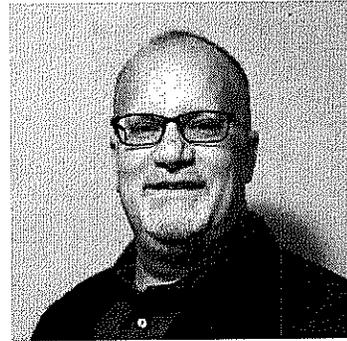


CRAIG MCKENZIE

CHAIRMAN & CEO

218-324-2001

cmckenzie@progressiverail.com



DUSTIN HEICHEL

MANAGING DIRECTOR, OPERATIONS

851-808-9488

dheichel@progressiverail.com

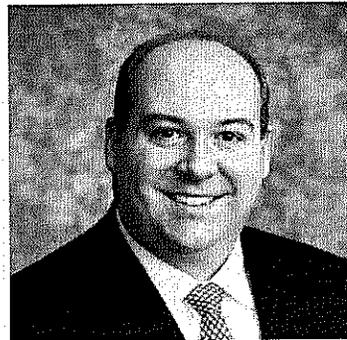


JEREMY URLACHER

MANAGING DIRECTOR, OPERATION SERVICES

612-791-3254

jurlacher@progressiverail.com

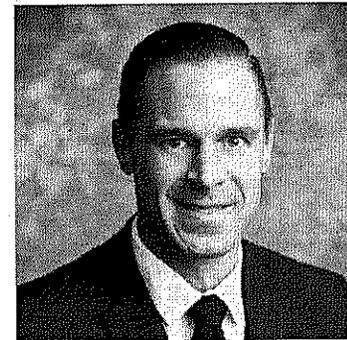


JIM THORNTON

MANAGING DIRECTOR, LEGAL

404-539-5421

jthornton@progressiverail.com

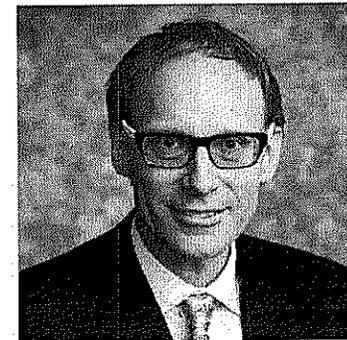


NICK DILLON

MANAGING DIRECTOR, FINANCE

612-385-1423

ndillon@progressiverail.com



DAVE FELLON

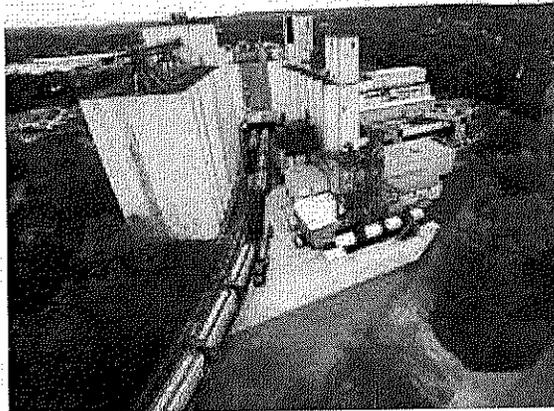
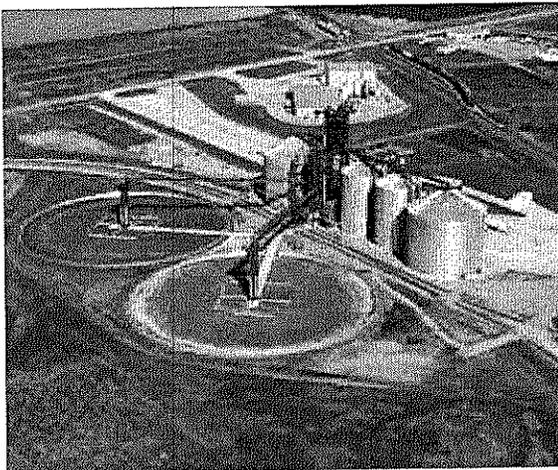
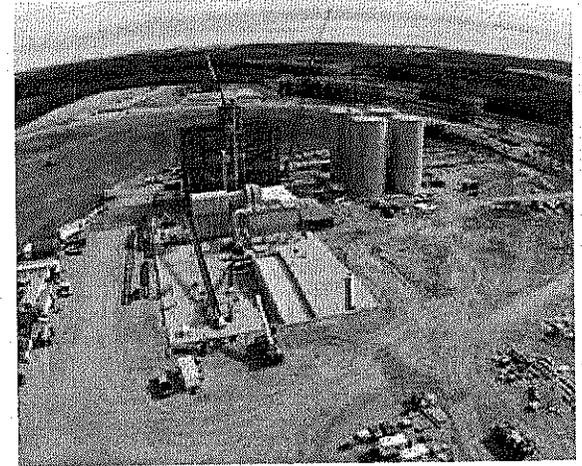
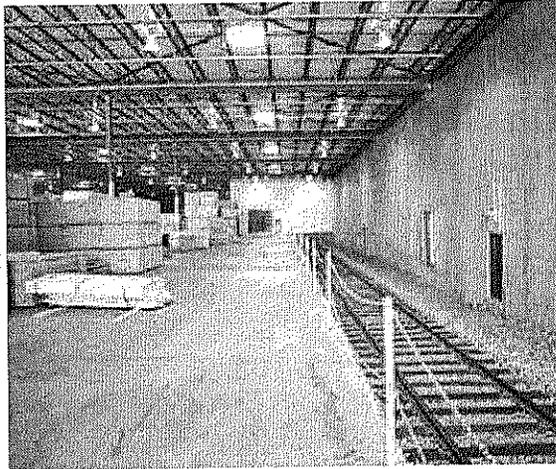
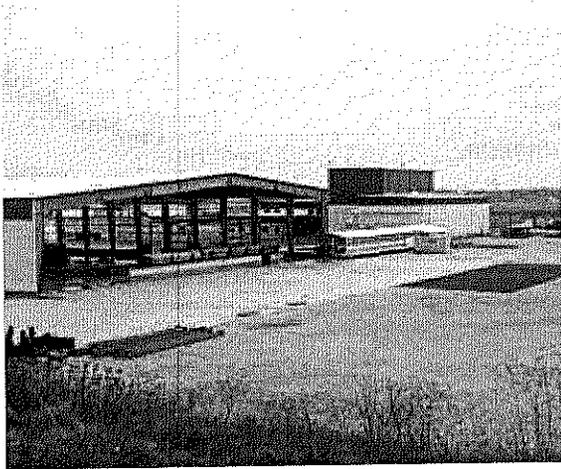
PRESIDENT & OWNER

612-791-3255

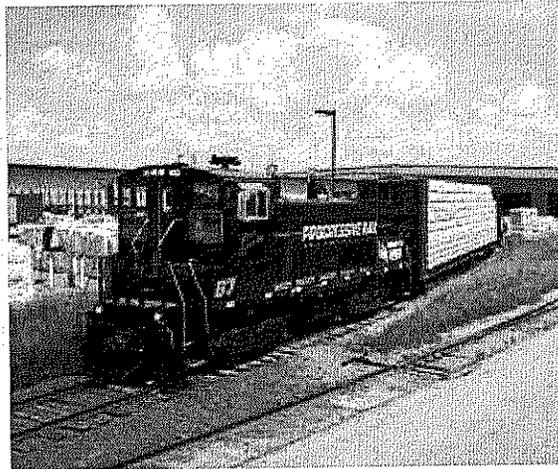
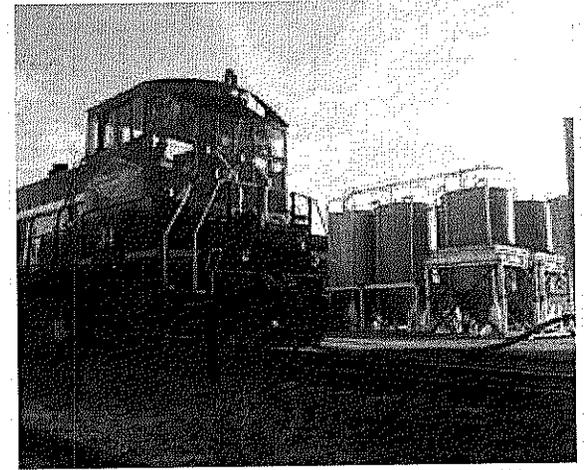
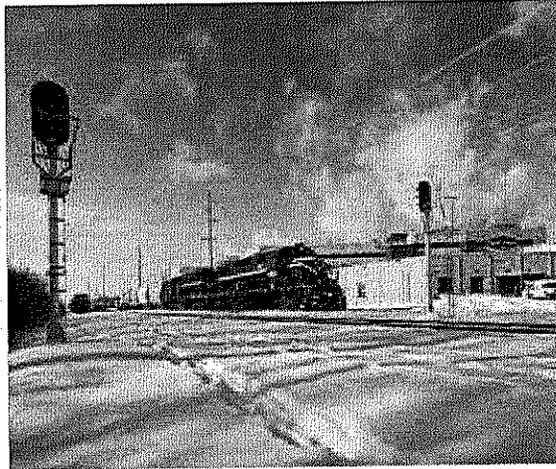
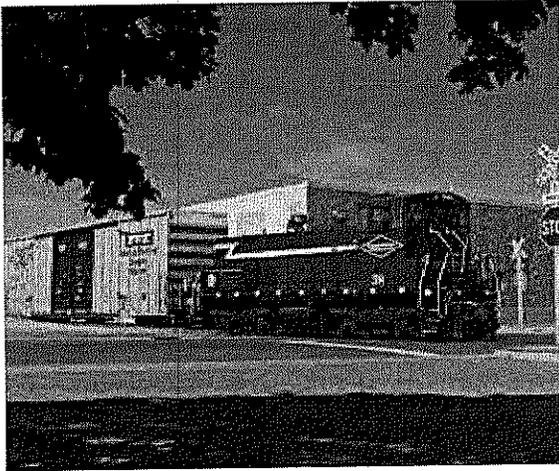
dfeillon@progressiverail.com



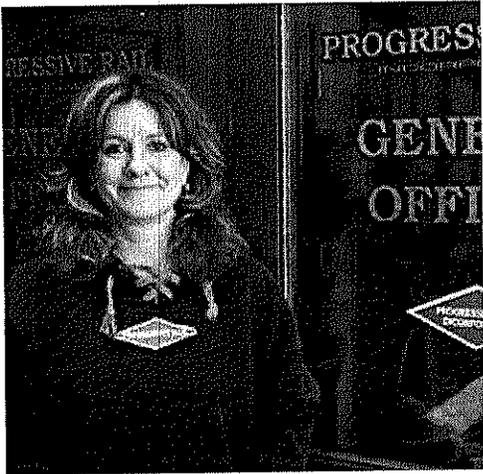
INDUSTRIAL DEVELOPMENT LED BY PGR



DIRECT SERVICE



CUSTOMER SERVICE 24/7/365

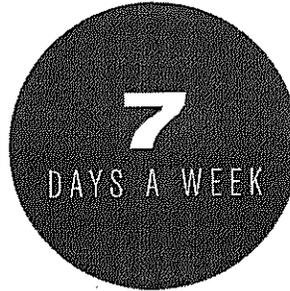


JEANETTE LENTZ
SENIOR MANAGER, OPERATIONS
612-791-5600
jlentz@progressiverail.com

Who doesn't like good service? I know I do and I also appreciate the experience no matter what I am buying rather it be just a tank of gas or a brand new car.

I am in charge of Progressive Rail's Customer Solutions team and we take customer service very seriously. It all starts by knowing what our customers need before they need it and then be there with a backup plan if a supply chain interruption occurs well away from PGR Lines. The bottom line is PGR is truly our shippers life line for both raw materials in and finished goods out to markets throughout North America. That's a big responsibility and frankly we love the challenge.

Finally, and I find this unique to PGR, my department answers to and is incentivized by PGR's Sales & Marketing team which only further underscores how intertwined customer service is with sales. In effect we walk the talk when you hear the phrase "service after the sale".



PASSENGER EXCURSION AND EVENTS

MUTUAL COOPERATION AGREEMENT

THIS MUTUAL COOPERATION AGREEMENT (this "Agreement") is made as of January 3, 2017, by and among Progressive Rail Incorporated ("PGR") and American Heritage Railways, Inc. ("American Heritage"). PGR and American Heritage are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, PGR owns or operates six shortline railroads in five states;

WHEREAS, PGR's business is primarily focused on the transportation, unloading and temporary storage of freight and goods ("Freight Operations");

WHEREAS, American Heritage owns or operates three shortline railroads in three states;

WHEREAS, American Heritage is a tourist rail operator and expert in rail-related special event management ("Excursion Operations"); and

WHEREAS, the Parties intend to engage in cooperation on matters of mutual interest and concern, including helping the other Party with its Freight Operations or Excursion Operations, as applicable.

AGREEMENTS

NOW, THEREFORE, the Parties agree as follows:

1. PGR agrees that American Heritage will have the exclusive right to conduct Excursion Operations on PGR Railroads, as hereinafter defined. The Parties will negotiate in good faith a mutually satisfactory revenue sharing agreement for any Excursion Operations that occur on PGR Railroads before beginning operations. Notwithstanding the foregoing, nothing herein should be construed to require PGR to conduct Excursion Operations on PGR Railroads. For purposes of this Agreement, "PGR Railroads" means all railroads currently owned or operated by PGR or its affiliates as well as any railroads subsequently acquired. If American Heritage declines to conduct Excursion Operations on a PGR Railroad, however, PGR may conduct its own Excursion Operations or contract with a third party to conduct Excursion Operations on such PGR Railroad only.

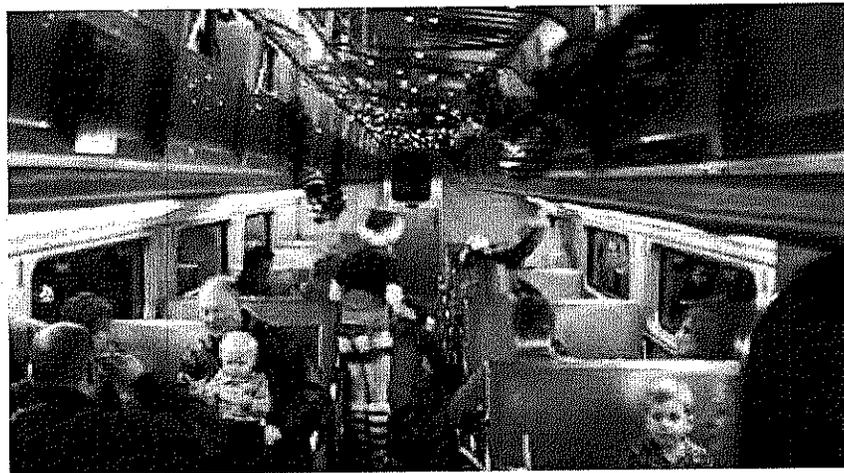
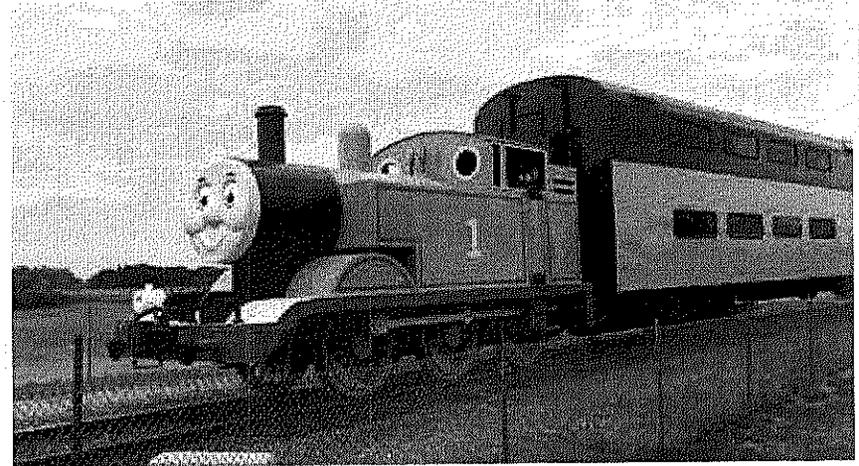
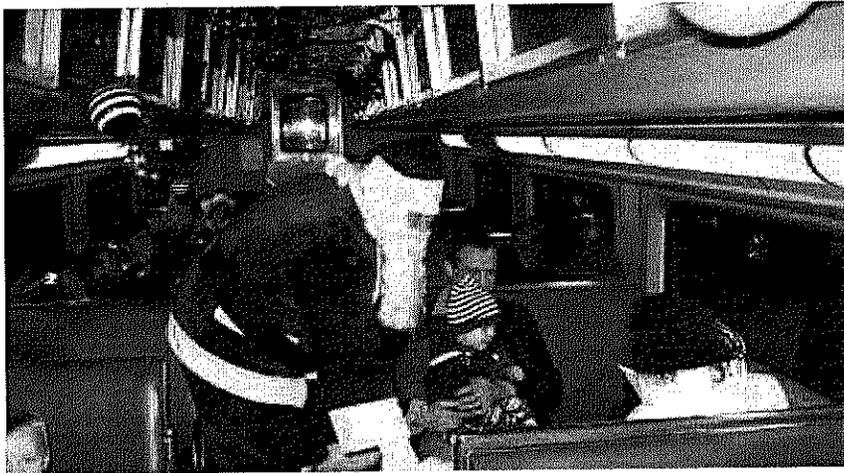
2. American Heritage agrees that PGR will have exclusive rights to conduct Freight Operations on American Heritage Railroads, as hereinafter defined. The Parties will negotiate in good faith a mutually satisfactory revenue sharing agreement for any Freight Operations that occur on American Heritage Railroads before beginning operations. Notwithstanding the foregoing, nothing herein should be construed to require American Heritage to conduct Freight Operations on American Heritage Railroads. For purposes of this Agreement, "American Heritage Railroads" means all railroads currently owned or operated by American Heritage or its affiliates as well as any railroads subsequently acquired. If PGR declines to conduct Freight

Partnership Agreement executed with
American Heritage Railways in January 2017.

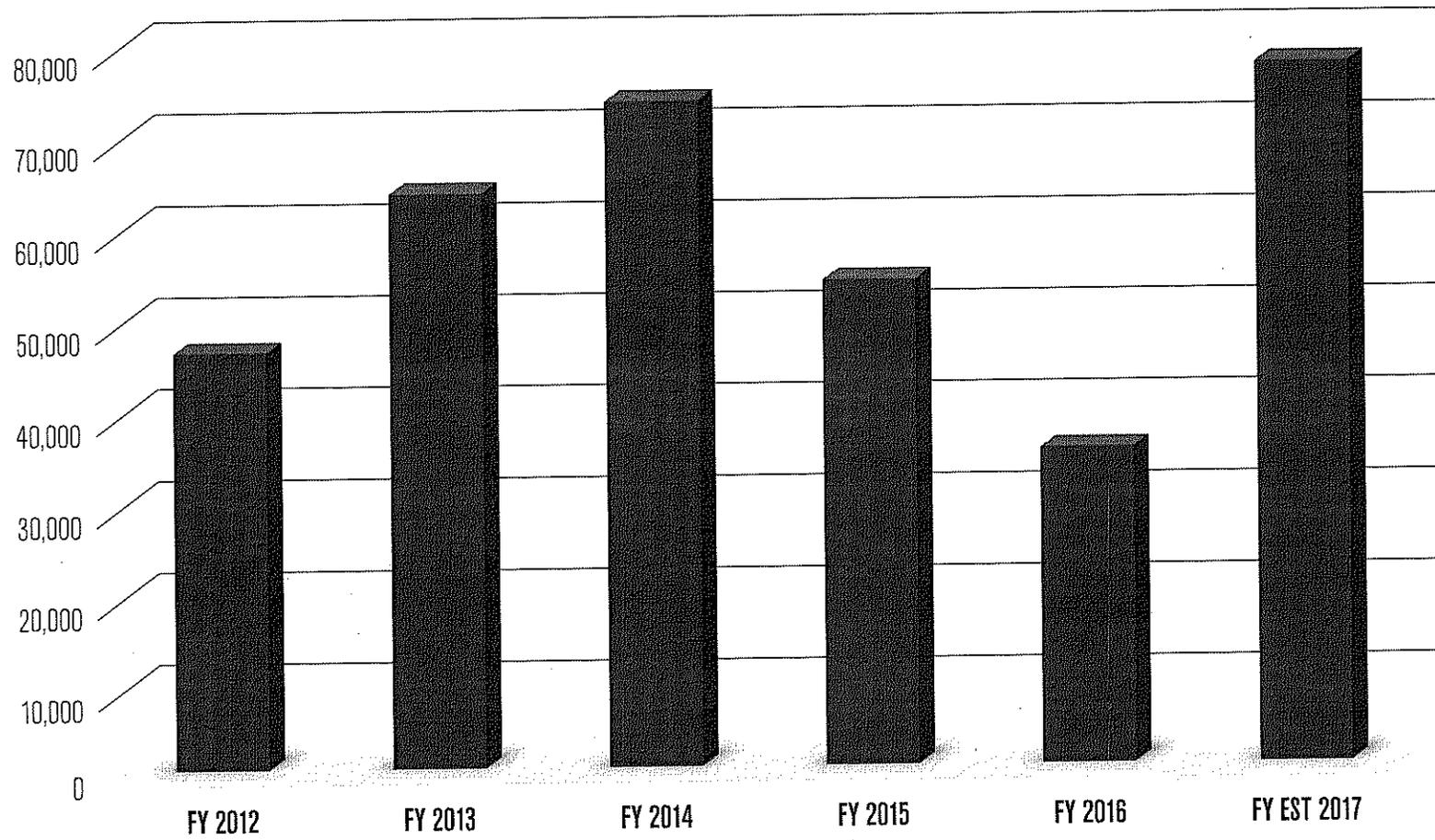
With AHR and Rail Events as our strategic partner, PGR is poised to extend and build on the success of Polar Express.



RAIL EVENT EXPERIENCES ORGANIZED BY PGR



CARLOAD VOLUMES



BALANCE SHEET

Progressive Rail, Inc. and Affiliate
Combined Balance Sheets
 As of October 31, 2017 and December 31, 2016

ASSETS		
	December 31, 2017 (Unaudited)	December 31, 2016 (Audited)
Current Assets	\$ 10,569,471	\$ 9,581,002
Property and Equipment	59,690,494	54,177,704
Less - Accumulated Depreciation	22,661,427	21,410,502
Property and Equipment, Net	37,029,067	32,767,202
Other Assets	5,094,983	4,969,678
Total Assets	\$ 52,693,521	\$ 47,317,882
LIABILITIES AND STOCKHOLDERS		
Current Liabilities	\$ 8,860,012	\$ 5,339,364
Long-Term Liabilities	14,609,321	14,818,753
Total Liabilities	23,469,333	20,158,117
Total Equity - Progressive Rail, Inc.	28,857,445	26,758,506
Non-Controlling Interest in Subsidiaries	366,743	401,259
Total Stockholder Equity	29,224,188	27,159,765
Total Liabilities and Stockholder Equity	\$ 52,693,521	\$ 47,317,882



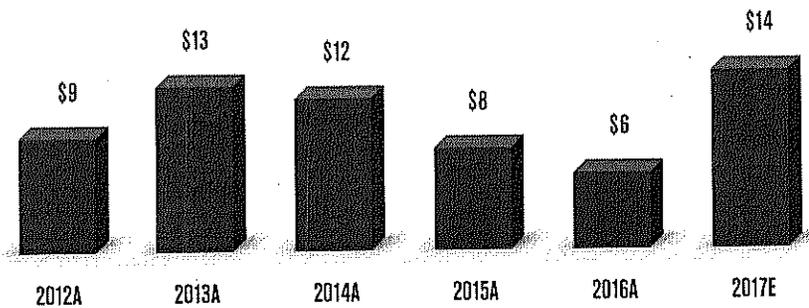
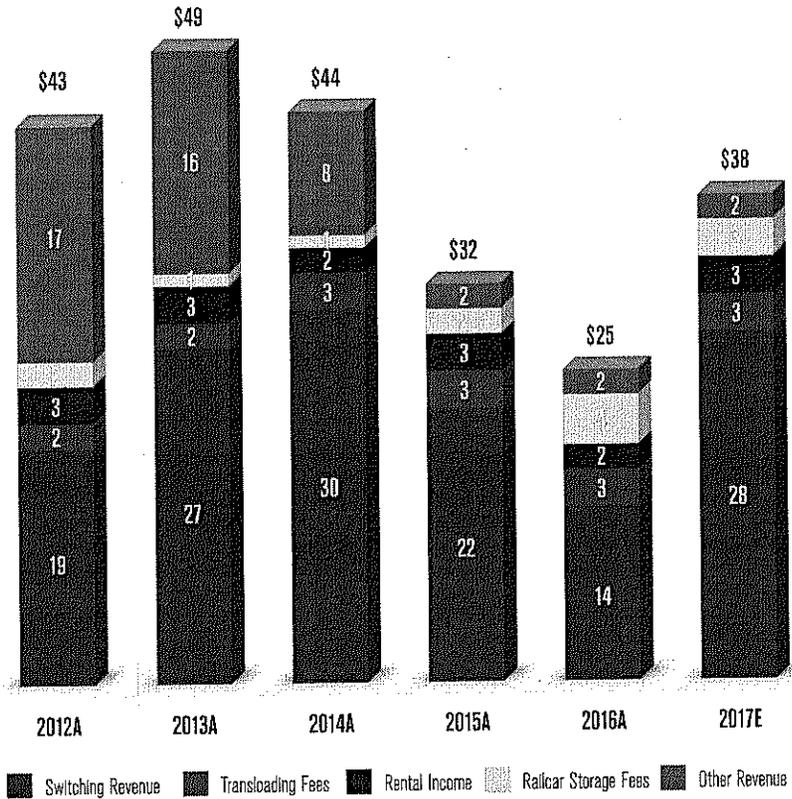
CASH FLOW FROM OPERATIONS

Progressive Rail, Inc. and Affiliate
Unaudited Combined Statements of Operations
For the Ten Months Ended October 31, 2017

	YTD October 31, 2017
Revenues	\$ 30,747,556
Cost of Sales	631,800
Gross Profit	30,115,756
Operating Expenses	25,820,441
Income from Operations	4,295,315
Other Expense	(1,211,182)
Income Before Income Taxes	3,084,133
Provision for Income Taxes	122,611
Net Income	2,961,522
Net Loss Attributable to Non-Controlling Interests	(15,484)
Net Income Attributable to Progressive Rail, Inc.	\$ 2,946,038
	\$ 6,971,851
EBITDA	683,178
New Business Start-Up Expenses	2,241,642
Staff Short Term Incentive Payments	1,346,670
Non-Recurring Site Maintenance	100,246
Professional Services/Consulting	246,415
Employment Termination Related Expenses	139,150
Other Non-Recurring Expenses	11,729,154
Adjusted EBITDA - 10.31.17	2,110,039
Nov-Dec EBITDA Forecast	13,839,139
2017E Adjusted EBITDA	13,839,139



RECENT FINANCIAL HISTORY



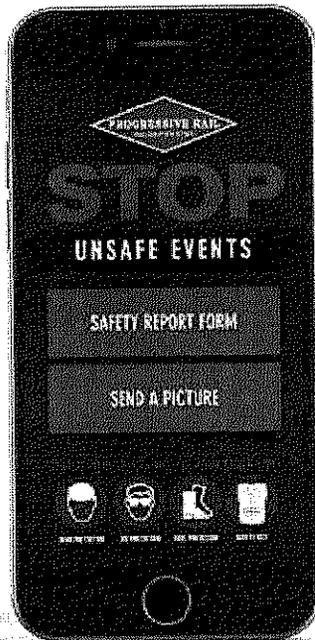
REVENUE (\$ in millions)

EBITDA (\$ in millions)

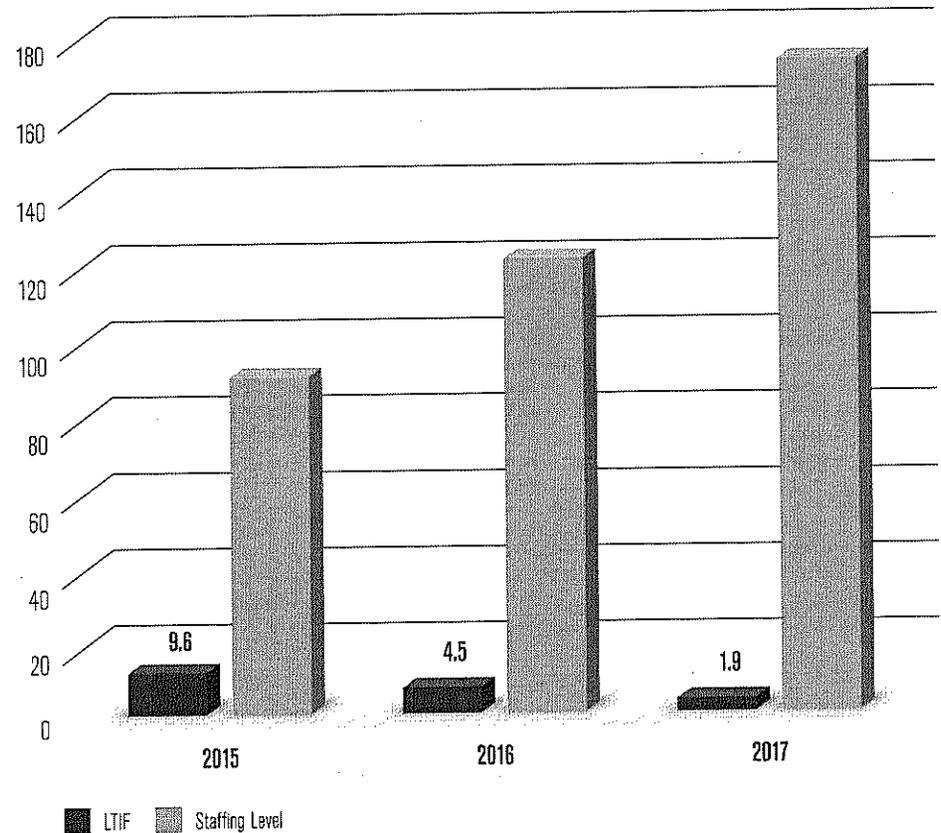


SAFETY RECORD

- Our goal is zero incidents
- We have an embedded safety culture with pay at risk for safety performance
- LTIF, defined as recordable incidents per 100,000 work-hours, continues to improve despite rapid growth
- Industry standards are 1.5 – 4.0; ours is 1.9
- Developed in-house smart phone APP called STOP (Safety Training Observation Program) to report, track, and close-out safety issues



HEADCOUNT & LOST TIME INCIDENT FREQUENCY



SALES & MARKETING - *Tradeshows*



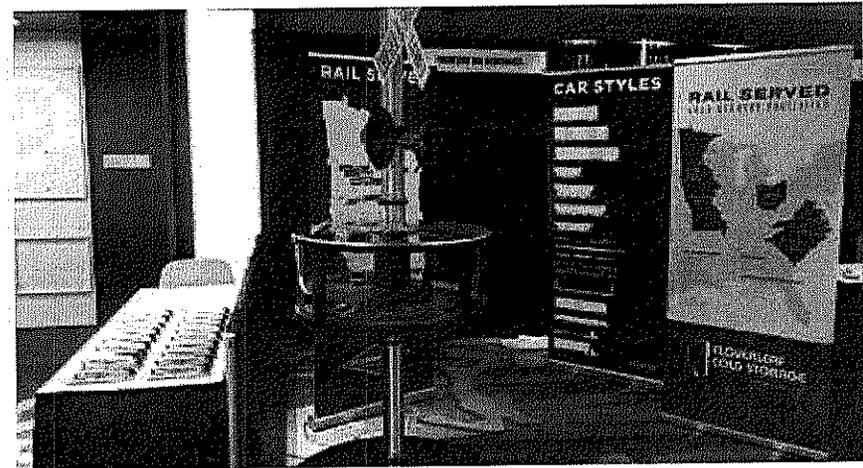
NAWLA Trader's Market
Tradeshow Booth Exhibitor
Las Vegas, NV



Transload Distribution Association of North America
Tradeshow Booth Exhibitor
Carefree, AZ



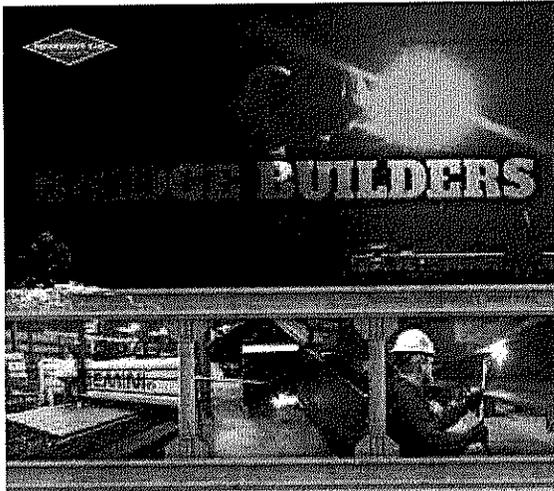
National Hardwood Lumber Association
Tradeshow Booth Exhibitor
Washington, D.C.



American Frozen Foods Institute Convention
Tradeshow Booth Exhibitor
San Diego, CA



SALES & MARKETING - Customer and Industry Newsletter Promotions



At Progressive Rail, we are committed to providing the highest quality products and services to our customers. Our commitment is to provide the highest quality products and services to our customers.

Progressive Rail is a leading provider of rail products and services. Our commitment is to provide the highest quality products and services to our customers.

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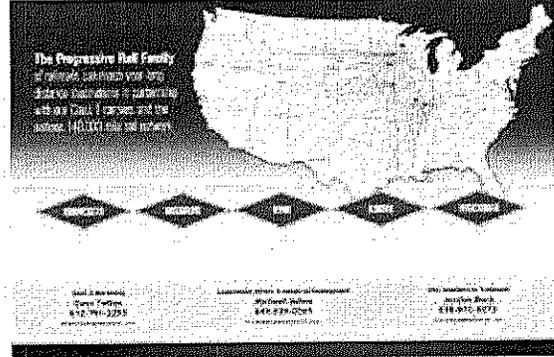
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THE ORIGINAL LONG DISTANCE CARRIERS

At Progressive Rail, we are committed to providing the highest quality products and services to our customers. Our commitment is to provide the highest quality products and services to our customers.



PGR's Monday morning newsletter is sent to 3,500+ active recipients who read our messages at an average 51% open rate.

The newsletters range in topics from highlighting customers and partners, industry history, holiday greetings, as well as announcing new PGR services, locations, and facilities.



SALES & MARKETING - *Trains Magazine Subscriptions*



NEW FOR 2017, YOUR FRIENDS AT PGR WANT TO SHARE WITH YOU EXCITING NEWS WITHIN THE RAILROAD INDUSTRY.

Some know that shipping freight by rail over long hauls makes good business sense. Our "New Formula" on page 38 spotlights how railroads can excel at direct hauls as well.

PROGRESSIVE RAIL INCORPORATED

Over 20 years, PGR has excelled at not only finding new formulas, but executing them.

www.pgr.com



SALES & MARKETING - Shortline Conference Attendance

BNSF
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CP

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SERVICE PLAN



OBJECTIVES AS OPERATOR

OVERALL OBJECTIVES:

Exceed all SCCRTC expectations of PGR as Operator of Branch Line

Expand tax base by catalyzing sustainable development connected to Branch Line

Be a most-admired company in California

Directly improve the environment where we operate

BY:

- Providing freight service in Watsonville immediately and growing it through concentrated marketing efforts
- Providing passenger and freight rail service over the entire line within three years
- Championing solutions to key issues such as noise abatement, crossing safety, coastal rail trail, & water drainage
- Designing passenger service as modern, but nostalgic experience that becomes a tourist attraction in itself
- Providing exemplary rail service, that is safe, efficient, & respectful of all stakeholders
- Going beyond rail service to drive local industrial development
- Making direct local investments in rail, real estate, buildings, & equipment
- Bringing existing PGR customers to SCC and link SCC to PGR's network



FRA & CPUC COMPLIANCE

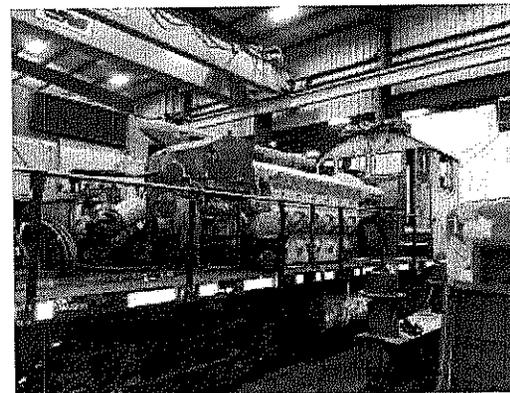
Progressive Rail Inc.:

- Is the parent company for seven railroads in six states, which are all in full compliance with federal and state laws.
- Complies with Title 49 CFR 172.700 hazardous materials communications, emergency response information, training requirements, and security plans.
- Complies with Title 49 CFR 174.1 – 174.750 Carriage by Rail.
- Complies with applicable parts of Title 49 CFR 200-299 Federal railroad administration. Plans and submissions are on file with the FRA.
- Complies with (EPCRA) Emergency Planning and Community right to know act reporting in all states.
- Works directly with state pollution control agencies with outside engineering firms to monitor air quality and storm water runoff at our trans loading locations.
- Is compliant with local counties in regards to hazardous waste generation with license on file.
- Works with state inspectors to ensure its responsible compliance with local communities.
- Has no operations presently in California, but is in contact with CPUC to establish that relationship and we are confident that the above will ensure our full compliance.



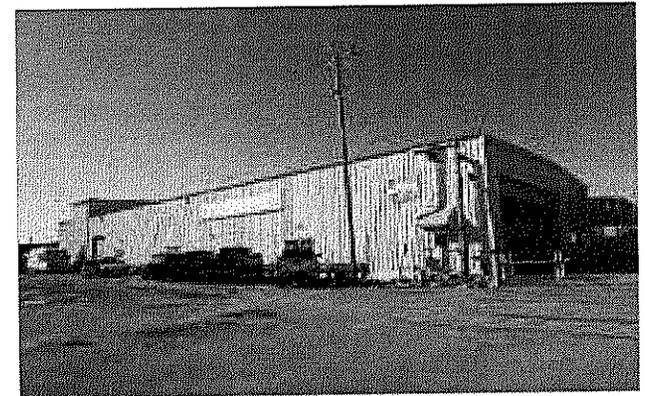
MASTER OPERATING PLAN

- PGR will name its railroad the Santa Cruz Scenic Railway.
- PGR will first focus on Watsonville with its Freight Plan.
- PGR has a locomotive refurbishment program underway; a SW 1200 or SW 1500 will be located at Watsonville to continue freight service to existing customers.
- Two dual-qualified engineers will be based in Watsonville; one will be the General Manager who will report to the COO in Lakeville, MN. Functional support will be provided as per the Resource Plan.
- Our centralized MOW team has already inspected the entire 31 miles of track, as well as inspected all the major bridges with A.R.E., a railroad engineering firm based in Los Angeles. MOW professionals will be deployed to work with the SCCRTC and oversee works per the Maintenance Plan.
- Our centralized Health, Safety & Environment team, along with our FRA Compliance team, will proactively set standards and engage authorities regarding our Safety & Compliance Plan.
- Our centralized Signals & Crossings team is set to inspect all the crossings. An integrated team will be formed to spearhead the Quiet Zone Plan with the respective municipalities.
- Our centralized Marketing team will recruit an on-the-ground representative who will be based locally to deploy the Marketing Plan.
- An integrated business development team will be formed to pursue all tourist experiences per our Passenger Excursion Plan.



WATSONVILLE FREIGHT PLAN

- Freight service already exists in Watsonville on the Branch line, but has much more potential than current car load levels.
- PGR's proven formula is to secure a transloading warehouse as a means to market the railroad to target customers; a warehouse at 880 W Beach Road, Watsonville, is a property we have identified.
- The agriculture industry has opted for trucking of outbound fruits and vegetables. Our goal is to develop a fast corridor with UP for shipping refrigerated freight outbound to the Midwest, with proteins on the return trip.
- Agriculture demand for plastic mulch, liquid and dry fertilizers, insecticides is perfect for rail, and we are ready to make a compelling proposition to farmers.
- Dimensional lumber and construction materials, specialty rock and other landscape supplies are perfect commodities for long hauls.
- Lansing Trading, one of the preeminent energy traders in the US, is poised to partner with PGR to construct a propane distribution terminal.
- We have no plans for rail car storage.



800 W Beach Road

MAINTENANCE OF WAY PLAN



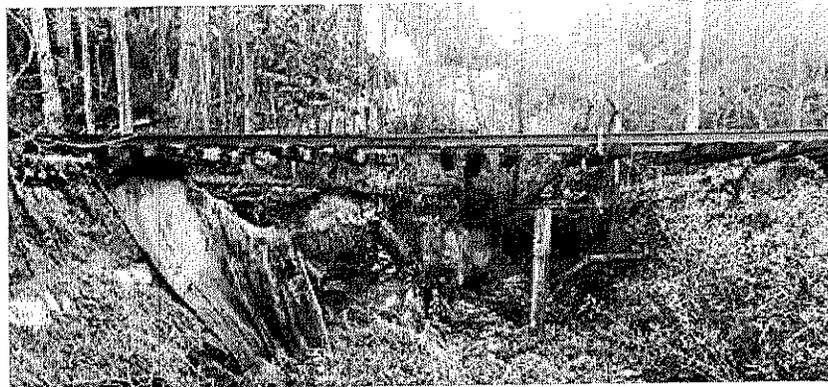
LEON HOYT

GENERAL MANAGER, MAINTENANCE OF WAY

715-563-4327

lhoyt@progressiverail.com

- Our MOW team is equipped to handle any and all defects there may be, from insufficient ballast or cross level issues to switches and turn outs. We are also equipped with a on-track brush cutter and have licensed herbicide applicators on staff.
- American Rail Engineers Corporation (ARE) performed an assessment of the Santa Cruz Branch Line for Progressive Rail on December 17, 2017. The assessment was completed by David Anderson P.E., a practiced railroad bridge engineer licensed by the State of California as a Professional Engineer.
- PGR plans to use its planned transloading warehouse in Watsonville as a laydown yard for rail and ties, as well as storage facility for rolling stock.
- Our working assumption is that the SCCRTC will restore the track conditions on the line to appropriate standards and that PGR will be responsible for proper maintenance.
- PGR is prepared to oversee any of the SCCRTC works.



BRIDGE INSPECTIONS

MP	Section	Bridge Type	Length	# of Spans	Span Type	Year Built	Super Condition	Sub Condition	Deck Type	Ballast Deck Condition	Bridge Tie Condition	Deferred Maintenance	Capital Cost next 10 years	Annual Maintenance (10-yr avg)	Notes
0.86	1 of 1	DDPT	218	14	Timber	1940	Fair	Good	Open		Good	\$ 7,500.00	\$ 26,000.00	\$ 6,000.00	Stringer thru bolts missing. Need to add stringer through bolts.
1.06a	1 of 3	DDPT	180	13	Timber	1950	Fair	Fair to Good	Open		Fair to Poor	\$ 5,000.00		\$ 4,500.00	Spot bridge tie replacement required. Some fire damage.
1.06b	2 of 3	TPGOD	301	5	Steel	1906	Fair to Good	Fair	Open		Fair to Poor	\$ 4,000.00	\$ 50,000.00	\$ 5,000.00	Up to 50% of top flange of floor beams; stringers in good condition.
1.06c	3 of 3	DDPT	91	6	Timber	1950	Fair	Fair to Good	Open		Fair to Poor	\$ 7,000.00		\$ 4,000.00	Spot bridge tie replacement required and walkway & railing repair needed. Some fire damage.
2.73		DHH	n/a	n/a	CIP PS Concrete	1967	Good	Good	n/a				\$ -	\$ -	Overhead highway.
4.45	1 of 1	DDPT	60	4		1932	Good	Good	Open		Good	\$ 10,000.00	\$ -	\$ 500.00	Ties replaced in 2002.
4.87	1 of 1	BDPT	195	13	Timber	1909	Fair	Fair	Ballasted	Fair		\$ 25,000.00		\$ 6,000.00	Ballast retainers needing maintenance. Substructure & superstructure in a wet environment.
5.52	1 of 1	BDPT	15	1	Timber	1904	Fair	Fair	Ballasted	Fair		\$ 15,000.00		\$ 7,500.00	Ballast holes, moderate to heavy decay of deck. Some severely decayed piles needing posting.
5.54	1 of 1	BDPT	135	9	Timber	1923	Good	Good	Ballasted	Fair		\$ 15,000.00		\$ 2,500.00	Ballast retainer deterioration.
6.01	1 of 1	BDPT	90	6	Timber	1926	Good	Good	Ballasted	Fair				\$ 2,500.00	
6.14	1 of 1	BDPT	30	2	Timber	1927	Good	Fair	Ballasted	Fair				\$ 1,500.00	Back wall deterioration.
6.25	1 of 1	BDPT	120	8	Timber	1906	Fair	Fair	Ballasted	Fair		\$ 30,000.00		\$ 4,500.00	Ballast retainer low. Ends of cross tie exposed on deck. Ballast retainers need to be raised.
6.32	1 of 1	BDPT	15	1	Timber	1916	Good	Fair	Ballasted	Fair				\$ 1,500.00	
8.64a	1 of 2	PS Concrete Tub	48	1	Concrete	1975	Good	Fair	Ballasted	Good		\$ 10,000.00			Strut bearing plate corroded and pier 2 concrete spalling around bearing plates. Plates need replacement with larger plate and concrete repaired.
8.64b	2 of 2	DDPT	112	9	Timber	1932	Good	Fair	Open		Fair	\$ 15,000.00		\$ 4,500.00	Bent bracing moderate to severe decay.
9.09	1 of 1	Deck Plate Girders	330	8	Steel Truss	2014?	Good	Good	Open		Good			\$ -	Superstructure and steel towers recently replaced.
10.45	1 of 1	BDPT	240	16	Timber	1928	Fair	Poor	Ballasted	Fair		\$ 80,000.00		\$ 10,000.00	Bent bracing poor. Piling good to fair. Overall bent condition poor due to bracing condition.
11.16	1 of 1	BDPT	240	16	Timber	1928	Fair	Fair	Ballasted	Fair				\$ 10,000.00	Bent bracing condition moderate decay.
12.03	1 of 1	OHH	n/a	n/a	Steel w/ Concrete Deck	1953	Fair	Fair	n/a	n/a			\$ -	\$ -	Highway overhead. Assuming maintenance by others. DOT says structurally obsolete.
12.30	1 of 1	Deck Steel Plate	89	2	Steel w/ Concrete Deck	1948	Fair	Fair	Ballasted	Fair					Seismic retrofit in 1996. Caltrans responsible for substructure maintenance. Railroad responsible for superstructure maintenance.
12.34	1 of 1	Steel Plate Girder	218	4	Steel	1989	Fair	Fair	Open		Good			\$ 2,500.00	Wood plank walkways.
12.39	1 of 1	Steel Plate Girder	60	1	Steel	1925	Fair	Fair	Open		Good			\$ 1,500.00	Wood plank walkways. Bridge ties replaced in 1994.
12.71a	1 of 2	Steel Plate Girder	160	2	Steel	1989	Fair	Good	Open		Good				Steel grated walkways. Bridge ties replaced in 1994.
12.71b	2 of 2	Through Plate Girder	71	1	Steel	1929	Fair	Fair	Open		Good			\$ 1,500.00	Wood plank walkways. Bridge ties replaced in 1994.
12.83	1 of 1	Through Plate Girder	137	2	Steel	1948	Fair	Fair	Ballasted		Fair				Seismic retrofit in 1996. Caltrans responsible for substructure maintenance. Railroad responsible for superstructure maintenance.



BRIDGE INSPECTIONS (CONT'D)

MP	Section	Bridge Type	Length	# of Spans	Span Type	Year Built	Super Condition	Sub Condition	Deck Type	Ballast Deck Condition	Bridge Tie Condition	Deferred Maintenance	Capital Cost next 10 years	Annual Maintenance (10-yr avg)	Notes
14.86	1 of 1	PS Concrete	52	2	Concrete	1971	Good	Good	Ballasted		Fair				Low vehicular clearance of 14' 1". Cable seismic retrofit.
15.89a	1 of 5	Precast Concrete Box	120	3	Concrete	1970	Good	Good	Ballasted		Fair			\$ 2,500.00	Crib wall with moderate decay. Cable seismic retrofit.
15.89b	2 of 5	ODPT	215	15	Timber	1904	Fair	Fair to Poor	Open		Fair	\$ 65,000.00		\$ 10,000.00	Bent longitudinal bracing, several with severe deterioration. Bridge ties replaced in 1997.
15.89c	3 of 5	Pin connected deck truss	148	1	Steel	1903	Fair	Fair	Open		Fair		\$ 175,000.00	\$ 2,500.00	Stringers rate vary poorly. Up to 28% section loss observed in top stringer flange. Vertical member U1-L1 has holes in flanges. Recommend that stringers and floor beams be replaced or strengthened for sustained loading using light 4 axle locomotives.
15.89d	4 of 5	ODPT	40	3	Timber	1904		Fair to Poor	Open		Fair	\$ 15,000.00		\$ 2,500.00	Bent bracing has moderate to severe deterioration. Timber walkway and railing in Fair to poor condition.
15.89e	5 of 5	Prestressed Concrete	60	1	Concrete	1971	Good	Good	Ballasted		Fair				Some damage from underpass vehicular traffic.
17.30	1 of 1	Precast Concrete Box	240	8	Concrete	1977	Good	Good	Ballasted		Fair				
18.04	1 of 1	Precast Concrete Box	420	7	Concrete	1970	Good	Good	Ballasted		Fair				
19.43a	1 of 2	Through Truss	240	2	Steel	1904	Fair	Fair	Open		Fair	\$ 100,000.00		\$ 2,500.00	Floor beams have section loss up to 100% at top and bottom of stringer connection. Bottom lateral bracing members have severe section loss. Stringers have bottom flange section loss. Bridge ties replaced in 1996.
19.43b	2 of 2	Steel Deck Girder	60	1	Steel	1904	Fair	Fair	Open		Fair	\$ 15,000.00		\$ 2,500.00	Moderate corrosion throughout. Bridge ties replaced in 1996, severe decay of isolated ties. Girder bracing moderate to severe section loss.
20.18	1 of 1	ODPT OHR	n/a	n/a	Timber	1999	n/a	n/a	Solid Timber		n/a	\$ -	\$ -	\$ -	Overhead roadway.
22.29	1 of 1	ODPT	330	22	Timber	1928	Fair	Fair	Open		Fair	\$ 30,000.00		\$ 10,000.00	Bridge ties replaced in 1996. Moderate decay of stringers. Moderate to severe decay of isolated timber bracing.
23.47	1 of 1	ODPT	15	1	Timber	1935	Fair	Fair	Open		Fair			\$ 1,500.00	Bridge ties replaced in 1997.
23.54	1 of 1	ODPT	16	1	Timber	1913	Fair to Poor	Fair to Poor	Open		Fair	\$ 20,000.00		\$ 1,500.00	Bridge ties replaced in 1997. Longitudinal struts failing. Back walls leaning in with decayed timbers. Stringer replacements needed of sustained regular traffic.
26.09	1 of 1	ODPT	11	1	Timber	1937	Fair	Fair	Open		Fair			\$ 1,000.00	Bridge ties replaced in 1997.
26.55	1 of 1	ODPT	11	1	Timber	1937	Fair	Fair	Open		Fair	\$ 2,500.00		\$ 1,500.00	Back wall planks have decay.
4.45		Retaining Wall													Wall is a Steel H pile soldier wall in good condition.
Selva Beach Area		Retaining Wall										\$ 15,000.00		\$ 500.00	Tree sections, sections wall failing with washouts.
Leonard Gulch		Retaining Wall													Timber crib wall in Good condition.
TOTAL												\$ 456,000.00	\$ 260,000.00	\$ 112,500.00	



MOW - WATSONVILLE

MP 1 to 4.6

- Bridges are in fair condition. Evidence of encampments under bridge and fire damage on ties.
- Ties and rail are in good shape, and every 5th tie needs to be replaced. Rail is 119# and qualifies as #1 relay. Surfacing looks good in profile and alignment. Dry weather aids in this and lack of train traffic. Vegetation is clear in this area.
- Requires \$300,000 in immediate repairs; \$800,000 in maintenance over next three years.
- Crossings ok, but need maintenance/upgrades; est \$45,000 in asphalt removal in flanges
- Unable to inspect this area due to trespassers.

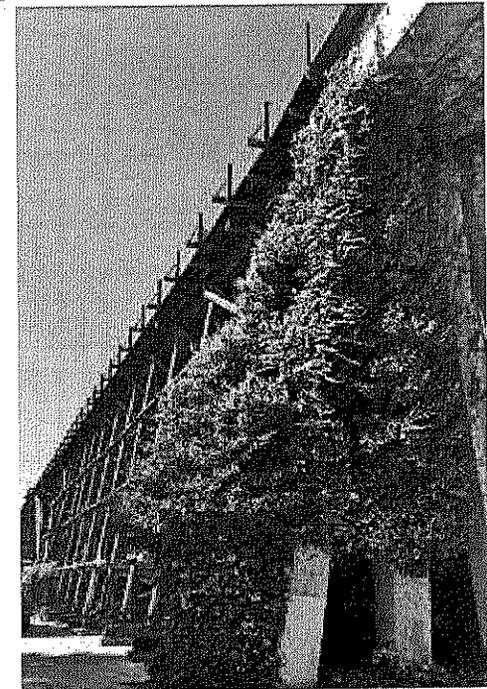
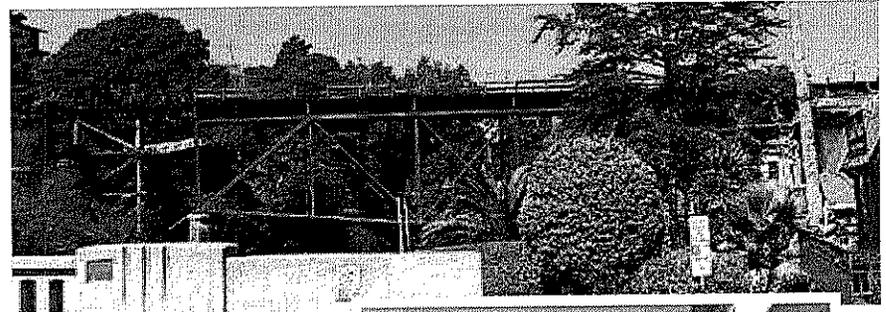
MP 5.2 to 6.5

-
- Between MP 6 and 5.8, there are several mudslides that cover 500 track feet. Estimate \$280,000 to build retaining wall and remove mud.
 - MP 5.5 washout. Estimate \$100,000 for small repair.
 - MP 5.2 washout. Large in damage and surface area. Possible bridge construction to span the separation caused by the damage or 2 large culverts. Property owners upstream will need to also address their erosion. Estimate \$975,000-\$1,200,000 for repair.
 - Ties are in good shape; every 5th tie to be replaced in tangent and every 3rd in curves. Rail is 119# and qualifies as #1 relay, with 90-112# rail sprinkled between. Surfacing needed for profile and for water shed through ties. This section has lots of vegetation and large trees overgrowing track. \$315,00 in immediate repairs and \$875,000 in maintenance over next three years.



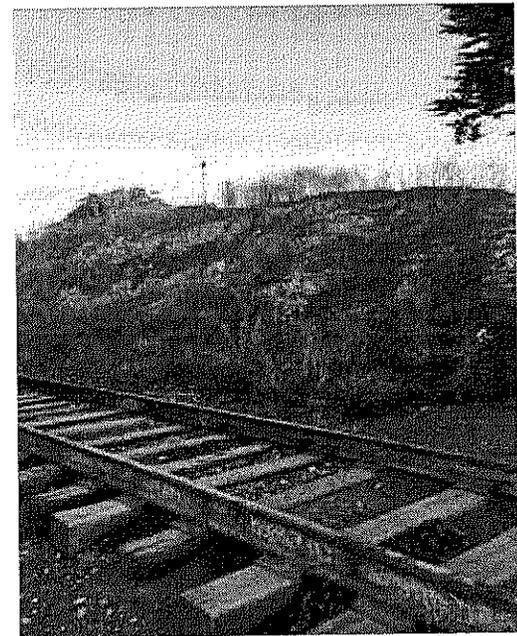
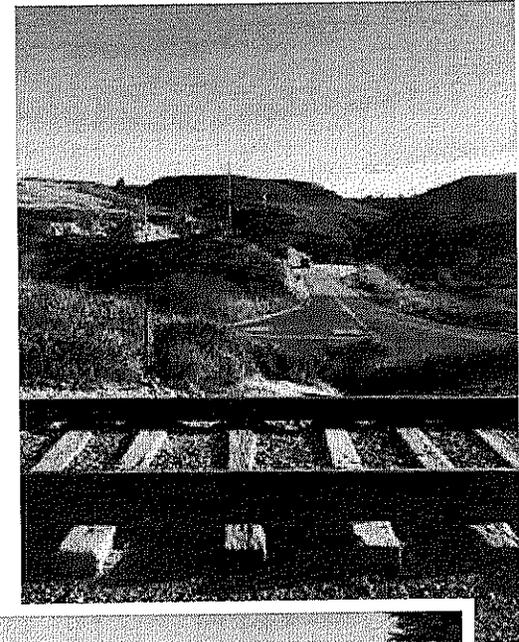
MOW - CAPITOLA TO SANTA CRUZ

- Capitola bridge will need rivets replaced due to extreme rust. Bridge structure will need to be sanded and coated with a non-rusting enamel. Wooden stringers and floor beams need to be replaced or strengthened. Security should be upgraded. A detailed cost estimate would need to be undertaken.
- Rail and ties are 119# with every 5th tie to be replaced in tangent and every 3rd in curves.
- Surfacing will be needed to adjust movement of ties on the grade. Ballast needs to be added.
- There are locations where stairs have been placed to allow for pedestrians to walk to public beaches. Pedestrian crossings needed with proper signage and lights.
- Estimate \$200,000 immediate repairs with \$875,000 in maintenance over next three years.
- Bridge at 19.43 has reported earthquake damage.
- Boardwalk clearance signs and cross bucks are needed to provide pedestrians with protection. Estimate \$85,000.
- Santa Cruz beach road running rail has cross bucks that need to be updated.



MOW - SANTA CRUZ TO DAVENPORT

- Ties are in fair shape. Every 5th tie will need to be replaced.
- Track surfacing will be needed to address water drainage.
- There is an old siding by Panther beach that could be rebuilt. Requires two switches and track restoration for an estimated cost of \$270,000.
- \$350,000 in immediate repair costs and \$815,000 in a 3 yr maintenance program.
- Davenport has several industry & siding switches, that need to be rehabbed. Switches in the siding rehab total estimated costing-\$25,000
- Removal of industry switch and straight raiiling area-\$50,000
- There are several crossings that have been paved over or have had the flange ways filled in. The number of these crossings that need to be addressed are unknown.



SAFETY & COMPLIANCE PLAN



JASON WELSH

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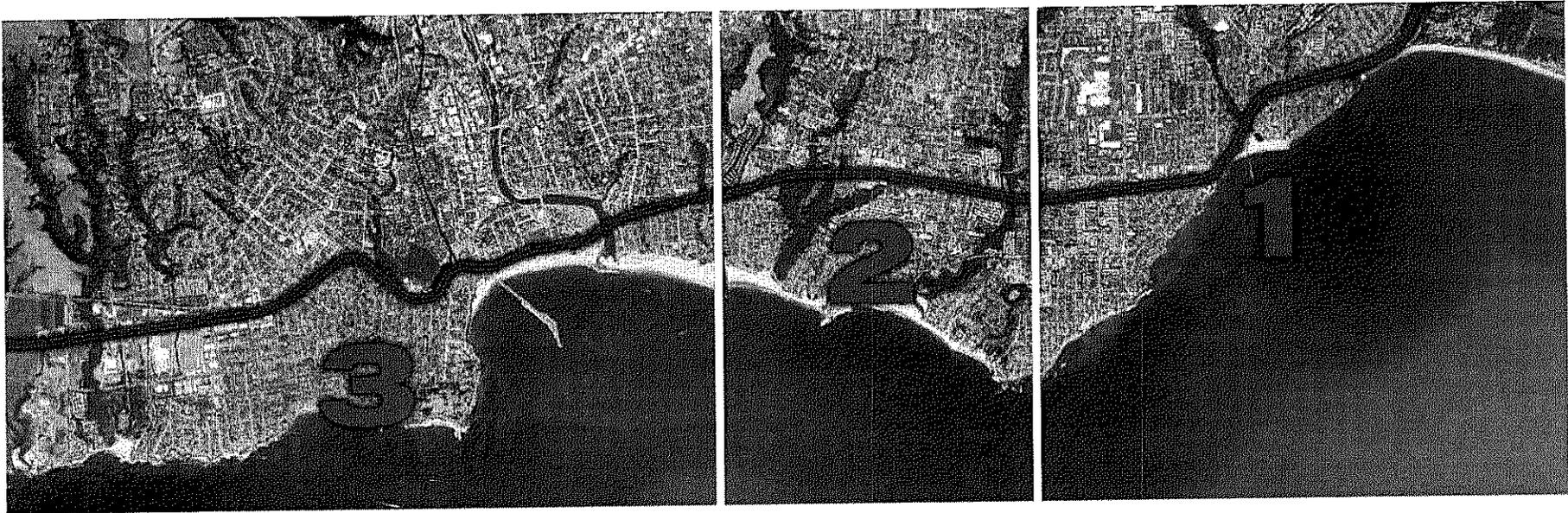
SAFETY COMES FIRST

The most important part of work is providing for family. I want every team member at PGR to go home in the same condition they arrived. In fact, if I can help them learn a better way to perform in any environment, maybe they will take some of that knowledge home and be healthier in their personal life as well.

- Review historical FRA recordkeeping and overall compliance; identify any gaps and fill them.
- Audit Code of Federal Regulations CFR 49 Parts 200-299
- Immediately contact and invite FRA local representative to meet on the operating segment to establish a new baseline.
- Submit advice letter to CPUC for notification of CPCN transfer. Immediately contact CPUC and invite representative on location to establish baseline.
- Create Signals & Crossings Plan.
- Roll out STOP program.

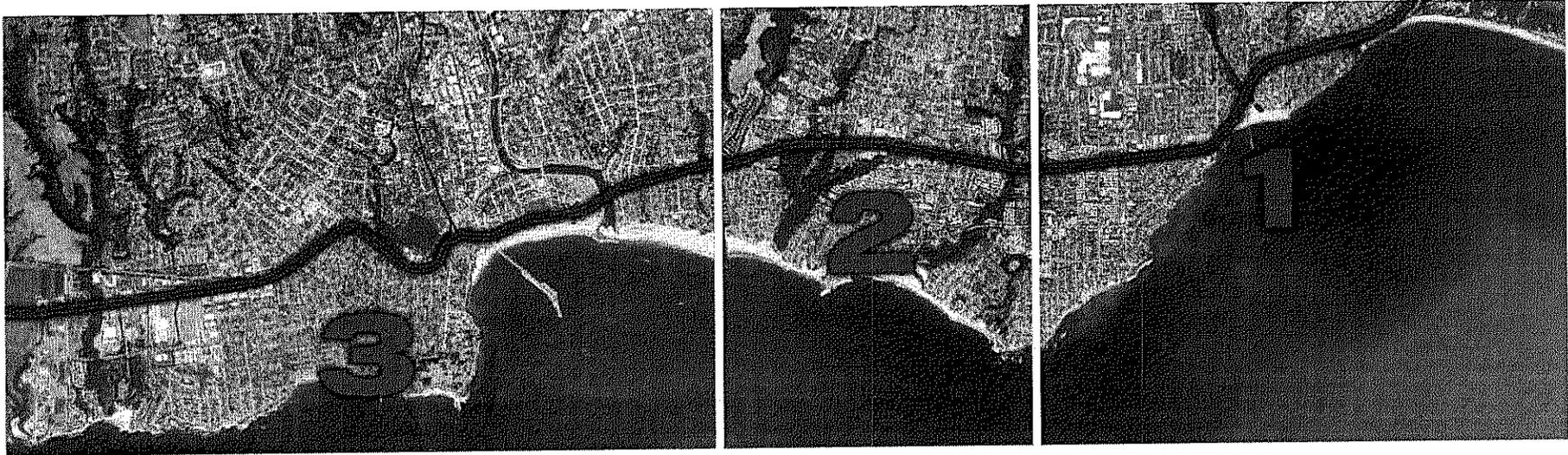


QUIET ZONE PLAN



- Our goal is to eliminate the use of locomotive horn signals in urban areas that include Santa Cruz, Live Oak, and Capitola
- Three independent Quiet Zones would extend from:
 1. Grove Lane crossing (MP 15.13) in the City of Capitola to the border of the unincorporated community of Live Oak
 2. Live Oak community (defers to Santa Cruz county) crossings
 3. From the border of Live Oak to Swift Ave. crossing (MP 21.59) in the City of Santa Cruz
- Both cities and Santa Cruz County would legally establish the Quiet Zones independently
- PGR would champion the effort by working with the three jurisdictions, undertake the required technical design and engineering work, and liaise with the FRA.

QUIET ZONE PLAN



THE STREET CROSSINGS THAT WOULD BE AFFECTED ARE AS FOLLOWS:

SANTA CRUZ

- MP 19.05 – Sea Bright Ave.
- MP 19.22 – Mott Ave.
- MP 19.71 – Cliff St./Beach Av
- MP 19.77 – Westbrook St.
- MP 19.83 – Main St.
- MP 19.97 – Pacific Ave.
- MP 20.75 – California St.
- MP 20.79 – Bay St.
- MP 20.87 – Lennox St.
- MP 21.02 – Dufour St.
- MP 21.08 – Bellevue St.
- MP 21.14 – Younglove Ave.
- MP 21.18 – Seaside St.
- MP 21.20 – Rankin St.
- MP 21.40 – Almar Ave.
- MP 21.45 – Fair Ave.
- MP 21.59 – Swift Ave.

LIVE OAK

(SANTA CRUZ COUNTY)

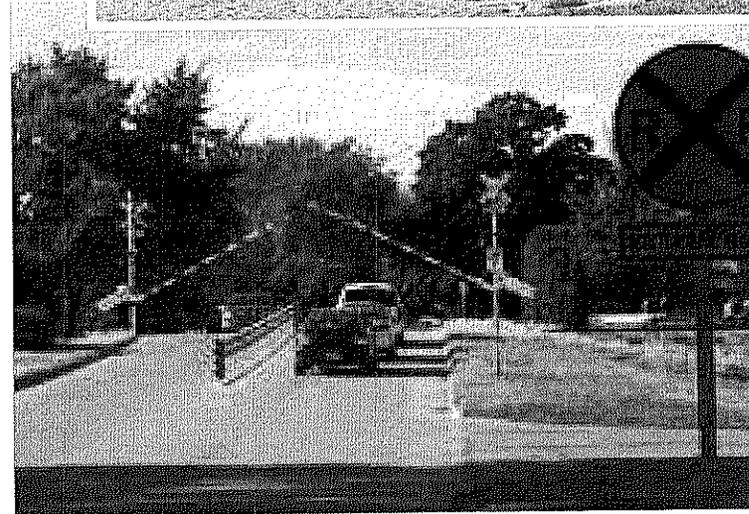
- MP 16.88 – 38th Ave.
- MP 17.21 – 30th Ave.
- MP 17.87 – 17th Ave.
- MP 18.42 – 7th Ave.

CAPITOLA

- MP 15.52 – Monterey Ave.
- MP 16.38 – 47th Ave.
- MP 16.75 – 41st Ave.

QUIET ZONE PLAN

- Minimum safety improvements to make at each at-grade crossing may include (and also not be limited to):
 - Automatic warning devices (lights and gates)
 - four-quadrant lanes & signage
 - LED flashing lights
- Level of protection determined by diagnostic team review
 - Required to assess collision risks at each crossing
 - Comprised of local government, railroad, and Caltrans
 - Team issues determination of additional measures needed
- Certification of the Quiet Zones
 - Local government certifies to FRA that risk reduction achieved
 - QZ takes effect after all safety improvements are made

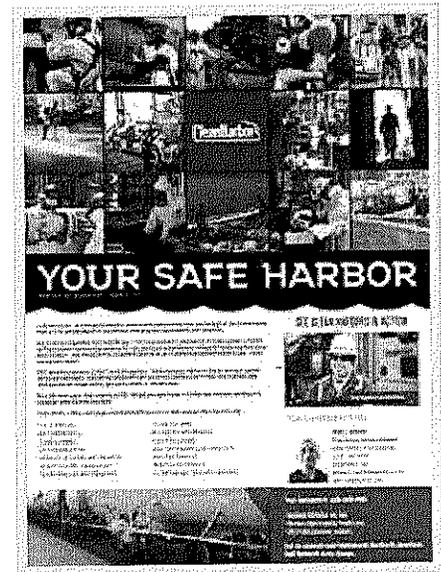
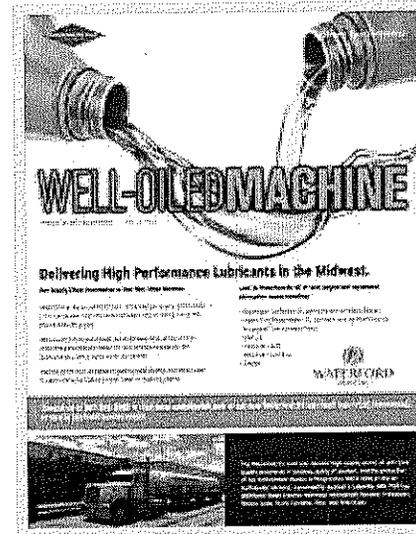
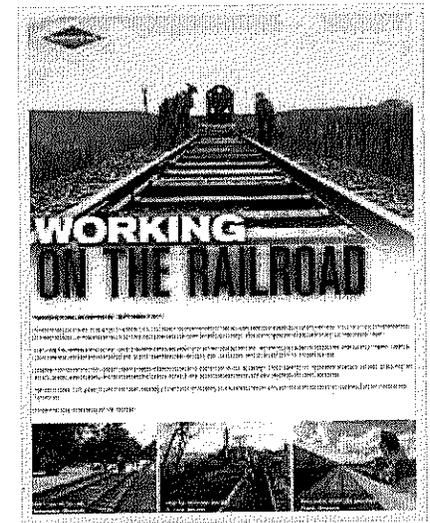
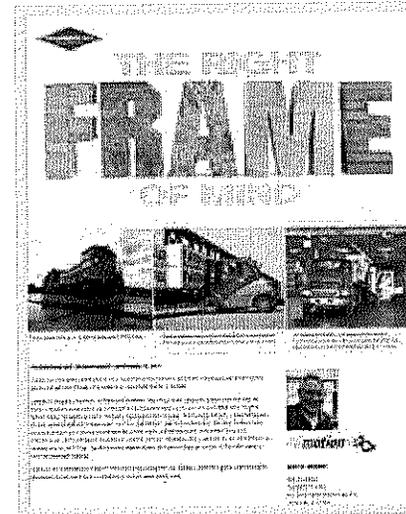


MARKETING PLAN

We will earn Santa Cruz customers by truly partnering with them. Our prosperity is a direct function of their prosperity, and we perpetually engage with them at all levels to drive improvements in the efficiency of their supply chains. We become involved in our customers' businesses so we can use our own networks of buyers, sellers and transportation providers to find advantages that our customers can use to prosper in their marketplaces.

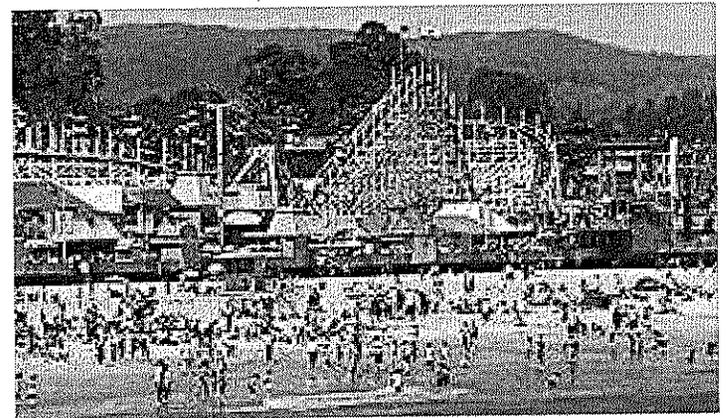
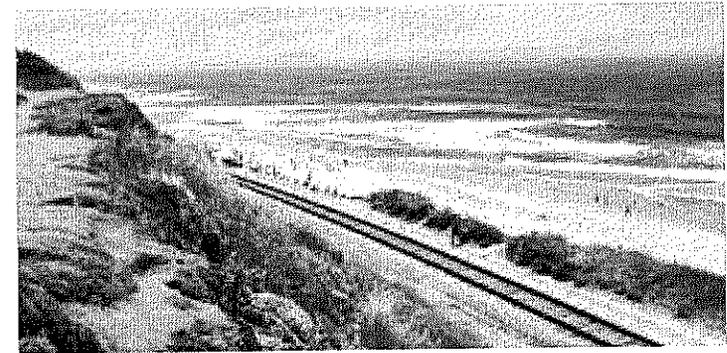
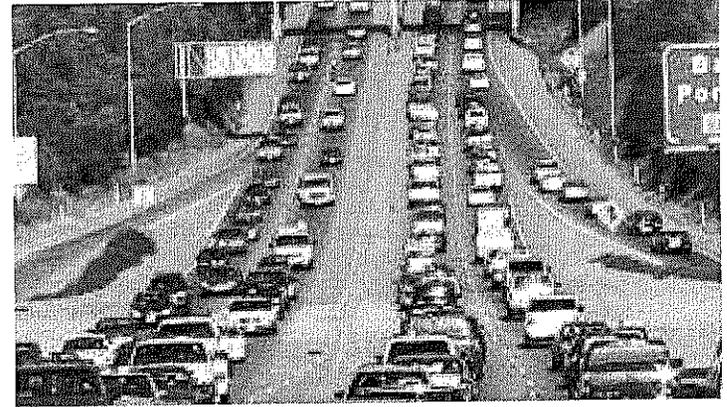
PGR engages customers with frequent face-to-face meetings, phone and email contact, weekly newsletters, monthly magazine mailings and hand-written notes. We not only like to keep asking the question, "what else are we missing?" but we like to share with them examples of programs and ideas we've developed with other customers to improve their supply chain efficiencies.

- Action steps are to:
 - Secure a transloading warehouse and recruit a marketing professional
 - Identify target customers and research their logistics options, hold in-person meetings, and follow-up with tailored marketing materials
 - Work seamlessly with UP to set up advantageous rates to win back freight from trucks
 - Connect Santa Cruz Scenic with PGR's network of customers across the US.



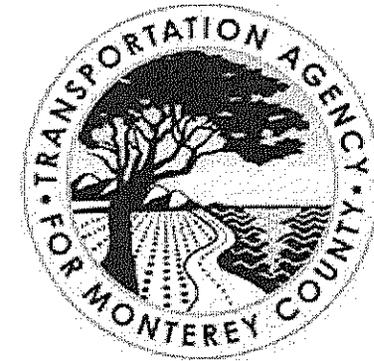
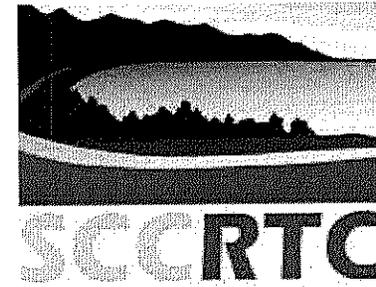
PASSENGER EXCURSION PLAN

- PGR will work eagerly with authorities as part of the California State Rail Plan to relieve congested roadways and provide rail solutions for freight and passenger transportation. How tourist and commuter services differ or overlap will be an important aspect.
- Anticipating some public resistance in the Capitola to Santa Cruz corridor as train service is reinstated, our goal is to create an endearing proposition that is safe, green, quiet, and efficient. We favor nostalgic train designs, which we believe would respect the rich heritage of the area and the Boardwalk.
- Reinstating the Suntan Special will be a transformational project and will take several years to develop. PGR has already started these efforts and we believe we have a workable solution whereby we provide service between Watsonville Junction and Santa Cruz and the San Jose leg is provided by TAMC. PGR aims to work closely with the Boardwalk to provide package incentives to tourists.
- Recognizing it will take time to plan, educate the public, secure quiet zones, and execute the excursions we envisage, we plan to focus at the outset on the coastal rail west and north of Santa Cruz. We will call this route the Sunset Special, but will provide several offerings.



SUNTAN SPECIAL

- Travel seamlessly across an urban landscape that opens to a scenic coastline
- Enjoy the journey on modern, safe, clean, and comfortable trains
- Glide past traffic congestion on reliable
- Transfer quickly and easily between high-speed train and a PGR local train with coordinated arrivals and departures with significantly reduced wait times
- Plan entire door-to-door trips, and purchase a single ticket using a portal that coordinates with the Boardwalk ticket sales
- Coordinated planning and investments among railroads and the Boardwalk will ensure that rail operators will benefit from the strategies in this plan.
- Provides a new tourist attraction that is a throwback to a past era
 - Improves safety and reduces the demand on emergency responders
 - Lowers greenhouse gas emissions
 - Enhance livability for everyone.



SUNTAN SPECIAL

- Our goal is to reestablish the historic Suntan Special by providing weekend passenger service from San Jose Diridon station to the Santa Cruz Boardwalk via Watsonville Junction.
- Approach is to partner with Transit Authority for Monterey County (TAMC) and the Santa Cruz Boardwalk. Discussions with both parties have commenced.
- TAMC would provide service for the San Jose to Watsonville Junction leg. Passengers would cross platform to the awaiting PGR train, which would provide service to and from the Santa Cruz Boardwalk.
- Total travel time is expected to be 1:06 hrs for the 51 mile San Jose leg via TAMC and 1:15 hrs for the 20 mile Santa Cruz leg on PGR's train. Total travel time is 2 hrs 36 minutes assuming a 15 minute transfer at Watsonville Junction. The historic Suntan Special travel time was 2 hours for this route.
- Scheduled service initially would be one morning train to Santa Cruz and a return train late afternoon.
- Service would be expanded in response to demand.

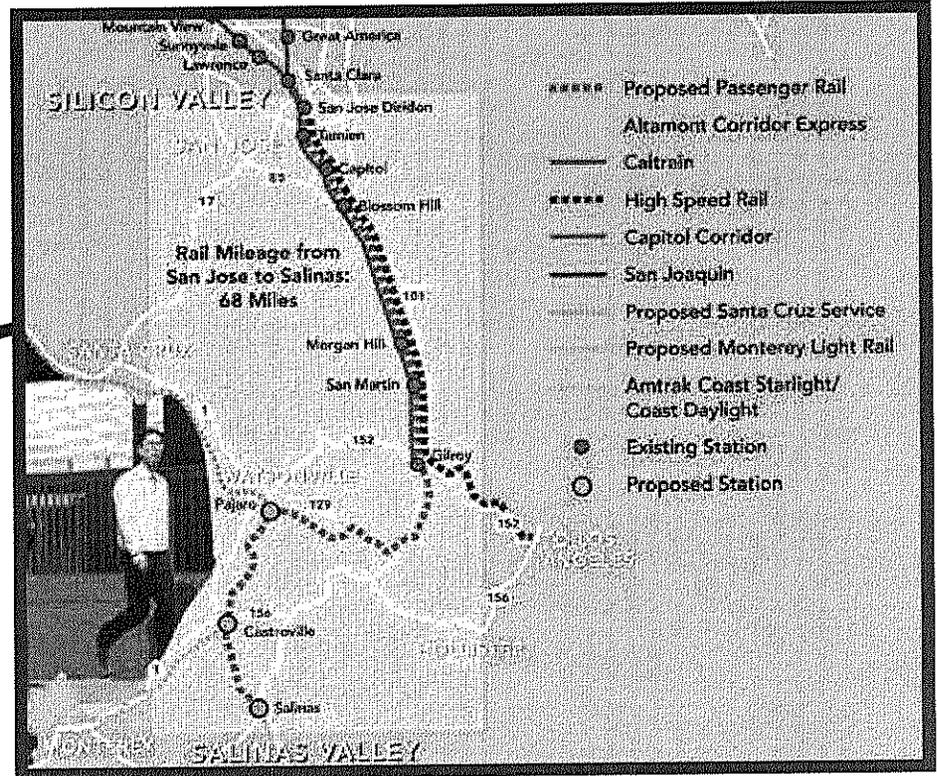
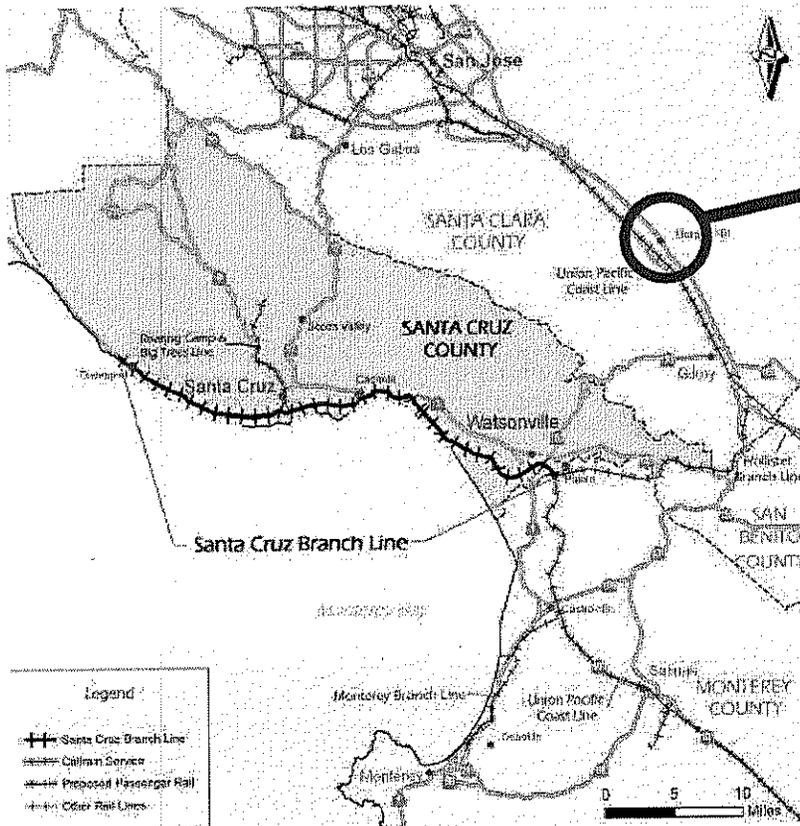


Preliminary Timetable

	To Santa Cruz	
San Jose Diridon	07.30	
Watsonville Junstion	08.36	08.51
Santa Cruz Boardwalk	10.06	
	To San Jose	
Santa Cruz Boardwalk	17.00	
Watsonville Junstion	18.15	18.30
San Jose Diridon	19.36	



SUNTAN SPECIAL - TAMC LEG

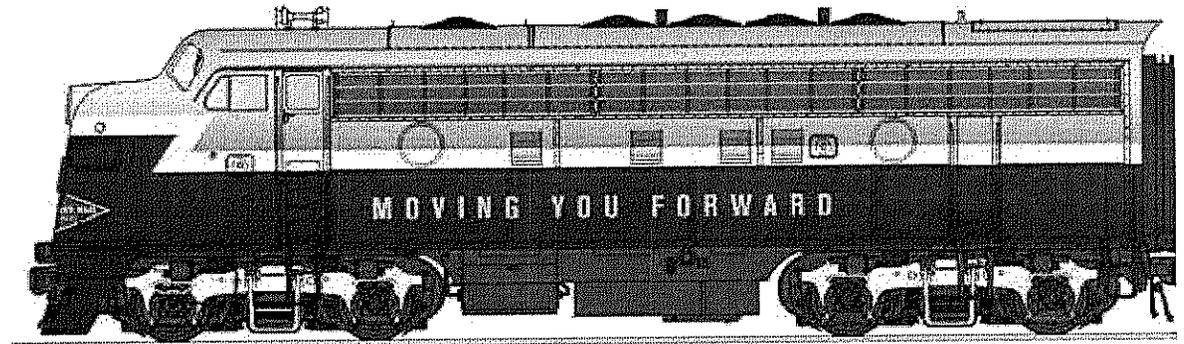
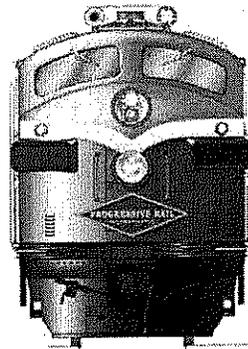
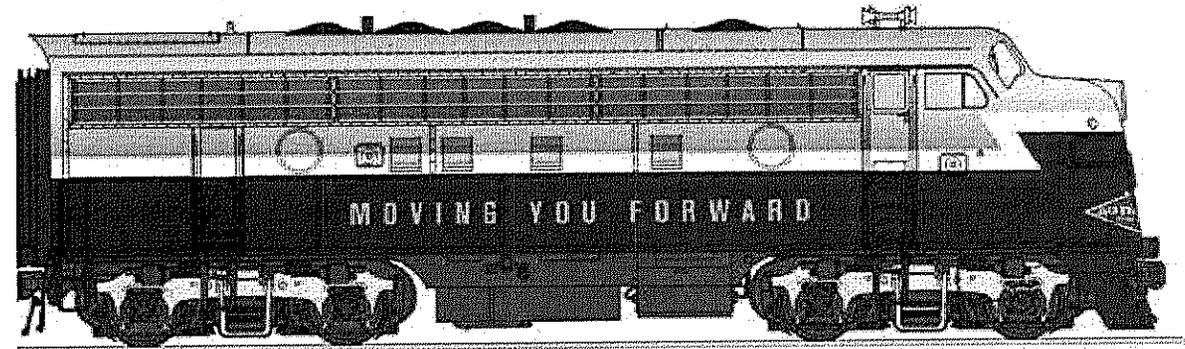


- We believe Santa Cruz can benefit from TAMC's efforts on the Salinas Rail Extension project
- In discussions with Christina Watson, Principal Transportation Planner, at TAMC
- Alternative approaches that include PGR gaining trackage rights on the UP line or initiating negotiations with Caltrain to provide service are viewed as less optimal



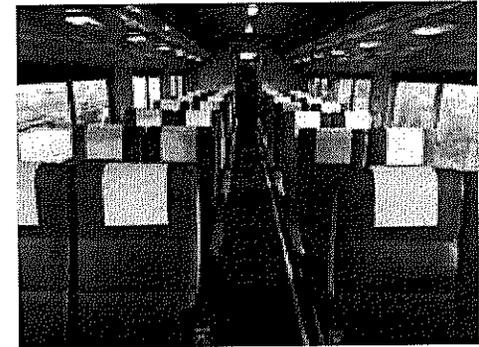
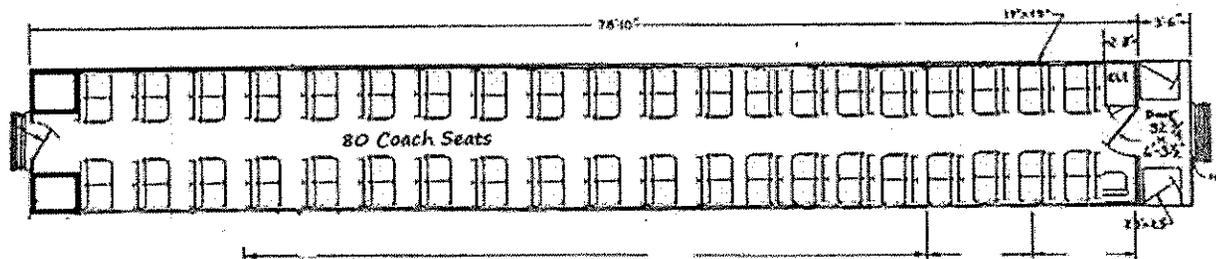
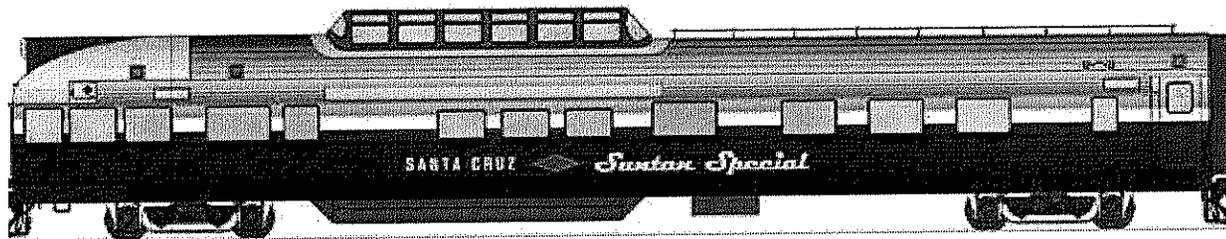
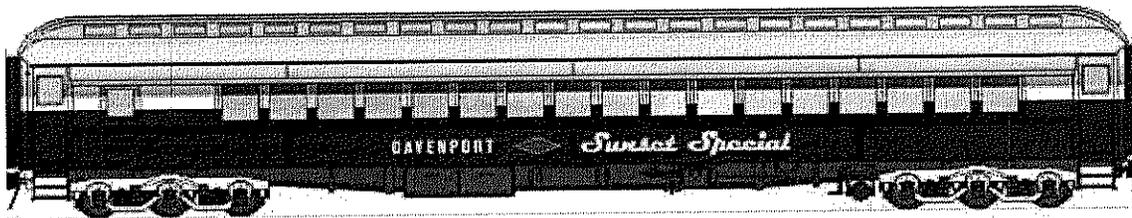
CONCEPTUAL LOCOMOTIVE

- In discussions with National Railway Equipment (NRE) to purchase fully refurbished quiet, N-ViroMotive hybrid diesel/electric gensets that can be configured with nostalgic covered wagon cowling.
- Approach is to set out a locomotive at each end of the train for ease of changing direction and for providing redundancy in the event of a power issue.
- The units are U.S. Environmental Protection Agency (EPA) Tier II certified using Tier III Off-Road certified industrial diesel engines.
- The N-ViroMotive product line is also recognized by the California Air Resources Board as Ultra-Low Emitting Locomotives.



CONCEPTUAL PASSENGER CARS

- Passenger car trainset design will comprise:
 - six coach fare cars,
 - two lounge class cars with observation domes,
 - a bar car in-between.
- Passenger cars have been identified in Florida, Connecticut, and Illinois.
- In discussions with Relco Locomotive in Albia, Iowa, to refurbish and modernize cars to provide wheelchair access.
- Train capacity would be circa 500 to 1,000 passengers depending on demand.



SUNSET SPECIAL

- Our goal is to launch a new excursion service to Davenport from Santa Cruz, using Wilder Ranch as a launch point until Quiet Zones east of Swift Street are established.
- Trainsets would be interchangeable with Suntan Special.
- Thematic excursions include:
 - Polar Express
 - Easter Egg Hunt
 - Pumpkin Patch
 - Picnic on the Beach
 - Sunset
 - Vino Veritas
 - Train Out Bike Back

Sharktooth

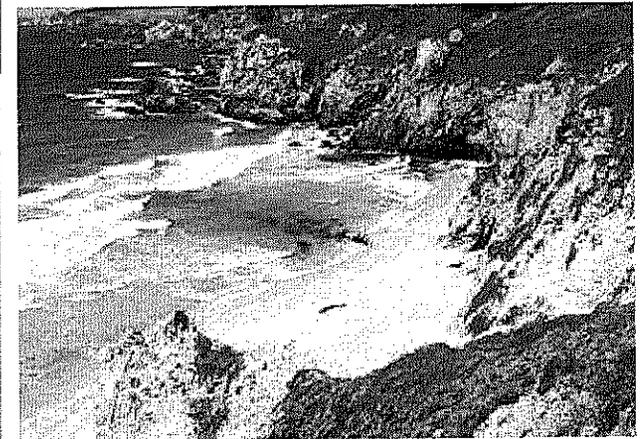


San Vicente



Bonny Doon

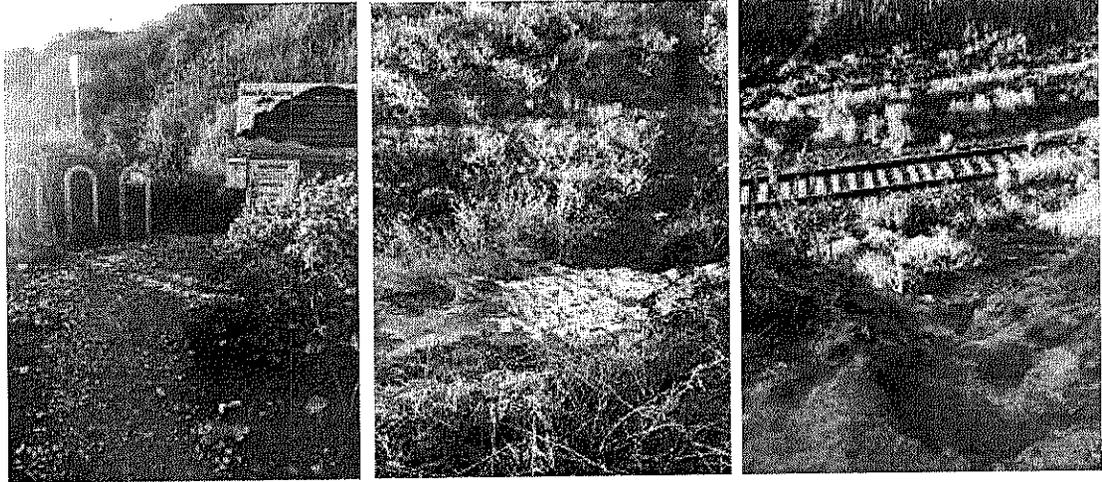
Bonny Doon



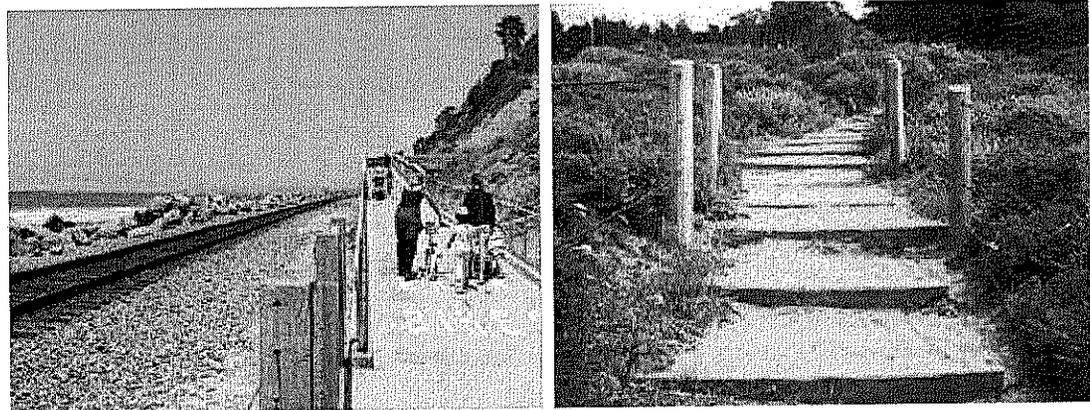
SUNSET SPECIAL

- We propose having an informal caretaker role in four beaches – San Vicente, Secret, Sharktooth, and Bonny Doon.
- We do not want to interfere with the role of government, but stand at the ready to improve the safety and experience of visitors in the Davenport area.
- Right now there are unsafe and unkept trails that are eroding. We think we can do better.
- With rail service to provide easy access, we anticipate higher levels of visitors. As such, we aim to preserve the natural beauty by providing safe passage down the cliffs, informative signage, and waste management.

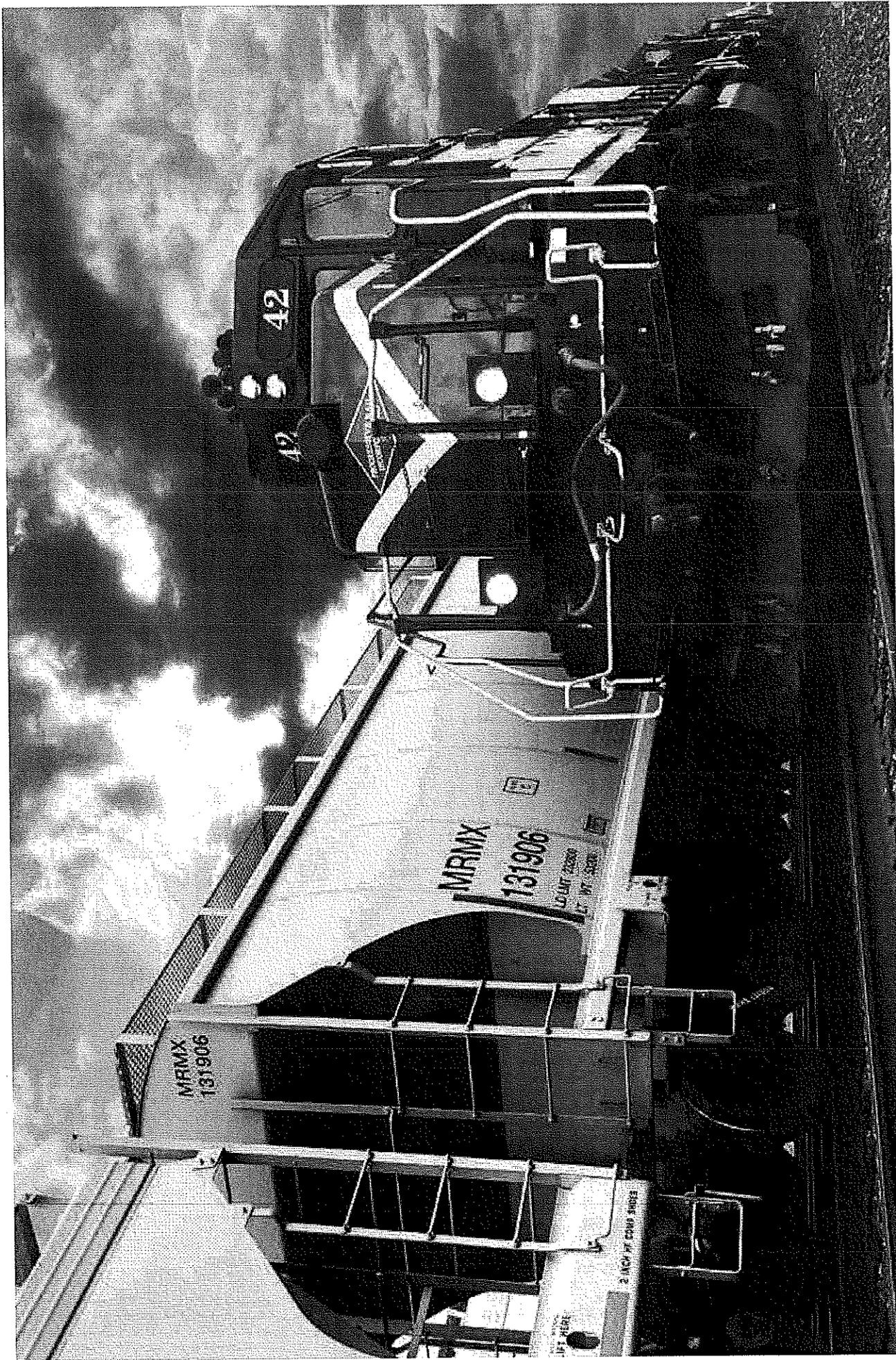
From the current condition...



There is room for improvement.



San Clemente, CA examples of possible approaches.



5-YEAR FINANCIAL PLAN

Total Santa Cruz Scenic Railway Pro Forma Cash Flow

Variances are favorable/(unfavorable) \$ in thousands	Forecast 2018	Forecast 2019	Forecast 2020	Forecast 2021	Forecast 2022
FINANCIALS					
Revenues					
Switching	\$1,040	\$1,700	\$5,025	\$7,450	\$10,050
Transloading	\$18	\$46	\$68	\$91	\$137
Storage & Rental	\$105	\$174	\$508	\$752	\$1,016
Other	\$200	\$319	\$974	\$1,448	\$1,947
Total Revenues	\$1,363	\$2,238	\$6,575	\$9,741	\$13,149
Operating Expenses					
Transportation	\$232	\$380	\$1,118	\$1,656	\$2,235
Maintenance of Way	\$136	\$224	\$1,008	\$1,559	\$2,134
Maintenance of Equipment	\$27	\$45	\$412	\$663	\$918
Carload Connection	\$76	\$131	\$358	\$526	\$715
Administrative	\$204	\$336	\$986	\$1,461	\$1,972
Total Operating Expenses	\$676	\$1,116	\$3,882	\$5,865	\$7,975
EBITDA	\$688	\$1,122	\$2,692	\$3,876	\$5,174
EBITDA Margin	50%	50%	41%	40%	39%
Capital Requirement	(\$2,595)	(\$3,767)	(\$4,767)	(\$1,017)	(\$767)
Cash Flow	(1,907)	(2,645)	(2,074)	2,860	4,407
Cumulative Cash Flow	(1,907)	(4,552)	(6,627)	(3,767)	640



5-YEAR FINANCIAL PLAN

Watsonville Freight Pro Forma Cash Flow

Variations are favorable/(unfavorable)
\$ in thousands

	Forecast 2018	Forecast 2019	Forecast 2020	Forecast 2021	Forecast 2022
FINANCIALS					
Revenues					
Switching	\$140	\$350	\$525	\$700	\$1,050
Transloading	18	46	68	91	137
Storage & Rental	15	39	58	77	116
Other	20	49	74	98	147
Total Revenues	\$193	\$483	\$725	\$966	\$1,449
Operating Expenses					
Transportation	\$33	\$82	\$123	\$164	\$246
Maintenance of Way	19	48	72	97	145
Maintenance of Equipment	4	10	14	19	29
Carload Connection	17	43	65	87	130
Administrative	29	72	109	145	217
Total Operating Expenses	\$102	\$256	\$384	\$512	\$768
EBITDA					
EBITDA Margin	47%	47%	47%	47%	47%
Capital Requirement	(595)	(267)	(267)	(267)	(267)
Cash Flow	(504)	(40)	74	187	414
Cumulative Cash Flow	(504)	(544)	(470)	(283)	132
CARLOADS					
Forecast	400	400	1,500	2,000	3,000
+/- vs Prior Year	na	na	500	500	1,000
% Change	na	na	50%	33%	50%



5-YEAR FINANCIAL PLAN

Excursion Trains toward Davenport Pro Forma Cash Flow

Variations are favorable/(unfavorable) \$ in thousands	Forecast 2018	Forecast 2019	Forecast 2020	Forecast 2021	Forecast 2022
FINANCIALS					
Revenues					
Switching	\$900	\$1,350	\$1,800	\$2,250	\$2,700
Transloading	-	-	-	-	-
Storage & Rental	90	135	180	225	270
Other	180	270	360	450	540
Total Revenues	\$1,170	\$1,755	\$2,340	\$2,925	\$3,510
Operating Expenses					
Transportation	\$199	\$298	\$398	\$497	\$597
Maintenance of Way	117	176	234	293	351
Maintenance of Equipment	23	35	47	59	70
Carload Connection	59	88	117	146	176
Administrative	176	263	351	439	527
Total Operating Expenses	\$573	\$860	\$1,147	\$1,433	\$1,720
EBITDA	\$597	\$895	\$1,193	\$1,492	\$1,790
EBITDA Margin	51%	51%	51%	51%	51%
Capital Requirement	(1,500)	(1,000)	(1,000)	(250)	(250)
Cash Flow	(903)	(105)	193	1,242	1,540
Cumulative Cash Flow	(903)	(1,008)	(815)	427	1,967
CARLOADS					
Forecast	20,000	30,000	40,000	50,000	60,000
+/- vs Prior Year	na	10,000	10,000	10,000	10,000
% Change	na	50%	33%	25%	20%



5-YEAR FINANCIAL PLAN

Suntan Special Pro Forma Cash Flow

Variiances are favorable/(unfavorable)
\$ in thousands

	Forecast 2018	Forecast 2019	Forecast 2020	Forecast 2021	Forecast 2022
FINANCIALS					
Revenues					
Switching	-	-	\$2,700	\$4,500	\$6,300
Transloading	-	-	-	-	-
Storage & Rental	-	-	270	450	630
Other	-	-	540	900	1,260
Total Revenues	-	-	\$3,510	\$5,850	\$8,190
Operating Expenses					
Transportation	-	-	\$597	\$995	\$1,392
Maintenance of Way	-	-	702	1,170	1,638
Maintenance of Equipment	-	-	351	585	819
Carload Connection	-	-	176	293	410
Administrative	-	-	527	878	1,229
Total Operating Expenses	-	-	\$2,352	\$3,920	\$5,487
EBITDA	-	-	\$1,158	\$1,931	\$2,703
EBITDA Margin	-	-	33%	33%	33%
Capital Requirement	(500)	(2,500)	(3,500)	(500)	(250)
Cash Flow	(500)	(2,500)	(2,342)	1,431	2,453
Cumulative Cash Flow	(500)	(3,000)	(5,342)	(3,911)	(1,459)
CARLOADS					
Forecast	-	-	60,000	100,000	140,000
+/- vs Prior Year	na	-	60,000	40,000	40,000
% Change	na	-	-	67%	40%

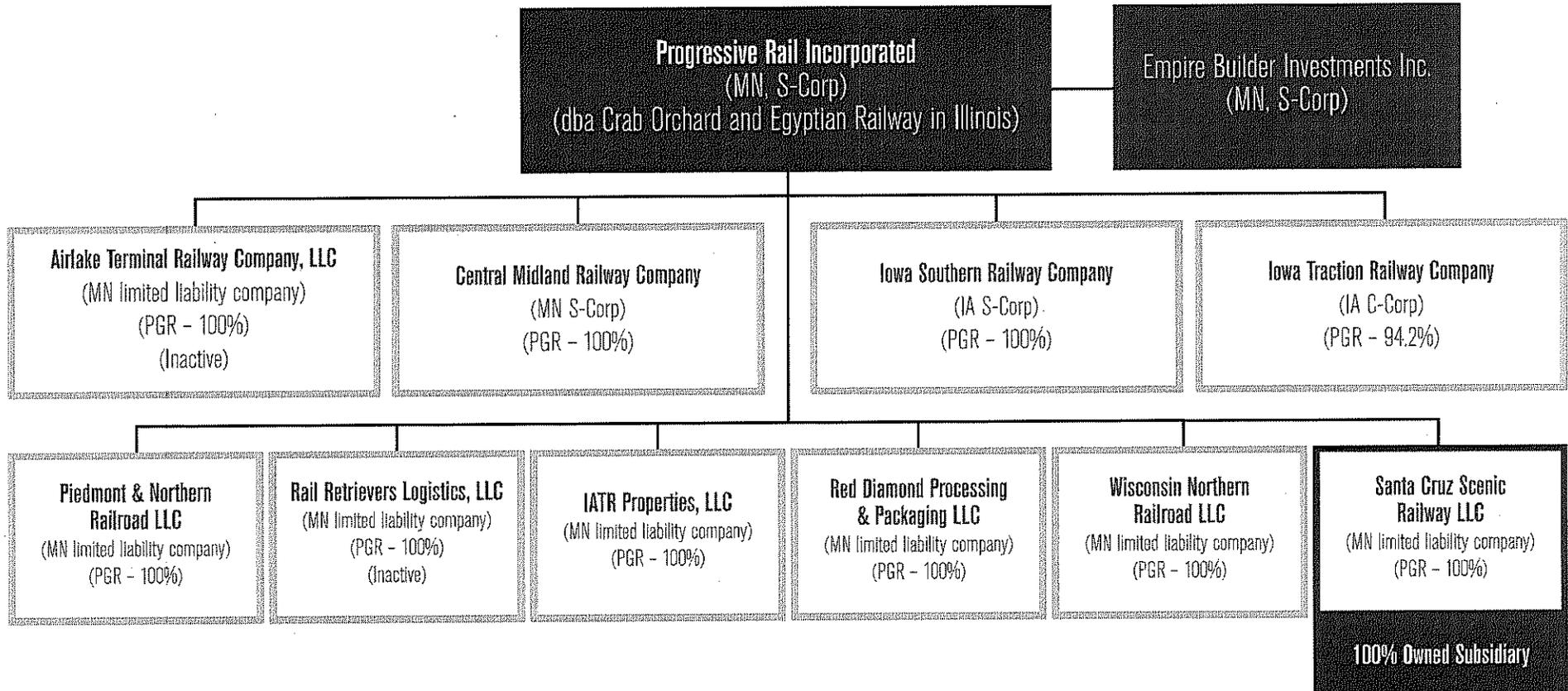


OPERATING CONTRACT

- Reviewed agreement with IPH dated September 27, 2012 and submit the following for consideration:
 - PGR is generally agreeable to the contract and its intent save the provisos discussed below.
 - Given the SCCRTC has experience with the contract, PGR is open to any proposed revisions that improve the contractual obligations, terms, and alignment between SCCRTC and PGR.
 - Regarding economics, we recommend increasing the operating term to 20 years or, conversely, a 10 year term with a 10 year renewal feature that is contingent upon PGR's being in full compliance and good standing.
 - We envisage making sizable investments to enable sustainable passenger rail service and anticipate the stakeholder alignment process taking two to three years. Peak investment levels will likely occur several years into the operating term and will require external financing. As such, investors will likely require at least a ten-year investment horizon from the time the investment is made.
 - Given the expected high-level of commitment and resources that PGR will put forth to reinstate a sustainable passenger service on the entire line, PGR will seek to protect that investment and is sensitive to any encroachment of other passenger operators that may enter onto the line.
- Reviewed agreement with Santa Cruz, Big Trees & Pacific Railway Company and understand their rights and have no concern about continued compliance.



LEGAL ENTITY AS OPERATOR



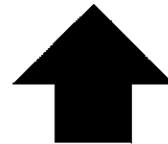
RESOURCE PLAN

	T&E	MOW	Signals & Crossings	Mechanical	Marketing	HSE & FRA Compliance	Business Development	Finance	Legal
Support Teams located in Lakeville, MN	Dustin Heichel	Leon Hoyt	Nik Shepard	Mike Sanders	Dave Fellón	Jason Welsh	TBA	Nick Dillon	Jim Thornton
Santa Cruz Scenic permanently posted locally	TBA-1 TBA-2				TBA-3				



Appointed GM is the single point of accountability

Convener for incident response



Team of Marketing professionals will support representative on the ground

On the ground team will be increased over 2018 in preparation for excursion trains. Vacation relief will be provided by the functional teams.



REFERENCES



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Robert Russell

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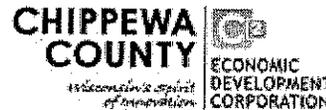
Union Pacific Railroad
1400 Douglas St. STOP 1350
Omaha, NE 68179



Allan Paul

Rail Division Acting Director - Department of Transportation
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1 South Wilmington Street
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Charlie Walker

President/CEO
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Chippewa County Economic Development Corporation
770 Technology Way
Chippewa Falls, WI 54729



MOBILIZATION & START-UP PLAN

- From the contract award date, PGR will meet with SCCRTC immediately to make introductions and to agree a process to finalize and execute definitive agreements.
- A request for approval to become Operator will be submitted to the STB once the operating agreement is executed. STB approval (or non-rejection) is expected to occur in 30 days (the Closing Period).
- During the Closing Period:
 - PGR will invite SCCRTC officials to its headquarters in Lakeville, Minnesota, to showcase its operations and discuss how to best align PGR capabilities with SCCRTC priorities.
 - As permitted by SCCRTC, PGR will have introductory discussions with Santa Cruz Branch Line employees and IPH. PGR's objective is to retain Santa Cruz Branch Line employees with a working assumption that two dual-qualified engineers will be needed as the T&E team.
 - PGR will assign a "business unit leader" who will be singly accountable for conducting safe operations on the line and providing customer interface
 - PGR's marketing team will begin contacting existing and targeted new customers, and recruit a representative on the ground.
 - A transition plan will be prepared and implemented to ensure new employees to PGR are provided with a company orientation, Human Resource documents that include compensation and grade level assignments, benefits, employment contracts, and any training that is required.
 - We will mobilize a switcher locomotive and store it on a siding in Watsonville until a facility can be secured.



Letter 16

COMMENTER: Pamela Silkwood, Horan Lloyd

DATE: September 24, 2018

Response 16.1

The comment is an introductory statement that the Horan Lloyd law firm is representing various farmers, and that they find the Draft EIR deficient and the RTC biased toward approving the Proposed Project.

Refer to **Master Response A**.

Response 16.2

This comment includes three main points.

- a) The Farmers' Alternative (Alternative 3) is the environmentally superior alternative that meets all the Project's objectives and must be selected.
- b) The RTC is biased in favor of the Proposed Project because the Draft EIR states the Proposed Project does not include improvements to the rail line or its related construction and operation impacts, yet finds Alternative 3 to have significant and unavoidable impacts to the historical Davenport Branch Line related to rail improvements.
- c) The Draft EIR includes the following conclusory determination without substantial evidence in the record: "The impacts [of the Farmers' Alternative] would be similar, with some less and some more but no difference in the impact determination."

16.2a. CEQA does not require the Lead Agency to select the environmentally superior alternative; nor does it provide specific guidance on how the environmentally superior alternative should be determined. Indeed, the one and only reference to the environmentally superior alternative in all of CEQA appears in the following sentence from section 15126.6, subdivision (e)(1), of the CEQA Guidelines: "If the environmentally superior alternative is the 'no project' alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives."

More to the point, however, lead agency decisionmakers enjoy broad discretion in deciding whether to approve a project as proposed or one of the alternatives set forth in an EIR. In general, decisionmakers may reject EIR alternatives as infeasible if they fail to meet all project objectives, fail to fully meet project objectives, or are considered undesirable from a policy standpoint. (See *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1506-1509; *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal. App. 4th 957, 1001; *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165, 1166; *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417.) As the California Supreme Court said in *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 576, "[t]he wisdom of approving this or any other development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced."

As presented in Section 5.3, *Environmentally Superior Alternative*, the overall impacts of the Proposed Project and Alternatives would be very similar. Table 5-5 presents a summary comparison of the overall impact for each of the 16 resource topics as identified in Table 5-3, identifies the environmentally superior alternative for each resource topic based on that comparison, and provides a rationale for determining the environmentally superior when there is no substantial distinction. Additionally, Table 5-5 presents a numeric measure for the overall impact determinations to measure the degree of impact for each resource topic. The purpose of this comparative evaluation is to provide detail to decisionmakers and the public regarding how to proceed. By providing comparisons amongst alternatives by topical area, decisionmakers and the public are able to focus deliberation on points of specific relevance and importance. In summary, the alternatives discussion provides a very general comparison, wherein the higher number represents a greater impact. The results of this exercise further demonstrate that the overall impacts of the Proposed Project and Alternatives 1-3 would be very similar.

There are different ways to identify an environmentally superior alternative when the potential impacts of a project and project alternatives are similar. For the purposes of this analysis, three methods or measures were used: 1) focus on the absence of significant and unavoidable impacts, 2) focus on key resource topics, and 3) determine environmental superiority for most resource topics. The rationale for determining the Proposed Project is environmentally superior is clearly presented in the Section 5.3 discussion.

Regarding the commenter's statement that the Farmers' Alternative (Alternative 3) meets all the Project's objectives, the RTC clarifies that Alternative 3 does not meet the following objectives, as presented in Table 5-2.

- Objective 1: Provide a continuous public trail along the Santa Cruz Branch Line railroad corridor and connecting spur trails in Santa Cruz County.

It does not meet this objective because the southern portion of the Alternative 3 trail alignment leaves the rail corridor and extends along Highway 1.

- Objective 3: Develop the trail so future rail transportation service along the corridor is not precluded.

It does not meet this objective because the northern portion of the Alternative 3 trail alignment is located on the trail bed, requiring removal of the rail, in effect precluding future rail operation.

- Objective 5: Maximize safety and serenity for experiencing and interpreting the Sanctuary and landscapes by providing a trail separate from roadway vehicle traffic.

It does not meet this objective because the southern portion of the Alternative 3 trail alignment is substantially closer to Highway 1 than the rail corridor, resulting in an inferior user experience related to views of the Sanctuary and landscapes.

- Objective 11: Complete project construction by 2020 to maximize funding for the Project and meet current funding obligations.

As described in Section 2.6 under *Timing and Duration*, construction of a trail alignment involving removal of the rail, in its entirety under Alternative 1 and in the northern portion under Alternative 3, is estimated to begin in 2028 because of the additional time required to reverse policy, contractual, and regulatory commitments that the RTC has made regarding the railroad tracks.

16.2b. The Draft EIR was prepared by objective independent consultants. The analysis of potential impacts to historical resources was prepared by a senior architectural historian who holds a Masters of Historic Preservation degree and over 8 years of professional experience in the public and private sector.

The analyses found significant and unavoidable impacts to historical resources for both Alternatives 1 and 3 because those alternatives would require removal of the railroad tracks, although Alternative 3 would require removal only in the northern portion of the trail alignment because the southern portion is outside the rail corridor.

As described in Section 3.5.1 of the Draft EIR under *Davenport Branch Line*, a Historic Resources Evaluation was conducted by professionally qualified staff, and the Davenport Branch Line was determined eligible for federal, state and local listing, including the National Register of Historic Places and the California Register of Historical Resources. As described in Sections 3.5.4 under Impact CR-1 and in Section 5.2 under *Alternative 3 (Farmers' Alternative)*, Alternatives 1 and 3 would remove the most fundamental components of the identified historic resources and thus was determined a significant and unavoidable impact.

Removal of the rail line is not an issue for the Proposed Project and Alternative 2 because the trail alignment would be adjacent to the rail, consistent with the approved MBSST Master Plan. The rail line would not be removed, altered, or improved as part of the project because it is not necessary to construct and operate the trail. The inclusion of these two policy options does not reflect any bias on the part of RTC, but rather reflects the fact that the approved MBSST Master Plan contemplates a trail alongside railroad tracks rather than a trail with railroad tracks removed. By analogy, it would be totally appropriate for a city as lead agency, when faced with a proposal consistent with its general plan, to treat such a proposal as its "proposed project" and to treat options inconsistent with its general plan as alternatives to the proposed project.

As described in Section 3.5.4 under Impact CR-1, the analysis did consider indirect effects on the historic resource from construction and operation of an adjacent trail, and the potential impact was determined less than significant with mitigation because the most fundamental components of the identified resource (the rail line) would remain intact.

16.2c. The basis for the conclusion that the impacts of the Farmers' Alternative would be similar to those of the Proposed Project, with some greater and some lesser but no difference in the impact determination, is presented in Section 5.2 under *Alternative 3 (Farmers' Alternative)* of the Draft EIR on pages 5-19 to 5-29 and in Table 5-3. The discussion also notes that while most impacts would be similar with the same impact determinations, the one difference is that Alternative 3 would result in greater impacts to historical resources, as described above. The alternatives analysis in Section 5.2 includes sufficient information about each alternative to allow meaningful evaluation analysis, and comparison with the proposed project, as required by CEQA Guidelines §15126.6.

No revisions to the Draft EIR are required.

Response 16.3

The commenter states that the RTC is biased in favor of the Proposed Project by signing an agreement for rail operation; the discussion of the Farmers' Alternative is perfunctory and prejudicial; and the RTC failed to comply with the basic substantive requirements of CEQA.

Refer to **Master Response E**.

No changes to the Draft EIR are required.

Response 16.4

The commenter states the RTC invalidly breaks the rail trail into smaller pieces in an attempt to avoid significant impacts.

Refer to **Master Response E**.

No changes to the Draft EIR are required.

Response 16.5

The commenter argues that the Proposed Project is a change in land use, and that there should be a buffer between the trail and agricultural operations due to the potential for significant health and safety impacts from pesticide application. To support this claim, the commenter notes that Telone II cannot be sprayed within 100 feet of a structure. The commenter reiterates these statements at the bottom of page 10 of their letter, following comment 16.9.

Sections 3.2, *Agricultural Resources*, and 3.8, *Hazards and Hazardous Materials*, both acknowledge that application of Telone II is prohibited within 100 feet of an occupied structure. This requirement creates a buffer zone, which is an area extending horizontally from a treated field where entry into the zone is prohibited or restricted for a certain period (e.g., seven days following application). However, as stated in both Draft EIR sections, there are no buffer restrictions for transient uses (i.e., pedestrians on a trail). Therefore, 100-foot buffer requirement does not apply to the Project.

The Draft EIR analysis does, however, assume a 100-foot exclusion zone for Telone II, consistent with exclusion zones for other pesticides applied in the North Coast region. In contrast to a buffer zone, an exclusion zone is an area extending horizontally 100 feet from the application equipment in all directions during an application; once application has ceased, there is no exclusion zone. This assumption (100-foot exclusion zone, but no buffer zone) was based on in-person and email communications with Juan Hidalgo, Agricultural Commissioner for the County of Santa Cruz, in February 2018. As of December 2018, no additional regulations have been adopted. According to David Sanford, Deputy Agricultural Commissioner, previously anticipated changes to regulations for the use of 1,3-dichloropropene (the active ingredient in Telone II) are not expected in 2018, and it is not clear yet if Department of Pesticide Regulations (DPR) will be proceeding with change proposals in 2019.⁷ Because of this uncertainty, the Draft EIR's assumption of a 100-foot exclusion zone, at maximum, is still appropriate.

Health impacts to trail users from exposure to pesticides applied along the trail are addressed in Section 3.8, *Hazardous Materials*. In response to this comment, additional text has been added to this section to provide more detail regarding the potential for health impacts associated with 1,3-Dichloropropene (1,3-D), which is the active ingredient in Telone II. Specifically, text has been added to the end of the *Agricultural Pesticides* discussion in Section 3.8.1 to describe the potential health effects associated with 1,3-D. In addition, text has been added to the discussion under Impact HAZ-1 to reiterate these health impacts and to assess the potential for exposure of trail users to this material based on established margin of exposure (MOE) targets for short-term or acute ambient

⁷ Sanford, David. 2018. Deputy Agricultural Commissioner, County of Santa Cruz Department of Agriculture. Personal communication via email regarding pesticide use records and Telone II regulations with Megan Jones, Senior Program Manager, Rincon Consultants; Juan Hidalgo, Agricultural Commissioner, County of Santa Cruz Department of Agriculture; Cory Caletti, Senior Transportation Planner, RTC; Kate Giberson, Director, Harris & Associates; and Carolyn Neer, Planning Intern, Rincon Consultants. October 24, 2018.

exposure. This additional analysis reiterates the conclusion for Impact HAZ-1, which is that exposure of trail users and maintenance personnel to pesticides and other agricultural chemicals would be less than significant with mitigation. Finally, a new mitigation measure, HAZ-1, has been added. As noted in **Responses to Comments 12.9 and 12.10**, this new measure would require the California Department of Parks and Recreation, in consultation with the Department of Pesticide Regulation (DPR), at the time of next renewal or extension of agricultural leases with North Coast farmers along the North Coast Rail Trail corridor, to revise the current leases to include (i) a prohibition of pesticide application within 50 feet a distance from the of North Coast Rail Trail corridor sufficient to protect trail users, (ii) consistent with DPR regulations, a requirement that pesticide use occur only at times of the day when public health and safety can be protected ~~a prohibition of pesticide application during public hours, which would be determined through coordination with State Parks, the Coastal Commission, and property owners~~, and (iii) a requirement that, when spraying in areas ~~within 100 feet of~~ along the North Coast Trail corridor, agricultural operators ~~operations~~ place temporary warning signs at reasonable points along the potentially affected portion of the corridor. Such changes to the North Coast farmers' leases should provide adequate protection to the health of trail users. Refer also to **Response to Comment 16.6** below.

Response 16.6

The commenter notes that Santa Cruz County requires a 200-foot buffer between active agricultural operations and outdoor areas designed for human use, while the Proposed Project would provide a 0-foot buffer in some places. The commenter further states that identified mitigation is not adequate to reduce health and safety impacts. The commenter then states that the Draft EIR inconsistently applies County regulations, including reliance on the Santa Cruz County Right-to-Farm Ordinance for a less than significant determination despite stating that the Project is preempted from the 200-foot buffer. Within these comments, the commenter also notes that agriculture is often over-regulated and that farmers in the North Coast area implement protective measures to ensure their operations are safe and protective of the general population.

The commenter is correct in their description of the Project resulting in a buffer of less than 200-feet. However, as stated in the sixth paragraph under Impact AG-5 in Section 3.2, *Agricultural Resources*, the analysis in the Draft EIR assumed a minimum 10-foot buffer, rather than 0-foot buffer, due to the likely presence of a farm road between the trail and planted crops.

The commenter is also correct that the EIR assumes that the County's 200-foot buffer requirement does not apply to the Project. As stated throughout the Draft EIR, because the Project is being implemented by the federal government, local land use authority is preempted such that local policies and regulations do not directly apply to the Project. However, relevant local regulations – including the County's buffer requirements and Right-to-Farm Ordinance – are discussed for informational purposes.

The commenter's assertion that the Draft EIR then relies on the Right-to-Farm Ordinance to reduce Project impacts is incorrect. This ordinance is discussed in Impact AG-3, under *Nuisance Complaints*. This discussion clearly states that "local regulations do not directly apply to the Proposed Project due to federal preemption, and the protections granted by the Right-to-Farm Ordinance do not directly apply to the Proposed Project" and concludes that "[b]ecause nuisance complaints are expected to occur due to the Proposed Project alignment adjacent to active agriculture and because the County's Right-to-Farm Ordinance does not apply to the Proposed Project, mitigation is required to limit nuisance complaints against North Coast farming operations." The EIR clearly does *not* rely on this ordinance as mitigation, as suggested by the commenter, but instead consistently applies the

federal preemption assumption to all County regulations and requires mitigation measures to reduce impacts resulting from nuisance complaints.

Regarding the commenter's statement that identified mitigation is not adequate to reduce health and safety impacts, the commenter does not provide specific or clear criticisms of the mitigation identified, nor suggest revisions or additions. Further, the commenter's statement that agricultural operations in the North Coast area are "safe and protective of the general population" seems in conflict with the assertion that health and safety impacts are substantial and not adequately mitigated in the EIR. Similarly, their statements that agriculture is often over-regulated seems in conflict with the desire for the EIR to apply buffer restrictions to agriculture that do not otherwise apply due to federal preemption. Despite these inconsistencies and based on several comments regarding potential health effects from pesticide exposure (see also Comments 12.9, 16.5 and 16.7), a new mitigation measure has been added to Impact HAZ-1 in Section 3.8, *Hazards and Hazardous Materials*, to further reduce potential health and safety impacts associated with pesticide exposure.

The new Mitigation Measure HAZ-1 recommends that State Parks amend leases with North Coast farmers to prohibit pesticide application within 50 feet of a distance from the North Coast Rail Trail corridor sufficient to protect trail users and require that pesticide use occur only at times of the day when public health and safety can be protected as well as at during public hours of the trail, which would be determined through coordination with State Parks and the Coastal Commission, as well as through consultation with affected property owners, and to place signs when spraying in these areas.

Section 2.5, under *Hours and Closures*, in Section 2.0, *Project Description*, has also been revised to clarify that the trail would be closed at night to support existing agriculture adjacent to the trail and to protect the public from pesticide spraying necessary for the continued viability of agricultural use, and to discourage illegal camping. Also refer to **Master Response C** under *Parking Lot Gates, Hours and Closures*.

It should be noted that this recommended measure includes a 50-foot buffer because, according to State Parks, this is the current buffer that agricultural operators informally apply for trails in the North Coast area. In addition, State Parks prefers not to establish a wider buffer, such as 100 or 200 feet.⁸

Mitigation Measure HAZ-1 has the virtue of imposing limitations on the application of a hazardous substance by farmers who are leasing public lands, rather than imposing additional limitations on members of the public who are interested in using small portions of those same public lands. The commenter might prefer an approach whereby the farmers could continue to apply Telone II right up to the edge of the proposed trail, even if such activities could harm trail users. The RTC believes, however, that, from a public policy standpoint, the more equitable solution is to impose limits on the parties using the hazardous substance, particularly since the land at issue is owned by the California Department of Parks and Recreation, which maintains the land as a trustee for the People of the State of California (see CEQA Guidelines, § 15386, subd. (c)). The RTC's approach is also consistent with Coastal Act policies favoring public access to coastal areas. (See, e.g., Pub. Resources Code, § 30001.5, subd. (c).)

⁸ Spohrer, Chris. 2018. District Superintendent, California State Parks. Personal communication via telephone meeting regarding pesticide spraying, trail maintenance, operating agreement, and on-site mitigation with Andy Schiffrin, Analyst, Santa Cruz County Board of Supervisor Ryan Coonerty's Office; Cory Caletti, Senior Transportation Planner, RTC; and Kate Giberson, Director, Harris & Associates. October 24, 2018.

In response to this comment, the Draft EIR has been revised to include an additional recommended mitigation measure, and to clarify trail closure time restrictions.

Response 16.7

The commenter provides an excerpt from the MBSST Network Master Plan EIR, which included a trail closure mitigation measure, and states that the RTC is bound by this mitigation because it adopted a Mitigation Monitoring and Reporting Program (MMRP). The commenter states that the RTC cannot “disregard” the MMRP and claims that the EIR provides lesser and logistically infeasible mitigation with zero buffer in some areas, which would result in significant health and safety impacts. The commenter explains why Mitigation Measure AG-5 (Establish Pesticide Spray Notification Procedures and Install Temporary Warning Signage along Trail) would be logistically unrealistic, with notifications going through multiple parties and occurring often and in the evenings. The commenter then reiterates earlier comments regarding the County’s 200-foot buffer requirement and recommends that the RTC consult with “U.S. and Environmental Protection Agencies” prior to Project approval.

Refer to **Response to Comment 16.6** for a discussion of the County’s buffer requirements and potential health and safety impacts.

Regarding the comment about prior MBSST Network Master Plan EIR mitigation, the EIR does not disregard this measure. The measure – Master Plan EIR Mitigation Measure HAZ-3(a) (Trail Closure) – is discussed in the second to last paragraph under Impact HAZ-1 in Section 3.8, *Hazards and Hazardous Materials*. As stated therein, because the Project corridor is located primarily on public land and physical closure of the trail would inhibit public access to the coast west of the Project corridor, in conflict with California Coastal Act §30001.5, the Project does not include design features that would enable the physical closure of the trail. Instead, the Draft EIR explains that mitigation included would satisfy the objective of the Master Plan EIR Measure HAZ-3(a). As such, neither the EIR nor the RTC disregard this prior measure. Instead, the measure has been considered in light of project- and site-specific information currently available for this segment of the MBSST Network, and it was determined that trail closure would neither be required, nor consistent with California Coastal Act public access requirements. Under CEQA case law, a lead agency may repeal or abandon a previously approved mitigation measure if the agency has a “legitimate reason” for doing so. (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 359.) HAZ-3 as originally written is now considered infeasible because it would conflict with California Coastal Act public access requirements.

To the extent that HAZ-3(a) from the Master Plan EIR appears to be more protective of the health of trail users than Mitigation Measure AG-5 from this EIR (Establish Pesticide Spray Notification Procedures and Install Temporary Warning Signage along Trail), the RTC has devised a new measure, for implementation by the California Department of Parks and Recreation, that would be even more protective than Master Plan Mitigation Measure HAZ-3(a). As noted in **Response to Comment 12.9** above, Mitigation Measure HAZ-1 requires that the California Department of Parks and Recreation, in consultation with the Department of Pesticide Regulation (DPR), at the time of next renewal or extension of agricultural leases with North Coast farmers along the trail corridor, revise the leases to prohibit pesticide application within a distance from the 50-foot of the North Coast Rail Trail corridor sufficient to protect trail users; consistent with DPR regulations, a requirement that pesticide use occur only at times of the day when public health and safety can be protected prohibit pesticide application during public hours of the trail; and require the placement of temporary warning signs when spraying along within 100 feet of the corridor. The elimination of Master Plan EIR Measure

HAZ-3(a) as originally written for inclusion in the Master Plan must be understood together with required Mitigation Measures AG-3(b), AG-3(e), and AG-5 in Section 3.2, *Agricultural Resources*, as well as with the creation of new Mitigation Measure HAZ-1. Considered together, the related actions result in a greater level of protection of public health than could have been achieved by Master Plan EIR Measure HAZ-3(a).

Regarding the feasibility of Mitigation Measure AG-5, it should be clarified that this measure first requires that the Trail Manager develop a list of “pesticides of primary concern” in consultation with the Agricultural Commissioner. The notification and signage requirements would only apply to those pesticides, so would not be required for every pesticide or chemical applied to North Coast crops. Regardless, it is acknowledged that this notification may often occur in the evenings. This is consistent with the current practice of limiting spraying during from 8:00 am to sunset. ~~Public hours of the trail would be determined through coordination with State Parks and the Coastal Commission, as well as through consultation with affected property owners, and formalized pursuant to the new Mitigation Measure HAZ-1, if implemented by State Parks.~~

The Agricultural Commissioner was consulted when preparing this measure and provided comments on the Draft EIR (refer to Letter 8). In that letter, the Agricultural Commissioner agreed Mitigation Measure AG-5 would help mitigate identified impacts, but suggested removing the Agricultural Commissioner from the notifications so that the communication would occur directly between the farmers and the Trail Manager. This edit has been made to Mitigation Measure AG-5 in Section 3.2, *Agricultural Resources*, so one of the notification steps has been removed. The measure now requires that agricultural operators notify the Trail Manager directly when spraying “pesticides of primary concern” and allows 24 hours for the Trail Manager to place signs on the affected portion of the trail. This requirement is neither onerous nor infeasible.

Regarding the final comment about consulting “U.S. and Environmental Protection Agencies,” it is assumed the commenter means the US EPA and not a collective group of multiple different agencies. The commenter does not explain why the US EPA should be consulted, and there is no clear nexus for such consultation. Therefore, no revisions to the Draft EIR have been made in response to this specific comment.

In summary, Master Plan EIR Measure HAZ-3(a) was not disregarded in the EIR. Instead, it was determined that trail closure (as was required by this measure) would neither be required, nor consistent with California Coastal Act public access requirements. As such, this prior measure was excluded as infeasible. The RTC has devised a new measure, HAZ-1, that would be more protective than Master Plan EIR Measure HAZ-3(a), as it would prohibit pesticide spraying within a distance from 50 feet of the trail corridor sufficient to protect trail users, and would require that pesticide use occur only at times of the day when public health and safety can be protected ~~prohibit spraying during public trail hours~~. Lastly, Mitigation Measure AG-5 is not considered onerous or infeasible, for the reasons described above.

No revisions to the Draft EIR have been made in response to this comment. However, this response relies on revisions made to Mitigation Measure AG-5 in response to **Comment 8.2**, and the addition of Mitigation Measure HAZ-1 in response to **Comments 12.9 and 16.6**.

Response 16.8

The commenter states that there are no guarantees there would be funding for mitigation implementation and a trail manager.

Refer to **Master Response F**.

Response 16.9

The commenter requests preparation of an indemnification and hold harmless agreement between RTC and each agricultural operator along the trail right-of-way. This agreement would protect the agricultural operators from legal damages associated with the trail and its use. The commenter also requests establishment of a trail fund that commits \$250,000 every fiscal year to implement the project's mitigation measures.

The RTC declines to adopt the proposed recommendations. The request for an indemnification and a hold harmless agreement suggests that the commenter believes that the North Coast Farmers' pesticide application could result in legal liabilities due to health effects, and that the commenter believes that such liability should be passed on to the RTC. Not only would such an arrangement fail to mitigate any physical effect, thus failing to qualify as a mitigation measure recognizable under CEQA (see CEQA Guidelines, § 15370 [definition of "mitigation"]); the arrangement would also reduce the farmers' incentives to take great care in applying those pesticides. The farmers are lessees of public lands, and can be made, pursuant to Mitigation Measure HAZ-1, to limit their future activities in a way that will protect future trail users. This is a better solution, and one more consonant with Coastal Act policies favoring public access. Nor has the commenter established the need for a proposed annual \$250,000 trail fund. The RTC does not believe that such expenditures are necessary to avoid any significant environmental effects or reduce any such effects to less than significant levels. The commenter has not identified any source for such funds, and the RTC is not aware of any.

Response 16.10

The commenter expresses preference for the Farmers' Alternative, even if the trail closure mitigation is implemented.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 16.11

The commenter states that the EIR fails to adequately analyze and mitigate the project's impacts on agriculture. This comment includes the following separate points.

- a) The cumulative agricultural discussion in the Draft EIR downplays cumulative impacts when compared to the cumulative analysis in the MBSST Network Master Plan EIR.
- b) The Draft EIR relies on the Santa Cruz Right-to-Farm Ordinance for a finding of less-than-significant effects, which is inconsistent with the statement that the County's 200-foot agricultural buffer would not apply to the Project due to federal preemption.
- c) The characterization of Important Farmland conversion is understated, and the historical nature of agricultural operations should be considered.
- d) The Draft EIR fails to consider cumulative impacts of the MBSST Network Master Plan.
- e) Indirect effects of the Project, when taken with cumulative buildout of the entire MBSST Network, would result in considerable loss of Important Farmland. These indirect effects

include removing farmland to preserve a buffer between the trail and active agriculture; fallowing, loss of farm roads and crossings, and food safety concerns; increased liability; increased use of informal trails; and general urbanization of the area.

- f) Signage is insufficient mitigation.
- g) The lack of restrooms, litter, and trespassing would result in food safety impacts. Farmers must provide bathrooms to its employees at a walking distance of no less than five minutes.
- h) The loss of crossings and farm roads would stymie agricultural operations to the point where farming would no longer be viable.
- i) Impacts to agriculture resulting from the formalization of existing informal trails was not analyzed in the EIR.
- j) The following mitigation measures must be considered:
 - i. Bathrooms every mile
 - ii. Establishment of a 200-foot buffer
 - iii. Six-foot tall fencing
 - iv. Retention of all existing crossings and farm roads
 - v. An indemnification and hold harmless agreement between RTC and each agricultural operator
 - vi. A trail fund of \$250,000 every fiscal year
- k) The Farmers' Alternative is environmentally superior to the Proposed Project.

Within this comment, the commenter restates prior remarks about the lack of a buffer and the need to consult with "U.S. and Environmental Protection Agencies." These comments were previously addressed in **Responses to Comments 16.6 and 16.7**.

16.11a. The Master Plan EIR analyzed impacts associated with the entire MBSST Network, which would span approximately 32 miles over the length of Santa Cruz County. Due to this expanse, it would abut agriculture in several areas of the County, including in and near the City of Watsonville. As such, cumulative impacts account for development throughout the County, and the MBSST Network's contribution would be comparatively substantial. In contrast, the current Project is a 7.5-mile segment located in the North Coast area of Santa Cruz County. The cumulative analysis in the Draft EIR assesses whether this 7.5-mile segment would contribute to cumulative impacts when combined with reasonably foreseeable projects in the North Coast area (refer to Table 4-1 in Section 4.0, *Other CEQA-Required Discussions*). This analysis is at a geographic different scale than the programmatic MBSST Network analysis, and therefore does not present an appropriate "like for like" comparison. The cumulative impacts in the Draft EIR are therefore not understated, but are more project- and site-specific than those included in the Master Plan EIR.

16.11b. The statement that the EIR relies on the County Right-to-Farm Ordinance is incorrect. Refer to **Response to Comment 16.6**.

16.11c. The analysis under Impact AG-1 considers whether the Project would directly convert land designated by the DOC FMMP as Prime Farmland, Farmland of Statewide Importance, and Unique Farmland to non-agricultural use. To calculate this conversion, the Project footprint was overlaid atop this data in ArcGIS and the resulting acreage reported. This analysis was based on GIS-data from the DOC and is not prejudicial as suggested by the commenter. Indirect impacts are analyzed separately under Impact AG-3.

The thresholds identified in Section 3.2 of the Draft EIR are based on Appendix G of the State CEQA Guidelines, and do not include consideration of the historic use of the land. Map categories that constitute Important Farmland must have been cropped or in production sometime during the four years prior to the mapping date. Beyond this time reference, however, historical use is not a factor in the FMMP designations. Impacts to historical resources are discussed in Section 3.5, *Cultural Resources*. The analysis therein is based in part on a cultural resources records search of the Project corridor at the Northwest Information Center (NWIC) at Sonoma State University. The records search did not identify a cultural landscape within the study area. Therefore, for the purpose of CEQA, agricultural use of the land is not identified as an historic resource. Should the landscape be determined a historical resource per CEQA at a later date, it is not anticipated that the Project would negatively affect its integrity or result in a significant adverse impact, as the Project would result in a very minor and unobtrusive change to the overall setting.

No revisions to the Draft EIR are required.

16.11d. Refer to Table 4-1 (List of Cumulative Projects) in Section 4.0, *Other CEQA Required Discussions*, of the Draft EIR. The MBSST Network Master Plan is included in the list of cumulative projects and is therefore considered in the Draft EIR cumulative analysis, contrary to the commenter's assertion.

For agricultural resources specifically, the cumulative setting includes any proposed developments in the North Coast area. This includes segments 1 through 6 of the MBSST Network Master Plan. While some segments outside of the North Coast area, such as those in the Watsonville area, could convert agricultural land, the Project would not contribute to such impacts due to the geographic distance and disconnection from that reach. Therefore, the cumulative setting for agricultural impacts is appropriate.

The first paragraph under Impact AG-C in Section 4.1.3 of the Draft EIR has been revised to clarify that cumulative development in the North Coast area includes segments 1 through 6 of the MBSST Network. This minor clarification does not change the conclusion that cumulative impacts would be less than significant, nor that the Project's contribution would not be cumulatively considerable.

16.11e. Indirect effects of the Project on agricultural operations are analyzed in Section 3.2, *Agricultural Resources*. Specifically, Impact AG-3 considers impacts related to food safety, which includes a discussion of liability. Mitigation is identified to limit potential food safety and liability concerns. The loss of farm roads and the elimination of five existing crossings is discussed under Impact AG-4. As noted therein, the Project would necessitate the creation of a new farm road adjacent to the trail to provide continued access for farming equipment. However, the conversion from crops to a farm road is not considered a conversion to non-agricultural use. Similarly, fallowing (which is discussed under Impact AG-1), is also not considered a conversion to non-agricultural use. In combination, these impacts would not result in conversion of Important Farmland, as suggested by the commenter.

Regarding the suggestion that the Project would remove farmland from productivity due to preservation of a buffer between the trail and active agriculture, the County's 200-foot buffer does not apply to the Project, as discussed in Response 16.6. The recommended new Mitigation Measure HAZ-1 (added to the EIR in response to comment 16.6) would institute a ~~50-foot~~ buffer between the trail and the application of pesticides sufficient to protect trail users. The inability to spray pesticides does not preclude planting or harvesting of crops, and would not constitute a conversion to non-agricultural use. In other words, the farmers' inability to apply Telone II or similar economic poisons

on leased public lands up to the edge of the proposed public trail does not constitute an irreversible loss of agricultural resources.

Regarding the statement that the Project would increase use of informal trails that would be formalized as part of the Project, it is unclear what trails the commenter is referring to. The Project would install a formal multi-use trail, which would be fenced and would provide clear and formal access from distinct areas (namely, existing parking lots). Further, it is unclear how increased use of an existing trail, whether formal or informal, would convert agricultural land to non-agricultural use. Refer also to **Response to Comment 16.11i**.

Regarding the statement that general urbanization of the area would result in a loss of farmland, this suggestion is unfounded. Cumulative projects in the North Coast area (as listed in Table 4-1) are somewhat limited; public access improvements, a wastewater treatment plant upgrade, potential future rail service, and a multi-use trail do not constitute a pattern of urbanization, but rather a series of reasonable modifications to facilities to address evolving land use patterns and social needs. Based on the reasonably foreseeable projects in the North Coast area, cumulative impacts to agriculture were found to be less than significant.

16.11f. Signage is not the only mitigation identified in the Draft EIR. Other mitigation concepts include measures to reduce construction-related conflicts and the regular removal of solid waste and litter. Mitigation Measure AG-5 includes the development of a list of pesticides of primary concern and notification prior to application of these pesticides, in addition to the placement of temporary signage. In addition, a new Mitigation Measure added to Impact HAZ-1 in Section 3.8, *Hazards and Hazardous Materials*, recommends that State Parks, in consultation with the Department of Pesticide Regulation (DPR), amend leases with North Coast farmers to prohibit pesticide application within a distance from 50 feet of the North Coast Rail Trail corridor sufficient to protect trail users and to require that pesticide use occur only at times of the day when public health and safety can be protected ~~as well as during public hours of the trail, which would be determined through coordination with State Parks and the Coastal Commission, as well as through consultation with other affected property owners~~. This measure has been added to Section 3.8 in **Response to Comment 16.6**. All of these measures have physical components that would limit identified impacts.

It should also be reiterated that the Project includes features that would serve to minimize conflicts between the proposed trail and existing agricultural uses. These include: placement of fencing between active farmland and the multi-use trail where natural barriers do not exist, placement of 12-23 trash/recycling receptacles along the trail alignment including in parking areas, and the prohibition of dogs and horses. Signage would be an addition to these other mitigating design features. These signs would be strengthened by the addition of specific food safety warnings [pursuant to Mitigation Measure AG-3(d)] and bolstered with the addition of “No Trespassing” signs [per Mitigation Measure AG-3(b)]. These signs are intended to educate trail users about the importance of food hygiene, the location of public restrooms, and the legal ramifications for trespassing, which would serve to alter behaviors that could otherwise negatively impact agricultural operations.

Based on the nature of Project impacts, mitigating design features of the Proposed Project, and other identified (non-signage) mitigation, impacts would not be significant. Signs would further reduce impacts for the reasons listed above.

No revisions to the Draft EIR are required.

16.11g. Restrooms/human waste, litter, and trespassing are all analyzed under Impact AG-3 in Section 3.2, Agricultural Resources. Labor laws governing agricultural operators do not apply to the Project. The requirement for a restroom within a walking distance of no less than five minutes is relevant when farmworkers are working within a field for eight or more hours per day. Trail users, on the other hand, are transient – passing through the area on foot, bike, or other wheeled transports. Therefore, the need for restrooms within a five-minute walk (or every mile, as suggested by the commenter) is not warranted.

The Trespassing discussion under Impact AG-3 acknowledges that the proposed 4.5-foot tall fence would be scalable, and that the potential for vandalism, theft, or other direct impacts to adjacent farmland from trespassing could occur. As a result, Mitigation Measure AG-3(b) (Install No Trespassing Signs Prior to Operation) is required, which would inform trail users of the legal ramifications for trespassing.

The suggestion that potential food safety impacts resulting from trespassing and human defecation would limit the viability of farming to the extent that Important Farmland would be lost is speculative, and fails to address the true nature of agricultural impacts under CEQA. Pursuant to Appendix G of the State CEQA Guidelines and the thresholds used in the EIR, impacts to Important Farmland would occur if these areas would be converted to a non-agricultural use. Lost productivity or fallowing of farmland is not a non-agricultural use. Furthermore, any short-term damage to crops due to trespassers would not alter the long-term quality of the agricultural soils in the area. Because agricultural properties adjacent to the Project corridor are currently zoned for agricultural production, future non-agricultural development would not be permitted.

As stated in the *Summary* of Impact AG-3, trespassing, littering, and other food safety-related concerns would not result in conversion of farmland to non-agricultural use. However, these potential impacts could negatively impact and be considered in conflict with agricultural operations. Therefore, mitigation is required to reduce these conflicts, thereby limiting the potential for negative effects. None of the comments provided support the claim that such impacts would be significant to the point of converting Important Farmland to non-agricultural use.

No revisions to the Draft EIR are necessary.

16.11h. The loss of crossings and farm roads are discussed under Impact AG-4 in Section 3.2, *Agricultural Resources*. As stated therein, the elimination of five existing crossings would represent an inconvenience for farm workers, sometimes requiring longer travel distances to access property on the other side of the trail, and lengthening the time of each crossing as workers stop to look for pedestrians and bicyclists. However, increased travel times for farm workers would not result in the conversion of agriculture to non-agricultural use. Similarly, the creation of a new farm road adjacent to the trail to provide continued access for farming equipment is also not considered a conversion to non-agricultural use.

16.11i. The Project would not formalize existing informal trails, as suggested by the commenter. Therefore, impacts to agriculture from such improvements need not be analyzed.

Text has been added to Section 2.1, *Overview*, to clarify the Project does not include spur trails to the bluffs and beaches.

16.11j. As discussed in Response 16.11g, restrooms are not needed every mile (suggested measure i). Labor laws governing requiring that agricultural operators provide a restroom within a walking distance of no less than five minutes is not relevant to transient trail users, who would move through the area relatively quickly.

Refer to **Response to Comment 16.6** for a discussion of the County's 200-foot agricultural buffer (suggested measure ii). As stated therein, this buffer does not apply to the Project. Requiring such a buffer as mitigation would significantly increase the amount of agriculture converted to non-agricultural (trail) use.

One of the Project objectives is to maximize ocean views and scenic coastal vistas along a coastal alignment for experiencing and interpreting the Monterey Bay National Marine Sanctuary, and historical and agricultural landscapes. Installing a six-foot tall fence (suggested measure iii) would obstruct these views, and thus be in direct conflict with this Project objective. Furthermore, such mitigation is not warranted as the impact associated with people scaling the proposed 4.5-foot tall fence to defecate on adjacent croplands was not identified, on its own, as being significant. The likelihood of trespassing by scaling the 4.5-foot tall fence would be low, and sufficiently mitigated through the installation of no trespassing signs and the proposed monitoring of the trail by the Trail Manager. A six-foot tall fence would not be proportional to the impact identified, and thus has not been added to the Draft EIR.

Requiring that all existing crossings be retained (suggested measure iv) is not warranted based on the impacts identified in the Draft EIR. As stated previously, although the closure of some existing crossings would require longer travel distances and/or lengthening time for each crossing, such inconveniences would not result in a significant impact to agriculture. Similarly, requiring that all farm roads be retained is not feasible because the Proposed Project footprint occurs on some existing farm roads. The conversion of these farm roads is included in the analysis of direct conversion of Important Farmland to non-agricultural use, as discussed under Impact AG-1 in Section 3.2, *Agricultural Resources*. As stated in the Draft EIR, construction of the proposed multi-use trail may necessitate the widening of an existing farm road or creation of a new farm road adjacent to the trail to provide continued access for farming equipment. The new farm roads would reduce the land available for planting. While construction of new farm roads would reduce the land area available for planted crops, farm access roads are considered an agricultural use as they directly support agricultural operations. Therefore, conversion of planted crops to farm roads outside of the Proposed Project alignment would not constitute a conversion to non-agricultural use resulting from the Proposed Project. As such, there is no nexus to require the retention of farm roads, nor would such a mitigation measure be technically feasible.

For a discussion of suggested measures v and vi, refer to **Response to Comment 16.6**.

No revisions to the Draft EIR are necessary.

16.11k. Refer to Response 16.2c.

Response 16.12

The commenter states that impacts to biological resources are significant and considerable and that the DEIR fails to adequately analyze and mitigate the impacts. The commenter focuses on cumulative impacts. The commenter lists the Project-specific potential impacts identified in the EIR and takes issue with the word "presumably" in the assessment of cumulative impacts. The commenter states that the DEIR is deficient and that "the RTC has failed to comply with the basic substantive requirements of CEQA." The focus of the comment is that the Draft EIR understates the severity of cumulative biological resource impacts. The RTC disagrees.

The word "presumably" is used in the discussion of the cumulative impacts to describe the legal mandate for each project considered under cumulative impacts of this EIR to mitigate project-

specific significant impacts under CEQA to the extent feasible. This mandate can be expected to result in meaningful levels of mitigation for each of the listed projects. Even so, however, the Draft EIR candidly states that “[b]oth construction of the access improvements and increased public access and use [associated with cumulative projects] would result in increased:

- Trampling, and degradation of sensitive habitats;
- Disruption of habitat values associated with edge habitat;
- Degradation of wetlands, creeks, drainages, riparian habitat, water quality, associated habitat values and functions, and ecosystems services;
- Disruption of wildlife utilization of biological resources for foraging; hydration; cover, shelter, aestivation/hybernacula; nesting and breeding; movement, dispersal, and migration; including for sensitive fish species, CRLF, sensitive and native nesting birds, and San Francisco dusky-footed woodrat;
- Fragmentation of contiguous natural landscapes, and loss of large hunting territories for higher order predators; and
- Illegal camping, introduction of litter (including human foods), urine and fecal matter, illegal off-leash dogs (causing harassment and mortality of wildlife).

Taken cumulatively, these impacts would result in degradation and fragmentation of the suite of habitat types and associated biological resources that occur within the cumulative setting on the North Coast, and result in overall diminished regional ecological functions and values. The Project would contribute to these impacts by adding Project-related infrastructure and provisions for on-going maintenance, enforcement, and conservation of biological resources that would be necessary to minimize and mitigate cumulative impacts.” (Draft EIR, Section 4.1.5)

These passages represent a candid acknowledgement that significant adverse cumulative effects to biological resources would result. The key issue for the proposed project, however, is whether its incremental contribution to these significant cumulative impacts would itself be cumulatively considerable. (See CEQA Guidelines, §§ 15065, subd. (a)(3), 15130, subd. (a).) The Draft EIR concludes that, *with mitigation*, the project’s contribution to cumulative biological resource impacts will *not* be cumulatively considerable. (Draft EIR, Section 4.1.5)

The analysis of cumulative impacts is focused on the task of addressing those impacts that are not mitigated on a project-by-project basis. This task is accomplished in the Draft EIR by identifying Mitigation Measure BIO-C(a), which adds specific goals, objectives, qualitative performance criteria, and adaptive management to the MMP to mitigate for potential cumulative impacts, and Mitigation Measure BIO-C(b), which adds a Maintenance and Conservation of Biological Resources component to the Project Operations and Maintenance Plan and includes fencing, vegetative barriers, and enforced hours of trail use.

No revisions to the EIR are necessary.

Response 16.13

The commenter states that the Project was invalidly segmented by entering into a long-term agreement with a rail operator to avoid the responsibility for considering the environmental impacts of the project as a whole, including rail improvements and expanded operation, and references Exhibit C (an email exchange between RTC and Progressive Rail).

Exhibit C is an email exchange between RTC and Progressive Rail, and the relevance is unclear because it is primarily about scheduling a meeting and does not discuss specific rail improvements or rail operation in the North Coast area where the Project is located.

Refer to **Master Responses E**.

No revisions to the Draft EIR are required.

Response 16.14

The commenter states the cumulative analysis related to noise and vibration does not adequately address cumulative impacts related to rail service.

The commenter's reference to guidance for evaluating noise and vibration from railroad operations from the U.S. Department of Transportation and California Department of Transportation is noted. However, a quantitative analysis of future rail operation in Section 4.1.12, *Noise*, would be speculative, as details of future operation are unknown. Increases in noise and vibration as a result of railroad operation would be a direct impact of future rail use, not attributable to the Project. Operation of the Project would result in minimal noise from human conversations, staging activities of users at trail access locations, and possibly the flushing of toilets at the new Davenport Beach Lot restroom facility. Operation of the Project would not generate vibration. As such, even if data regarding future noise and vibration from rail operation were available, the Project's minimal contribution to ambient noise and vibration would not be cumulatively considerable.

The Draft EIR, Section 4.1.12, has been revised to clarify the Project's minimal contribution to ambient noise and vibration.

Response 16.15

The commenter claims that the Draft EIR ignores several issues primarily related to erosion, sedimentation, and flooding:

- 1) Rail improvements and associated vibration impacts would result in significant erosion, sedimentation, and flooding impacts.
- 2) Formalizing informal trails would lead to increased use of these trails, resulting in similar impacts as well as impacts to agriculture.
- 3) The Draft EIR underestimates the acreage of the Project corridor that would be exposed to coastal erosion hazards.
- 4) Because a portion of the Farmers' Alternative would be located farther inland, along Highway 1, it would have lesser impacts related to noise, erosion, sedimentation, and flooding.

With regard to item 1, rail improvements are not part of the Proposed Project, as described in Section 2.5 of the Draft EIR under *Rail Operation and Maintenance*. Also refer to **Master Response E**. Operation of the proposed trail would not generate vibration.

It is anticipated that some trail users would access other unpaved trails via formalized crossings. Public use of these side trails would incrementally increase. However, this increase in use would not substantially exacerbate soil erosion that could result in sedimentation, flooding, or adverse effects on adjacent agricultural operations.

Draft EIR Section 3.7, *Greenhouse Gas Emissions/Climate Change*, estimates the exposure of the Project corridor to coastal erosion hazards based on the best available data: mapping by The Nature Conservancy of coastal hazards under Year 2010 and Year 2060 scenarios. As noted in Table 3.7-8, it is projected that 0.24 acre of the Project corridor would be subject to the hazard of coastal bluff hazard by 2060. Although the entire Project corridor is located near the coast, only a small portion of the corridor would be directly exposed to erosion of coastal bluffs.

As discussed in the *Geology/Soils* discussion of Alternative 3 in Section 5.0, *Project Alternatives*, the Farmers' Alternative would have impacts similar to those identified for the Proposed Project, including soil erosion. In the southern section, the alignment of the Farmers' Alternative would require more earth movement because of the embankments along Highway 1 and the Baldwin Creek and Lombardi Gulch crossings, which would require construction of a long, reinforced soil slope. However, like the Proposed Project, the impacts would be reduced to a less than significant level with implementation of mitigation described in Section 3.6, *Geology/Soils*. Impacts related to flooding would be less than significant for both the Proposed Project and this alternative. As discussed in the *Noise* discussion of Alternative 3 in Section 5.0, *Project Alternatives*, the noise impacts of the Farmers' Alternative would be similar to those identified for the Proposed Project, but slightly less in the northern section and slightly greater in the southern section.

No revisions to the Draft EIR are necessary.

Response 16.16

The commenter states that a Federal preemption does not apply to the Project where the Lead Agency is RTC preparing an EIR under CEQA. The commenter supports this contention by invoking CEQA Guidelines section 15125, subdivision (d), which requires, in pertinent part, that "[t]he EIR shall discuss any inconsistencies between the proposed project and *applicable* general plans, specific plans and regional plans." (Italics added.)

The key word in the quoted language from section 15125 is "applicable." The quoted language cannot be reasonably understood to render every project subject to CEQA equally subject to local general plans, as such plans do not "apply" to all agencies subject to CEQA. Under the Supremacy Clause of the United States Constitution, need not comply with state or local requirements unless Congress consents to do so. (*United States v. City of Pittsburgh* (9th Cir. 1981) 661 F.2d 783, 785-786; *United States v. City of Chester* (3rd Cir. 1944) 144 F.2d 415, 419-420.)

As explained in Section 1.2, *Project Background*, of the Draft EIR, the Federal Highway Administration's Central Federal Lands (CFL) Division is the lead agency for the project and is responsible for the construction of the proposed project. Accordingly, no amendments to the County General Plan, zoning ordinances or LCP are required for the Project. As such, the level of consistency with the Coastal Act is at the federal level and not the local level. CFL will pursue a federal consistency determination for the proposed project.

No revisions to the Draft EIR are necessary.

Response 16.17

The comment includes several concluding statements that were stated in previous comments. A summary of the statements and brief responses are below.

- The Draft EIR is wholly deficient, and the RTC is biased and failed to comply with substantive requirements of CEQA. Refer to **Master Responses A and E**.

- The Farmers Alternative must be selected. Refer to **Response to Comment 16.2**.
- Additional mitigation measures that must be incorporated include: bathrooms at every mile interval, 200-foot buffer between active agricultural operation and the trail; 6-foot-high fence between agricultural lands and the trail; retain all crossings for use by farmers, an indemnification and hold harmless agreement between the RTC and agricultural operators; and a \$250,000 fund for maintenance. Refer to **Response to Comments 16.6, 16.9, and 6.11**.



September 19, 2018

Cory Caletti, Senior Transportation Planner
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Executive Director
Stephen Slade

Dear Ms. Caletti,

Please accept these comments on the Draft Environmental Impact Report for the North Coast Rail Trail project, which are related to the completeness of the analysis and proposed mitigation measures. The Land Trust of Santa Cruz County has previously expressed support for the proposed project, and the comments expressed in this letter sustain that support while making suggestions that may enhance the project.

17.1

Our comments are related to the project objective: Maximize safety and serenity for experiencing and interpreting the sanctuary and landscapes by providing a trail separate from roadway vehicle traffic. The document accurately characterizes impact T-3, The project may increase design hazards and traffic risks at roadway crossings and parking lots. The project also adequately mitigates those impacts with the proposed mitigation measures T3(a,b,c).

17.2

We see an opportunity for the project to go beyond the required mitigation and improve the overall safety of the Highway 1 corridor in this area. This highway segment is very popular with beach goers and other recreational visitors. The approach we envision is to add additional parking, to the extent feasible, at each of the new proposed parking lots (Davenport Beach and Panther/Yellowbank Beach).

The rationale for this suggestion is that parking along Highway 1 is a problem under existing conditions, with accidents and near-accidents a frequent occurrence. This is the case especially on busy weekends and during the summer travel season, as visitors navigate informal parking areas and run across Highway 1 to reach trailheads to the beach. Entirely apart from the Rail Trail, we expect this use will increase over time. Recreational use of this corridor is likely to increase as Coast Dairies State Park becomes more widely known and when Cotoni Coast Dairies (Bureau of Land Management) is opened for public access. Additional capacity at the parking lots proposed for the North Coast Rail Trail will help absorb some of this demand. This will be especially helpful for visitors unfamiliar with the best places to park. The least desirable scenario is for visitors to find designated parking areas full, and then park on the road shoulder or in another suboptimal location. Highway 1 in this segment has many such suboptimal locations.

We encourage the RTC to incorporate additional parking spaces into each of the proposed parking lots to the extent feasible. We understand this opportunity may exist at the Davenport Beach and Panther/Yellowbank Beach parking areas. We anticipate that up to 25 additional parking spaces at each of these locations would be ideal to for absorbing additional parking demand. If that number were infeasible, any amount would help. While not necessary to reduce the impacts of the North Coast Rail Trail, this added parking would advance the overall project objective of maximizing safety for visitors experiencing and interpreting the sanctuary and surrounding landscapes.

17.2
(cont'd)

Sincerely,

A handwritten signature in blue ink that reads "Bryan Largay". The signature is written in a cursive, flowing style.

Bryan Largay
Conservation Director

Letter 17

COMMENTER: Bryan Largay, Conservation Director, Land Trust of Santa Cruz County

DATE: September 19, 2018

Response 17.1

The commenter states that the Land Trust of Santa Cruz County has previously expressed support for the Proposed Project, and that the present letter sustains that support and adds suggestions to enhance the Project.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the commenter's support of the Project is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 17.2

The commenter recommends providing additional parking at the Davenport Lot: North and Panther/Yellowbank Beach Lot to reduce the need for parking on the shoulder of Highway 1.

Please refer to **Master Response C** for a discussion of parking supply and demand.

No revisions to the Draft EIR are necessary.



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- Emily Thomas**

Executive Director
Stephen Slade

Cory Caletti
Santa Cruz County RTC
1523 Pacific Avenue
Santa Cruz, CA 95060

RE: North Coast Rail Trail Draft EIR

9/4/18

As a major funder of the North Coast segment of the Coastal Rail Trail, the Land Trust has reviewed the Draft EIR carefully.

We are very familiar with the North Coast resources and agree with the analyses and conclusions of environmental impacts identified in the report. We are pleased to note that approximately half of the identified proposed project impacts were deemed less than significant without any mitigation and that there are practical mitigation steps for all other impacts.

The Land Trust actively protects farmland and was pleased to find out that just 1.5 acres of Important Farmland that is actively farmed would be converted (spread out linearly over 7.5 miles) – and that the Land Trust is identified as a potential mitigation partner, a role we readily embrace.

The draft EIR also identifies a wide variety of mitigation steps to address impacts on natural resources. The Land Trust is committed to protecting natural resources and providing access – and this project does both. When it is completed it will immediately provide safe bicycle and pedestrian access along a beautiful stretch of the Pacific Coast. The North Coast Rail Trail will link the City of Santa Cruz to a state park, a national monument, and to a 38-mile trail system being built in San Vicente Redwoods.

More than 1,000 people have donated \$5 million to the Land Trust to support this project. We are proud to partner with RTC on the visionary project and support the adoption of this Draft EIR.

Sincerely,

18.1

Stephen Slade
Executive Director

Letter 18

COMMENTER: Stephen Slade, Executive Director, Land Trust of Santa Cruz County

DATE: September 04, 2018

Response 18.1

The commenter states that the Land Trust of Santa Cruz County agrees with the analyses and conclusions of the Draft EIR. The commenter states that the Project limits farmland conversion, protects natural resources, and provides public access to the Pacific Coast.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the commenter's support of the Project is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 19

From: [Gail McNulty](#)
To: [Cory Caletti](#); [Bruce McPherson](#); [Cynthia Chase](#); [ed bottorff](#); [Greg Caput \(greg.caput@santacruzcounty.us\)](#); [Jacques Bertrand](#); [John Leopold](#); [Mike Rotkin](#); [Randy Johnson](#); [Ryan Coonerty](#); [Sandy Brown \(sbrown@cityofsantacruz.com\)](#); [Trina Coffman](#); [Zach Friend](#); [Patrick Mulhearn](#); [Gine Johnson](#); [andy.schiffirin@co.santa-cruz.ca.us](#); [Regional Transportation Commission](#); [Ryan@Coastal](#); [CFL \(FHWA\)](#); [Rick Suarez](#); [Vince Auriemma](#); [Timber Belish](#); [Ray Golden](#); [Tim Gubbins](#); [Chris.spohrer@parks.ca.gov](#)
Cc: [Jake Pierce](#); [Steve Palopoli](#); [Jondi Gumz](#); [Kara Meyberg Guzman](#); [Erik Chalhoub](#); [Todd Guild](#); [thannula@register-pajaronian.com](#); [news@ksco.com](#); [Debra Monroe](#); [Phil Gomez](#); [Joseph](#); [Tyler Fox](#); [editors@cityonahillpress.com](#); [City Editors/Laretta johnson](#); [ccorona@cityonahillpress.com](#)
Subject: Approving the North Coast EIR would be premature under the current circumstances
Date: Monday, September 24, 2018 4:03:42 PM

Dear Commissioners and Staff:

At the preliminary meetings for the North Coast EIR held in October 2017, RTC staff stated that train operation on this segment of the corridor *is not currently being considered*. However, as you know this section is now included along with the entire 32-miles in the [Progressive Rail freight contract](#).

19.1

Based on this change of circumstances and how it affects the findings of the EIR, we recommend your agency postpone approval of a preferred North Coast project until after the Commission, the RTC's new executive director, and the public review and approve the final Unified Corridor Study and determined the immediate future of the rail corridor.

Additionally, we share the concerns outlined in the detailed North Coast EIR comment letters submitted by Trail Now and the North Coast Farmers and those of the [Rural Bonny Doon Association](#).

19.2

Please move slowly and conscientiously with the impactful decisions that will come before you over the next few months to ensure we build more equitable transportation options for our county and fulfill Measure D's promise to "[Get Santa Cruz County Moving](#)".

Sincerely,

Santa Cruz County Greenway Board of Directors
and

Gail McNulty, Executive Director [Santa Cruz County Greenway](#)
www.facebook.com/SCCGreenway
831-824-4563

Letter 19

COMMENTER: Gail McNulty, Executive Director, Santa Cruz County Greenway

DATE: September 24, 2018

Response 19.1

The commenter states that the RTC's Progressive Rail freight contract is now considering train operation on the North Coast tracks. The commenter states that train operation considerations represent a change of circumstance that affects the findings of the Draft EIR, and recommends postponement of Project approval until the immediate future of the rail corridor is determined.

Refer to **Master Response E**.

No revisions to the Draft EIR are necessary.

Response 19.2

The commenter indicates that they share concerns outlined in letters from Trail Now, the North Coast Farmers, and the Rural Bonny Doon Association. The commenter also requests that the RTC move slowly and conscientiously on its decision.

The RTC did not receive a letter directly from the North Coast Farmers; however, they were represented by the law firm Horan Lloyd, which submitted comments (Comment Letter 16). The RTC did not receive a letter from the Rural Bonny Doon Association, but did receive a letter from the Davenport/North Coast Association (Comment Letter 12), which may include Bonny Doon. Refer to **Response to Comments 12.1 through 12.23, Response to Comments 16.1 through 16.16, and Response to Comments 21.1 through 21.24**.

This comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.



**SANTA CRUZ COUNTY
GROUP**
Of The Ventana Chapter
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September 24, 2018

Cory Caletti, Senior Transportation Planner
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue, Santa Cruz, CA 95060
submitted by email to: NCRTDraftEIR@scrtc.org

Subject: North Coast Rail Trail Draft Environmental Impact Report (DEIR)
SCH#2017092034

Dear Ms. Caletti:

While the Sierra Club in general supports the rail trail project we note serious shortcomings in the DEIR for the North Coast segment as a component of the planned Monterey Bay Sanctuary Scenic Trail.

20.1

The DEIR as written contains valuable information regarding the environmental impacts of the proposed project, but it lacks critical information to assess and mitigate impacts of the project and alternatives. In particular, the Sierra Club requests that you address the following concerns (headings reflect resource areas under Appendix G of the CEQA guidelines as well as Sierra Club conservation and transportation policies):

Federal Nexus

1. How will the requirement of the federal funding for this project, by increasing access to federal lands, be implemented?
2. Why have the project proponents avoided a NEPA review process, given the federal funding for the project?
3. How have project proponents consulted with BLM in planning for this project?
 - a. What conclusions were reached during these consultations?
 - b. In what ways were these discussions exempt from the Federal land use planning process?

20.2

Biological Resources

1. California Red-Legged Frog (CRLF)
 - a. Please specify what fraction the acreage of CRLF habitat that will be lost represents of the total remaining CRLF habitat.
 - b. To be considered less than significant, mitigation must replace lost CRLF habitat at a 3:1 ratio. The proposed mitigations do not reduce the impact to less-than-significant.
2. How will the project proponents analyze the effects of the alternatives on the species and communities included in the Santa Cruz County General Plan list of locally unique sensitive species and communities, which must be addressed under CEQA?
3. Tree removal: Please provide an accurate and complete accounting of trees to be removed for each alternative.
4. How do you calculate that mitigations, including BIO-4, reduce the impact to less than significant? Please quantify the threshold you use.
5. Table ES-1 in the Appendix covers mitigations from the Monterey Bay Sanctuary Scenic Trail Master Plan. We request a mitigation that addresses restoration adjacent to the proposed path in order to increase and improve lost habitat.
6. The DEIR states that bi-annual "Routine Maintenance" will occur. Please specify which habitat-friendly methods of maintenance will be used in Mitigation Measure BIO-9(b).
7. In the Project description, in addition to estimates of acreage that will be disturbed, please specify how much of the adjacent ground cover and growth will be affected.
8. The Project description references wire fence between trail and railway or trail and farmland or where safety is a concern, and split-wire fencing is mentioned in BIO-9(b) as a possible choice.
9. Please assess the relative impact of each of these fencing types on wildlife movement.

20.3

Hydrology and Water Quality

1. HYD-3. The Project would alter drainage patterns in the Project corridor, which may impact water quality. The DEIR fails to mention how stream crossings will be managed regarding drainage and any project construction that might affect stream crossings.
2. Please describe how each stream crossing in section 3.9 will be managed by the Project and its alternatives.
3. Although Mitigation Measure BIO-9(b) addresses wetlands, restored wetland habitats cannot be equated to mature wetlands.
 - a. Please specify what quantity of wetland loss would be significant to the protection of the CRLF.
 - b. Please specify how CRLF affected by wetland loss will be protected.
 - c. Please specify where wetland habitat restoration will take place.
 - d. How much reduction of movement to the CRLF be considered significant.
 - e. Impacts to "special aquatic sites" such as all habitat areas of the CRLF are not acceptable because the Clean Water Act requires the Regional Board to protect to the highest degree possible.

20.4

Land Use and Planning

1. What impacts will the alternatives have on the quality of visitor experience for people visiting the beaches along the trail corridor?
2. Table 2-1 Summary of Trail Crossings includes six informal pedestrian trails that will be closed as part of the project. How will these trails be closed? Will there be cuts in the fence for these closed trails, as stated in the DEIR on page 2-19, "At all crossings, there would be a break in the fencing that extends between the trail and the railroad tracks."? Will there be access nearby for the areas these trails reach? Please include a description of the impact of closing these trails, including alternate access for pedestrians and the need to offset damage that might result if people create their own access to areas these trails used to service.
3. Coastal Access: The Appendix A site plan sheets show some proposed closures of existing popular pedestrian crossings of the rail corridor. This needs further evaluation to avoid eliminating practical access to historically established and well-loved beach access trails. Possibly the most striking beach access trail to be closed off at its rail corridor crossing is shown on the lower half of Sheet 4. This is the main 'easy' access trail to Laguna Creek Beach (the trail being mostly, a narrow, gravelly ranch road/trail). Users of this beach access trail, park in the parking lot along Hwy 1 at the intersection with Laguna Rd. (at the north end of the old Laguna Rd. loop, a very old version of Hwy. 1 that dips down into the tiny hamlet of Laguna). From the parking lot, beach trail users walk across Hwy 1 and follow the trail that begins directly across from the north end of the parking lot, down to the wild beach. This is a fairly easy, accessible way to get to Laguna Creek Beach, relatively free of the challenges with poison oak and mud that can be present on the other trail route. The plan sheet shows this as "Existing informal pedestrian RR crossing to be closed."

20.5

Transportation/Circulation

1. Appendix K, "Transportation Impact Analysis" (TIA) report by Kimley Horn consultants, does not adequately explain what evidence or data it used to arrive at key travel estimates. These estimates include the 80% - 20% split between in-county and out-of-county trail users and the proportional split between trail users potentially beginning their trip by bicycle (or foot) in Santa Cruz without driving on Highway 1 at all, and those trail users who will be driving on Highway 1 to get to a trail access starting point.
 - a. What is the basis for estimating that in the future fully 60% of local residents would drive cars to access the southern portion of the trail?
 - b. Did the analysis consider the future availability of a connecting, completed rail trail through the City of Santa Cruz plus the existing bike and pedestrian trail out to Wilder Ranch State Park?
 - c. With future policy changes, such as increasing carbon pricing on fossil fuels, will more trail users choose to be recreationally "car-free"?
2. The State of California is moving strongly toward transportation and climate policies that encourage a shift away from over-reliance on automobiles and promoting reductions in vehicle miles travelled. Active transportation and passenger rail are receiving new attention for state funding.
 - a. Please explain how this shifting future is factored in to the TIA.
 - b. The project plan of operation could consider adding some ongoing public outreach in MBSST informational materials (including online and in onsite signage) promoting why, how, and where to begin bicycling or walking from the MBSST sections within the City of Santa Cruz, thereby avoiding North Coast

20.6

- Highway 1 car travel. This promotional outreach aspect could be included as a required mitigation to reduce traffic impact on Highway 1.
3. Are the Caltrans peak hour traffic volume estimates for future Highway 1 vehicle travel “conventional” regarding growth in vehicle miles, or do they take current and future policy shifts into account?
 4. The TIA does not sufficiently examine the possible benefits for reduced vehicle travel and parking lot demand based on car-free recreation and continuing state and local transportation policy shifts and related achievements on climate action.
 - a. What impacts will the alternatives have on the quality of visitor experience for people visiting the beaches along the trail corridor?

20.6
(cont'd)

Cumulative Impact Analysis

1. What will the cumulative effects of this project be given the following approved and planned projects that would intersect with the proposed project:
 - a. State Parks' approved plan for parking lots at 4 Mile Beach, between the highway and the rail tracks
 - b. State Parks' approved, planned campground on the Scaroni property
 - c. BLM's plans (currently underway) for public entrances to Cotoni Coast Dairies
 - d. County's plans for expanded public access to County beaches near the trail
 - e. Plans (currently underway) for greatly expanded tourist facilities at the decommissioned Davenport cement plant
 - f. Land conservation partners' (currently underway) plans for a ridge-to-sea trail through BLM and the San Vicente Redwoods property

20.7

Conclusion

This section of the proposed rail trail affects sensitive environmental species and habitats. The DEIR is inadequate in its assessment of the project's impacts in the areas detailed above. The Sierra Club requests that these inadequacies be fully addressed in the final EIR so that alternatives can be properly considered and mitigations accurately evaluated.

20.8

Sincerely,

Gillian

Gillian Greensite, Chair
Sierra Club, Santa Cruz County Group

Letter 20

COMMENTER: Gillian Greensite, Chair, Sierra Club Santa Cruz County Group

DATE: September 24, 2018

Response 20.1

The commenter states the Draft EIR contains valuable information but lacks critical information to assess and mitigate impacts.

The comment does not specify which critical information is missing. Specific comments follow in the letter, and no further response is necessary to address this comment.

No revisions to the EIR are necessary.

Response 20.2

The commenter asks:

- a) how will the federal requirement to increase access to federal lands be implemented,
- b) why the NEPA review process is being avoided, and
- c) how BLM has been consulted.

20.2a. The project will provide bicycle and pedestrian access to federal properties in the local area, including the Monterey Bay National Marine Sanctuary and the BLM Coast Dairies National Monument. The project will increase access to Monterey Bay National Marine Sanctuary shoreline and views. The project will provide for safe public access for users off of CA Highway 1 in the Davenport location to BLM Coast Dairies National Monument. At this time, the BLM does not have a management plan for the Cotoni-Coast Dairies property; however, the proposed project would neither preclude nor constrain the development of BLM lands. The proposed project would provide opportunities for linkages with the proposed project particularly in the Davenport area.

20.2b. The project will undergo the NEPA process once the RTC has made a decision under CEQA regarding the preferred alternative. At that time, CFL will determine the appropriate NEPA pathway and initiate the NEPA process. Although a joint CEQA/NEPA document was not prepared, the NEPA process will be made more efficient through CFL's ability to use technical reports, data, and analysis provided through the CEQA process.

20.2c. The BLM has been invited to participate in internal scoping meetings to discuss preliminary trail concept and design. The BLM was an early supporter of the proposed FLAP project on the RTC application for federal funding. The BLM, through conversations with CFL and RTC, continues to support the project. At this time, the BLM does not have a management plan for the Cotoni-Coast Dairies property; however, it is recognized through conversations with BLM management that the proposed project would not preclude or constrain the development of the BLM lands in the future.

Ongoing discussions continue with BLM, the Land Trust of Santa Cruz County (the agency that will open the San Vicente Redwoods property which abuts Cotoni-Coast Dairies), and Caltrans on a future project to provide that access.

No revisions to the Draft EIR are necessary to respond to these comments.

Response 20.3

This comment has the following separate points.

- a) The commenter asks for a 3:1 mitigation ratio (CRLF habitat that will be lost/total remaining habitat) for potential impacts to CRLF habitat.
- b) The commenter asks about CEQA analysis of species and communities identified by the Santa Cruz County General Plan as locally unique.
- c) The commenter requests that the number of trees slated for removal for the Proposed Project and Alternatives be provided.
- d) The commenter asks how the calculation is performed to determine that mitigations adequately reduce the potential impacts to less than significant, including BIO-4.
- e) The commenter requests that mitigation include restoration adjacent to the proposed path.
- f) The commenter inquires what habitat-friendly methods of maintenance will be employed.
- g) The commenter asks about disturbance to the adjacent ground cover and growth as a result of construction.
- h) The commenter references fencing options proposed in the Draft EIR and potential impacts to wildlife.
- i) The commenter references fencing options proposed in the Draft EIR and potential impacts to wildlife.

20.3a. The commenter asks that the RTC “[p]lease specify what fraction the acreage of CRLF habitat that will be lost represents of the total remaining CRLF habitat.” The requested calculation would be very difficult to ascertain, as it would require a comprehensive survey of all occupied CRLF habitat in the vicinity of the Study Area. Fortunately, the calculation is not necessary for either an adequate EIR or adequate mitigation for CRLF. Typically, USFWS requires a protocol CRLF site assessment⁹ to determine the level of effort required to develop mitigation. In some cases, USFWS protocol surveys for CRLF¹ would be recommended.

In this case, since CRLF are known to be present, it is anticipated that formal consultation with USFWS would be required under Section 7 of the federal Endangered Species Act (ESA), as described in Section 3.4.2, *Regulatory Setting*, of the EIR. Based on Section 7 consultation, specific mitigations for the permanent loss of CRLF (critical) habitat, as well as for potential “take” of CRLF, would be incorporated into the MMP with input from USFWS, CDFW, CCC, and State Parks. The ratio for replacement habitat would consider the quality of habitat lost, the type of habitat lost (breeding or non-breeding aquatic, upland, and/or dispersal habitat), the location of lost habitat in relationship to known breeding sites, the overall benefits to the species provided by mitigation, and other factors decided by the agencies.

Even so, the RTC, in its capacity as lead agency under CEQA, has set a minimum performance standard of “no net loss” (minimum 1 to 1 ratio), as set forth in Mitigation Measure BIO-8(c).

No revisions to the EIR are necessary.

20.3b. No “locally unique” natural communities/habitat types or plant species are known to occur within the Study Area that have not already been carefully evaluated as sensitive within the DEIR. The local chapter of the CNPS no longer maintains a list of locally unique species; however, CNPS

⁹ USFWS. 2005. Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog. Washington, DC. August 2005.

considers locally rare plants “...to be sensitive, unique, or occurring at the limits of their natural range within a specific region (also called peripheral populations). Species-specific characteristics, available suitable habitat, as well as land use activities and practices, all play a role in determining whether a species that is relatively common in one part of its range is rare in another part of its range”.

None of the plants identified during the 2018 floristic-level survey of the Study Area (DEIR Appendix G2.b) meet the above CNPS definition for locally rare plants or are included in Appendix B¹⁰ of the County of Santa Cruz LCP and General Plan.

No revisions to the EIR are necessary.

20.3c. At this stage of Project planning, it is unknown how many trees would be removed under the Proposed Project or Alternatives. In Section 3.4.4, Mitigation Measure BIO-8(a) minimizes construction in sensitive habitats including arroyo willow riparian and coast live oak forests. Mitigation Measure BIO-8(d) limits disturbance of vegetation to the construction footprint. Mitigation Measure BIO-8(c) requires that any loss of sensitive habitats be mitigated with in-kind replacement at a ratio to be determined in consultation with the relevant permitting agencies, but at a minimum of “no net loss” (minimum 1 to 1 ratio).

Based on these measures, mature trees would be retained throughout Project alignment wherever feasible. If tree removal cannot be avoided, this impact would be mitigated by the planting of replacement trees at a composition and ratio to be determined in consultation with the relevant permitting agencies (but at a minimum of 1 to 1).

The Draft EIR (Mitigation Measures BIO-8a, BIO-8c and BIO-8d) has been revised to include these details.

20.3d. The standard thresholds for determining significance were used for purposes of this EIR. A significant impact would occur if implementation of the Project would result in any of the following conditions.

- A. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS
- B. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFW or USFWS
- C. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal) through direct removal, filling, hydrological interruption, or other means
- D. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites
- E. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance

¹⁰ Appendix B consists of lists of plants and animals (and their habitats) which are described in Section 5.1 of the General Plan and Local Coastal Program Land Use Plan. This appendix contains a series of lists which collectively address all the plant and animal species and their associated habitats which are to be protected in Santa Cruz County. As state and federal lists change, this catalogue will be amended to reflect the most current information. Updates can be made without General Plan/LCP amendments or certification by the California Coastal Commission.

- F. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan
- G. Substantially reduce the habitat of a fish or wildlife species
- H. Cause a fish or wildlife population to drop below self-sustaining levels
- I. Threaten to eliminate a plant or animal community
- J. Substantially reduce the number or restrict the range of an endangered, rare or threatened species

Therefore, the goal of mitigation is to reduce potential impacts to less than significant (i.e., below these thresholds). In general, potential impacts were reduced to less than significant through the Mitigation and Management Plans (MMPs) required by Mitigation Measures BIO-8(c) and BIO-9(b), which would ensure that potential permanent impacts are mitigated through replacement habitat, enhancement of key habitats in the Study Area, success criteria, and adaptive management. As described **Response to Comment 2.25**, additional detail has been added to Mitigation Measure BIO-8(c).

No further revisions to the EIR are necessary.

20.3e. The exact locations of replacement habitat would be determined in conjunction with USFWS, CDFW, CCC and State Parks to best benefit the resources, including spatial connectivity. If determined to be both beneficial and feasible, this may include replacement habitat immediately adjacent to the proposed path, at least in some locations, as noted in Mitigation Measure BIO-8(c):

“A portion of compensatory mitigation shall re-create the linear aspect and provision for wildlife dispersal of existing habitats, where these features are potentially lost as a result of the Proposed Project. This feature shall be designed to protect against fragmentation of remaining habitat patches adjacent to the rail bed.”

No revisions to the EIR are necessary.

20.3f. The Draft EIR identifies Mitigation Measures BIO-8(a), which minimizes construction in sensitive habitats; BIO-8(d), which limits disturbance of vegetation to the construction footprint; and BIO-8(c), which through a Biological Resources MMP requires that maintenance of sensitive habitats avoid take of sensitive species, and that interpretive signs, fencing, and green fencing protect sensitive habitat from impacts by trail users. Any trail maintenance would employ hand-tools only. The use of pesticides or herbicides would be prohibited.

The Draft EIR has been revised to include these additional details.

20.3g. Acreage estimates are provided in Section 3.4.4 under Impact BIO-8 for both the Proposed Project and Alternative 1 (see Table 3.4-4). These estimates include both permanent losses of habitat (the trail footprint), as well as the construction footprint, which is the area disturbed during construction that will be re-vegetated at project completion. As described in Mitigation Measures BIO-8(a) and BIO-8(d), no work would take place outside of the construction footprint, and sensitive habitats would be protected with construction fencing to prevent disturbance.

No revisions to the EIR are necessary.

20.3h. Refer to **Response to Comment 2.15**.

20.3i. Refer to **Response to Comment 2.15**.

Response 20.4

This comment has the following separate points.

- a) The commenter states that the Draft EIR fails to assess construction phase impacts to stream crossings, or to discuss how stream crossings will be managed.
- b) The commenter requests a description of how stream crossings will be managed.
- c) The commenter states that restored wetlands cannot be equated to mature wetlands and requests additional information regarding wetland habitat that supports CRLF, how this loss would affect CRLF and CRLF movement, and the location of replacement habitat. The commenter references “special aquatic sites”.

20.4a. As stated in Section 3.9.1 in Section 3.9, *Hydrology and Water Quality*, three unnamed streams and six named streams cross the Project corridor, as shown in Figure 3.9-2a and Figure 3.9-2b. These crossings flow beneath the Project alignment in large culverts cut through the Santa Cruz Mudstone, the rock that comprises the coastal terraces in the Project area.

Impacts related to surface water quality from both construction and operation of the Project are assessed under Impact HYD-1 and were determined to be less than significant with mitigation. Implementation of Mitigation Measures HYD-1(c) and HYD-1(d) would reduce the impact on hydrology and water quality by ensuring that the amount and rate of on- and off-site stormwater runoff would be reduced to the maximum extent feasible, and that, where feasible, stormwater runoff would be treated prior to discharge off-site.

Streams cross under the existing railroad track and proposed trail via existing culverts. The Project would not include any new bridges or other structures within the streams. Streams themselves would not be modified or managed as part of the Project.

No revisions to the Draft EIR are necessary.

20.4b. Refer to **Response to Comment 20.4a**. No revisions to the Draft EIR are necessary.

20.4c. The RTC acknowledges that replacement wetlands would take a number of years to become mature wetlands. The goal of mitigation is to both replace and enhance wetlands, including for CRLF, such that overall habitat conditions improve and CRLF dispersal habitat is protected. These goals would inform the location of replacement wetlands, which would be determined in conjunction with USFW, CDFW, CCC, and State Parks.

Special aquatic sites are described in 40 CFR Part 30 Subpart E in Section 404 of the Clean Water Act. Special aquatic sites include 1) sanctuaries and refuges; 2) wetlands; 3) mudflats; 4) vegetated shallows; 5) coral reefs; and 6) riffle pools and complexes. Of these special aquatic sites, only wetlands as defined in §230.41 are present within the Study Area. Wetlands with potential to be impacted by the Proposed Project and Alternative 1 are described in detail in the DEIR in Section 3.4 and mitigation requirements for wetland impacts are outlined under Impact Bio-9 of the DEIR.

No revision to the Draft EIR are necessary.

Response 20.5

This comment has the following separate points.

- a) The commenter asks what impacts the alternatives will have on the quality of the visitor experience for people visiting the beaches along the trail corridor.

- b) The commenter is concerned about the closure of six informal trail crossings, especially that leading to Laguna Creek Beach; asks if there will be breaks in the fencing or other nearby access points to the same areas; and asks if there is a need to offset damage that might result if people create their own access.

20.5a. The Project is expected to have a positive impact to the quality of visitor experience because it will improve access and provide amenities (e.g., restrooms, trash receptacles, bike racks).

The comment does not relate to the adequacy of the EIR or the CEQA process. No revisions to the Draft EIR are required.

20.5b. Of the six existing informal crossings, four would be closed, and there would be no break in the safety fencing (between the rail and trail) to allow crossing of the railroad tracks. The informal railroad crossing that accesses Laguna Beach would be closed primarily due to public safety concerns of crossing Highway 1 in this area where there is a significant grade. The informal crossing is therefore proposed for closure as part of this process. Access to the trail alignment along the coastal side of Highway 1 at crossings 8 and 10, just north and south of Laguna Road, would be enhanced through project implementation.

In Section 2.4 of the Draft EIR, Table 2-1 has been revised to show the distance from the closed crossing to the next nearest crossing. Additionally, the text under *Trail Crossings* has been revised to clarify that at all formal crossings, there would be a break in the fencing that extends between the trail and the railroad track. Also refer to **Response to Comment 2.13**.

It is anticipated that trail users who have used the informal trails being closed would adjust their behavior and use the nearby formal trails, rather causing damage at the closed trails.

It should also be noted that, as stated in Section 2.4, the plan for trail closures would require collaboration between various stakeholders and therefore could be subject to change.

Response 20.6

This comment has the following separate points.

- a) The commenter asks how the Draft EIR estimated that 60 percent of local residents would drive to access the southern portion of the trail. The commenter also asks if connecting trails or future policy changes to limit carbon use were considered to estimate vehicle trips.
- b) The commenter asks how the Transportation Impact Analysis factored in State policies to promote reduced vehicle miles traveled. The commenter also suggests a mitigation measure to provide promotional materials that explain how pedestrians and bicyclists can access the trail from MBSST sections in the city of Santa Cruz.
- c) The commenter asks if the Caltrans estimates of future traffic volumes on Highway 1, as cited in the Transportation Impact Analysis, account for current and future policy shifts.
- d) The commenter states that the Transportation Impact Analysis does not adequately discuss the potential benefits of policy shifts on vehicle travel and parking lot demand.

20.6a. The Transportation Impact Analysis prepared for the Draft EIR (Appendix K) estimated the percentage of local residents who would drive to the southern trailhead based on trail usage estimates included in the Unified Corridor Study and available information from other trail systems. It was estimated that 40 percent of people would ride bicycles from the city of Santa Cruz to the southern trailhead, leaving a remainder of 60 people driving to the trailhead.

The traffic analysis did consider the future availability of a connected, completed rail trail through the city of Santa Cruz plus the existing bike and pedestrian trail between Santa Cruz and Wilder Ranch State Park. The analysis did not factor in potential future policy changes to set a price on carbon use because they would be speculative to forecast.

No revisions to the Draft EIR are necessary.

20.6b. As discussed in Draft EIR Section 3.14, *Transportation/Circulation*, the EIR is not required to specifically address the issue of vehicle miles traveled (VMT) in assessing the significance of traffic impacts. Although the Draft EIR discusses this issue for informational purposes, no adopted regulatory standards to reduce VMT are currently applicable to the Project. Therefore, the EIR does not determine the significance of impacts related to VMT or require mitigation to reduce VMT.

The comment does not relate to the adequacy of the EIR or the CEQA process. Nonetheless, the recommendation to provide promotional materials is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

20.6c. The Caltrans forecast data is based on the historic growth rate in traffic on Highway 1. Future policy changes regarding mode choice are not included in Caltrans forecasting. Emerging vehicle technologies, such as electric cars, would not improve VMT but would reduce greenhouse gas emissions.

No revisions to the Draft EIR are necessary.

20.6d. Please refer to **Response to Comment 20.6a** for a discussion of the effects of policy changes on transportation.

No revisions to the Draft EIR are necessary.

Response 20.7

The commenter asks how several planned and approved cumulative projects would interact with the Proposed Project to cause cumulative effects.

As listed in Table 4-1 in Draft EIR Section 4.0, *Other CEQA Required Discussions*, the Draft EIR considers the management actions of public agencies on land near the Project corridor. Cumulative projects weighed in the Draft EIR include implementation of the Cotoni-Coast Dairies National Monument Management Plan on State Parks and Bureau of Land Management land, redevelopment under Davenport Cement Plant Coastal Restoration and Reuse Plan, and public access improvements to the San Vicente Redwoods Preserve, among other projects. These cumulative projects are broadly inclusive of the specific projects cited by the commenter.

No revisions to the Draft EIR are necessary.

Response 20.8

The comment is a conclusory statement that the rail trail affects sensitive environmental species and habitats, and the Draft EIR is inadequate in its assessment of project impacts as detailed above.

The specific comments have been addressed above. Also refer to **Master Response A**.

No further response or revisions to the Draft EIR are necessary to address this comment.

Letter 21

From: [Brian Peoples](#)
To: [NCRT Draft EIR](#); [Cory Caletti](#)
Cc: [Rodoni Farms](#); [Brian Peoples](#)
Subject: Response to North Coast Rail Trail EIR
Date: Monday, September 24, 2018 10:43:37 AM
Attachments: [Trail Now response to EIR for North Coast Rail Trail.pdf](#)

Ms. Caletti,

Please find attached our response to the EIR on the North Coast Rail Trail. As a note, we see that a major part of the EIR focus is on the timeline and need to spend federal grant funds by 2020. We believe the Farmers plan is the only plan that can be completed by 2020 deadline. We suggest the farmers plan be implemented south of Baldwin Creek to Wilder Ranch and a combination of rail with trail / Trail Only be implemented north of Baldwin Creek to Davenport. The farmers plan travels from Wilder Ranch to Baldwin Creek along the upper section of the farmland (not on Caltrans property) and this portion of the trail can be built sooner than a trail through the middle of the farm. We also believe that a partnership with farmers and property owners north of Baldwin Creek may allow for a trail path along the side of the tracks.

21.1

Best regards,

Brian Peoples
Executive Director
Trail Now



Cory Caletti
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, CA 95060

September 21, 2018

Subject: Comments on Draft EIR for proposed North Coast Rail Trail

Ms. Caletti,

The following is our comments to the draft EIR for the proposed North Coast Rail Trail. Please note that we have contributed to the comments submitted by Pamela Silkwood (Horan / Lloyd) who is representing the North Coast Farmers, and have not duplicated comments on our submittal. We support all comments submitted by Horan / Lloyd on behave of farmers and property owners.

21.2

In the following table, we list specific items within the EIR that we have a concern and provide a recommendation. Some of the overall concerns and recommendations we have include:

- The comment within the Executive Summary that construction of Alternative 1 would likely begin after the year 2028 should be removed because the EIR actually provides evidence that it does not take 10 years to implement a Trail Only. The EIR does not evaluate the timeline require to build a trail for the different scenarios, however, it does reference that only 3 additional approvals are required for Trail Only & Farmers Alternative. These 3 additional approvals (Surface Transportation Board, California Transportation Commission, SCCRTC) do not equate to 10 years of delay based on current process. According to the Woodside Consulting Group October 13, 2005 report produced for the RTC, STB would not likely deny abandonment of the entire railline. The California Transportation Commission (CTC) sent a letter to RTC in September, 2015 stating that the tracks can be removed and getting RTC Commission approval to abandon

21.3

tracks to Davenport will not take 10 years. Delay of 10 years is not a fact developed by the EIR and is based on an RTC Staff opinion paper and any reference to this timeline should be removed from EIR. Finally, RTC Staff admitted at the EIR Kickoff that their estimate of 10 years was little more than a guess.

21.3
(cont'd)

- The RTC erroneously assumed that the present track from Wilder Ranch State Park to Davenport was within the proper right-of-way, and planned the path to follow it. However, according to surveyors, the tracks have followed at least three different paths. That means that the RTC has to negotiate new rights-of-way, and that the DEIR has not studied at least some of the actual areas on which the Rail Trail will be built. This would show that the proposed project will be delayed past 2020 because of ROW issues. A partnership with farmers and property owners on a collaborative trail solution will help mitigate delays in the project past 2020.
- Mitigation steps identified within the EIR to minimize negative impacts to agricultural operations are not going to be as successful as stated within EIR. Concerns with the impact on agriculture operations is addressed by Horan / Lloyd comments to EIR.
- Table 5-2 Project Objectives and Alternative Trail Alignments – Objective 11 (Complete by 2020) incorrectly states that the proposed project will meet the 2020 deadline while the Trail Only and Farmers alternative plans will not. This is not true because the proposed project will be delayed by legal challenges from Trail Now, private landowners and farmers. Also, the Farmers plan can be implemented sooner because the section that traverse along the farmland can begin immediate with a partnership with the farmers. As stated earlier, according to the EIR, only 3 additional approvals are required for Trail Only (RTC, CTC, STB), all of which do not take 10 years to get approval.
- The Unified Corridor Study is being conducted to determine if rail service along the Santa Cruz Coastal Corridor is the best use of the corridor. At the kickoff of the EIR for the North Coast Rail Trail, RTC staff stated that a train operation is not considered in the future for this section of rail corridor. If EIR insist future rail operations be included, Federal railbanking protects the use of the rail corridor for future rail operation. Therefore, it does not preclude any future rail operation. Correction in Table 5-2 for “future rail operations” should be changed to “Yes” for Farmers Plan.

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Title	Description	Concern	Recommendation	
Railroad / Property Boundaries	Property boundaries are not clearly understood because the original location of the railroad tracks is different than today.	The original location of the railroad tracks is different than it is today. RTC is still in the process of identifying the actual location of the property boundaries.	Since the original location of the railroad tracks are not clearly understood at the time of the EIR, property boundaries of the proposed project should not be a decision criterion of the EIR analysis.	21.4
Railroad Crossings	The corridor currently has 24 existing trail crossings, including 16 that are formal paved or unpaved roads for farm vehicles or personal vehicles, six that are informal trails used by pedestrians/bicyclists to access the coast, and two that are informal roads used by farmers. The Project would retain and formalize some crossings and close others. A summary of trail crossings is provided in Table 2-1 in Section 2.0, Project Description.	Operation of farming equipment at railroad crossings are not adequately addressed in the way of both negative impacts to the farmers or impacts to trail. For example, requirements for farmer to open/closed gates will significantly increase operating cost of farm operations. Also, the farming equipment is heavy and full of mud/dirt requiring substantially greater trail strength construction and trail maintenance.	EIR should more clearly identify the issues with farm equipment travelling over trail and its impact to the farming operations and trail. EIR does not adequately show the negative impact of these trail crossings nor mitigation plans. Increased trail construction and maintenance requirements is not adequately addressed.	21.8
Duration of Construction	Construction of Alternative 1 would likely begin after the year 2028 because of the additional time required to reverse policy, contractual, and regulatory commitments that the RTC has made regarding the use of railroad tracks.	EIR does not evaluate the timeline require to build a trail for the different scenarios. It does reference that only 3 additional permits/approvals are required for Trail Only & Farmers Alternative. These 3 additional approvals (Surface Transportation Board, California Transportation Commission, SCCRTC) do not equate to 10 years of delay.	Remove reference within Executive Summary that construction of farmers plan can not start for 10 years. This is not a fact developed by the EIR and is based on an RTC Staff opinion paper. Based on EIR comments that only 3 additional approvals are required, and such approvals have been shown not to require a delay to 2028, there should be no statement that Trail Only option can not begin until 2028. More important, a partnership with farmers and property owners to build a trail that meets everyone's requirements will be built prior to deadline.	21.3
Fencing	The Proposed Project would include the installation of fencing on the inland side of the trail to separate trail users and the railroad. Fencing would also be installed between the trail and agricultural lands at some locations where natural or geographic barriers do not exist to prevent trail users from exiting the trail.	Fence is not tall enough.	Taller fencing is needed.	21.9

Title	Description	Concern	Recommendation
Future Train Operations	Develop the trail so future rail transportation service along the corridor is not precluded	The Unified Corridor Study is being conducted to determine if rail service along the Santa Cruz Coastal Corridor is the best use of the corridor. At the kickoff of the EIR for the North Coast Rail Trail, RTC staff stated that a train operation is not considered in the future.	<p>Remove statements that future rail transportation is a requirement. It was stated at EIR kickoff that rail was not to continue.</p> <p>Federal railbanking protects the use of the rail corridor for future rail operation. Therefore, it does not preclude any future rail operation. However, the trail-only would have to be rebuilt if any such operation shall occur.</p> <p>Also, future rail operations conceivably may include a 25-60 mph commuter train. If so, any MBSST trail under consideration will be required to be relocated for safety setbacks of 15-25 feet except where it has already be built as such.</p>
Future Train Operations	Develop the trail so future rail transportation service along the corridor is not precluded	If railroad tracks remain and it continues as a rail operation, all railroad crossings will need to be upgraded to meet California Public Utility Commission (CPUC) requirements.	Verify with CPUC that no upgrades to railroad crossings will be required.
Rail Operations beginning	The current rail operator may begin operating freight and/or passenger service between Santa Cruz and Davenport within the next 3 to 5 years, or sooner.	UCS is evaluating if rail operations will exist and it was stated at EIR kick off that there was no consideration of rail operations in the future. Within EIR / Introduction Section it states "Since the RTC decided to evaluate a "trail only" option in the CEQA environmental document, CFL has determined that the best course of action is to suspend further work on Project design and environmental clearance including preparation of the NEPA environmental document, until RTC makes a determination on whether the tracks will remain or be removed as it selects the trail alignment.	<p>At the EIR kickoff, RTC Staff stated that no rail operations will exist and is not part of this analysis. Remove reference that rail operations may begin in 3 to 5 years. As stated in Introduction section of EIR, the RTC is still evaluating the rail operation, therefore it should not be stated that rail operations may start within 3 to 5 years.</p> <p>If EIR keeps possible rail operations, EIR will need to address increased requirements by CPUC for all railroad crossings.</p>
Farmers Trail Location	Alternative 3. The Farmers' Alternative would remove the existing rail and locate the trail along the same alignment as Alternative 1 north of Scaroni Road, while locating the trail along Highway 1 (instead of the rail corridor) south of Scaroni Road before returning to the rail corridor just north of Wilder Ranch.	Farmers Alternative plan DOES NOT travel on Caltrans property. Farmers Alternative plan is to remain on the farmland, adjacent to Highway 1.	Ensure the EIR does not consider Farmers Alternative plan on Caltrans property. It was communicated to EIR consultants that the Farmers plan does not go on Caltrans property, but remains on farmland. It needs to be clearly stated that the farmers' plan remains on farmland.

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Title	Description	Concern	Recommendation
Farm Equipment on trail	At all crossings, there would be a break in the fencing that extends between the trail and the railroad tracks. Where farm equipment would be allowed access across the trail, there would be concrete pavement on the trail to minimize asphalt damage from the equipment. Additional design features, such as mud mats for the crossing approaches, may be incorporated to reduce the amount of dirt and debris being deposited on the trail. No gates are proposed as part of the Project.	Additional design features will reduce amount of agriculture land available. This was not included in the estimated lost agriculture land in the Proposed Project.	Re-estimate lost of agriculture land with Proposed Project.
Impact on Farmland	AG-1. The Project would not convert a substantial amount of Important Farmland to non-agricultural use	The amount of farmland converted to non-agricultural use for the proposed project is not correct. The EIR incorrectly did not consider the land that is between the crops and railroad as agriculture land. This land is used by tractors to turn-around and service the crops.	For proposed plan, include the land next to crops (near railroad tracks) as lost agricultural land.
Funding Expiration	The FLAP funding was awarded from the Federal Highway Administration's Central Federal Lands (CFL) Division in Spring 2015. Per a signed agreement with FHWA, all work associated with the agreement needs to be completed no later than December 31, 2020. As the federal partner to RTC, the CFL is responsible for Project design and compliance with federal requirements, including the preparation of a separate future environmental document satisfying the National Environmental Policy Act (NEPA).	EIR incorrectly states that the Proposed Project is the only one that can meet this deadline. This is not true for two reasons. First, if the Proposed Project is selected, Farmers / Trail Now will make a legal challenge to this plan, resulting in significant delay of the project. The Farmers Plan can actually start sooner because a portion of the trail will be located on farmland and will not require removal of tracks and number of approvals.	The current funding will not cover the entire cost of the project and, according to EIR, the implementation plan would start from Wilder Ranch going towards Davenport. Farmers plan near Wilder Ranch has the trail travelling on farmland, not requiring removal of tracks. For this reason, farmers plan can begin sooner and will be able to spend the FLAP Funding prior to expiration. Proposed project should have a "No" identified for meeting the deadline for FLAP Funding expiration. Farmers plan should have a "Yes" identified for meeting the deadline for FLAP Funding expiration.
Fencing	Fencing separating tracks, trail and farmland identified as being 4' 6"	What regulatory requirements were followed to determine height of fencing separating railroad from trail and separating farmland from trail.	Concern that height of fence is too low to meet federal rail regulations and prevent access to farmland.
Railroad Crossings & PUC requirements	Of the 15 crossings to be retained, 13 are formal CPUC crossings and would be improved with the standard treatments for the Project (e.g., grading, pavement, concrete crossing panels, signage).	Will upgrades include railroad cross guards and meeting PUC requirements?	Proposed Plan should include requirement to upgrade railroad crossings to CPUC requirements.

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Title	Description	Concern	Recommendation
Duration of Project	In addition to the approvals listed above, the following approvals would be required to implement Alternative 1. ☐ Santa Cruz County Regional Transportation Commission – approval of abandonment of rail tracks ☐ Surface Transportation Board – approval for abandonment of freight service ☐ California Transportation Commission- Proposition 116 and State Transportation Improvement Program funding reimbursement or approval	Only 3 additional approvals would be required for trail only. EIR should include estimated timeline to get these 3 approvals and not make general statement that it will take 10 years.	Remove statement that Farmers plan can not start until 2028 – based on the description with EIR. Also, the proposed project should be identified as not being started due to legal challenges.
Table 5-2 Project Objectives and Alternative Trail Alignments	Project Objective 1: Provide a continuous public trail along the Santa Cruz Branch Line railroad corridor and connecting spur trails in Santa Cruz County (Master Plan objective 1.1)	This objective should be changed to focus on “continuous public trail”, not have a requirement that it remain along the Santa Cruz Branch Line railroad. The goal is for a continuous trail, it is not to keep it along the railroad tracks.	Adjust the objective to “continuous public trail” and change Farmers’ plan to “Yes” in Table 5-2. The objective should be on a continuous trail that is accessible to public, not that it adjacent to railroad or included in Master Plan.
Table 5-2 Project Objectives and Alternative Trail Alignments	Maximize ocean views and scenic coastal vistas along a coastal alignment for experiencing and interpreting the Monterey Bay National Marine Sanctuary, and historical and agricultural landscapes (Master Plan policy 1.1.2 and 1.1.4, objective 2.1)	EIR incorrectly identifies Farmers’ Plan as not maximizing ocean views. Farmers’ plan actually has more views than proposed project and trail only because Farmers plan is on the upper section of the farmland and is has maximum ocean views. Proposed plan and trail only sections have portions without ocean views because they are located in the cutaways.	Change number 4 item in Table 5-2 to Yes for Farmers plan and Proposed Project should be changed to “Partially”.
Table 5-2 Project Objectives and Alternative Trail Alignments	Develop the trail so future rail transportation service along the corridor is not precluded (Master Plan policy 1.2.4)	RTC Staff stated at EIR kickoff that rail service was not planned north of Wilder Ranch. In addition, the Unified Corridor Study will be completed this year to determine if rail service is best use of corridor.	Since this requirement was clearly stated it is not part of the EIR analysis for North Coast Rail Trail and the UCS report, this objective should be removed from Table 5-2 because it does not achieve the goal of the trail. If EIR insist future rail operations be included, Federal railbanking protects the use of the rail corridor for future rail operation. Therefore, it does not preclude any future rail operation. However, the trail-only would have to be rebuilt if any such operation shall occur.

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Title	Description	Concern	Recommendation
Table 5-2 Project Objectives and Alternative Trail Alignments	Maximize safety and serenity for experiencing and interpreting the sanctuary and landscapes by providing a trail separate from roadway vehicle traffic (Master Plan Goal 1)	This objective has goal to separate trail from roadway vehicle traffic – mean that trail users are PHYSICALLY separated from vehicle traffic. Farmers plan does physically separate trail users from vehicle traffic and in fact, with the trail remaining on farmland, it is more than 100 feet from Highway 1.	Item number 5 for Farmers Plan should be “Yes” because trail does not expose trail users to vehicle traffic.
Table 5-2 Project Objectives and Alternative Trail Alignments	Minimize trail impacts to private lands, including agricultural, residential, and other land uses (Master Plan objective 1.5)	The proposed project does not minimize trail impacts to private lands and agriculture. Farming operations and private property will be significantly impacted by the trail. With the proposed project, the trail will be located in the middle of the farmland, resulting in a significant increase in public accessing agricultural land.	Proposed project should be changed to “No” for item number 6. Proposed project has major impact to farming operations – even with the mitigation solutions. The trail going through the middle of the farm will result in more people walking across the farmland.
Table 5-2 Project Objectives and Alternative Trail Alignments	Complete project construction by 2020 to maximize funding for the Project, and meet current funding obligations (Master Plan objective 4.6, policy 4.6.2 speak to maximizing funding)	Proposed project will be delay by legal challenges from private landowners and farmers. Farmers plan can be implemented sooner because there is no requirement to remove tracks, trail will be built on farmland and no track removal is required in first phase of the project. Also, according to the EIR, only 3 additional approvals are required for Trail Only (RTC, CTC, STB), all of which do not take 10 years to get approval.	Proposed project should be changed to “No” for item number 11. Farmers plan should be changed to “Yes” for item number 11.
Climate Emissions	Once constructed, the operational emissions from increased vehicle trips by trail users driving to the parking areas would be substantially similar because the estimated number of trails users would be the same.	With trail located adjacent to Highway 1, there would be more locations for access by public, reducing car trips to distant parking lots.	Farmers plan will increase access to trail at more locations – reducing vehicle trips. This should be considered in climate emissions.
Cultural Impact	Cultural resources impact of Alternative 3 would be greater on historical resources and less on archaeological and paleontological resources	What is definition of “Impact to historical resources” – the railroad tracks have to remain?	Farmers’ plan will allow for many sections of the railroad to remain for historical purposes.
Trail Access	Accessing the trail from Highway 1 would be similar, although the Alternative 3 alignment would be closer south of Scaroni Road, and emergency vehicles would not need to cross the tracks to access the trail, which could reduce emergency response times compared to the Proposed Project.	Emergency vehicles would not have to cross farmland.	The entire trail for farmers’ plan is accessible by emergency vehicles without traversing farmland. The proposed project will limit access by emergency vehicles to trail.

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Title	Description	Concern	Recommendation
Trespassing	Compared to the Proposed Project, there could be a slight reduction in trespassing and vandalism into adjacent lands	Proposed project will result in more trespassing because trail is located in middle of farmland.	Easy access to trail from multiple locations should be included in the objectives. Proposed plan has limited access points, versus Farmers Plan which has significantly more access points.
Vehicle traffic	The transportation/circulation impacts of Alternative 3 would be similar to, but slightly greater than, those identified for the Proposed Project.	This is not a true statement. Need clarification on why Farmers' plan has greater impact than Proposed Plan.	Reevaluate impact on transportation.
Access to other trails	The impact of increased design hazards would be slightly greater than the Proposed Project because, in the southern portion where the Alternative 3 trail alignment would be along Highway 1, trail users would be required to cross the tracks to access other trails to the coastal bluffs and beaches.	Not true – this needs to be reevaluated.	Unclear how this was determined. Need reevaluation and clarification.

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Finally, with the environmental issues of building trail along ROW, continued discussion on ROW location, continued discussions with Union Pacific and the potential legal challenges if trail is built through middle of farmland, we would hope that RTC Staff would recommend a win-win solution which is a combination of the various plans. We suggest the farmers plan be implemented south of Baldwin Creek to Wilder Ranch and a combination of rail with trail / Trail Only be implemented north of Baldwin Creek to Davenport. The farmers plan travels from Wilder Ranch to Baldwin Creek along the upper section of the farmland (not on Caltrans property) and this portion of the trail can be built sooner than a trail through the middle of the farm. We also believe that a partnership with farmers and property owners north of Baldwin Creek may allow for a trail path along the side of the tracks. Farmers plan is the only plan that can begin construction before 2020.

21.24

Best regards,

Brian Peoples

Brian Peoples
 Executive Director
 Trail Now
 669224-2020

Letter 21

COMMENTER: Brian Peoples, Executive Director, Trail Now

DATE: September 24, 2018

Response 21.1

The commenter states the comments on the EIR are attached and advocates for the Farmers plan, which they say is the only plan that can meet the 2020 deadline.

Refer to **Master Response D** regarding Project schedule and timeline. The individual comments are addressed below, and no further response is necessary to address this comment.

Response 21.2

The commenter states that they contributed to and support the comments submitted by Pamela Silkwood, Horan Lloyd (Comment Letter 16).

Refer to the **Responses to Comment Letter 16**. No further response is necessary to address this comment.

Response 21.3

The commenter states that construction of Alternative 1 (Trail Only) occurring in 2028 is based on RTC staff opinion, and the 3 additional approvals (Surface Transportation Board, California Transportation, SCCRTC) do not equate to 10 years of delay.

Refer to **Master Response D**.

Response 21.4

The commenter states that the proposed project will be delayed past 2020 because of the ROW issues.

Refer to **Master Responses B and D**.

Response 21.5

The commenter states that agricultural mitigation measures will not be successful, but does not explain why, or suggest modifications or alternative mitigation. Because the commenter does not identify an error or omission with the Draft EIR analysis, these comments cannot be addressed, and no revisions have been made to the EIR analysis.

The commenter additionally points to the Horan/Lloyd letter for agricultural comments. Refer to **Response to Comments 16.5 through 16.11**.

No revisions to the Draft EIR are necessary.

Response 21.6

The commenter states that Table 5-2 incorrectly states the proposed project meets Objective 11 (meet the 2020 deadline for construction) because the proposed project will be delayed, and that

the Farmers plan (Alternative 3) does not meet this objective because it won't take an additional 10 years to obtain the three additional approvals required.

Refer to **Master Response D**.

Response 21.7

The commenter states that at the EIR kickoff meeting, RTC stated train operation is not considered in the future for the rail corridor and that rail banking protects the use of the corridor for future rail operation. The commenter also states that Table 5-2 needs to be corrected to state that the Farmers plan should be changed to use for Objective 3 (develop trail so future rail use is not precluded).

As described in Section 2.5 under *Rail Operation and Maintenance*, rail use is identified as a possibility within the next 3 to 5 years or sooner, but this is not certain, the frequency is unknown at this time, and rail service is not proposed as part of the Project. Also refer to **Master Response E**.

Response 21.8

The commenter states that the EIR does not adequately address the Project's impacts on farmers that would occur due to railroad crossing closures. The commenter states that the EIR should more clearly identify impacts associated with farm equipment traveling over the trail.

The loss of crossings and farm roads are discussed under Impact AG-4 in Section 3.2, *Agricultural Resources*. As stated therein, the elimination of five existing crossings would represent an inconvenience for farm workers, sometimes requiring longer travel distances to access property on the other side of the trail, and lengthening the time of each crossing as workers stop to look for pedestrians and bicyclists. These statements from the Draft EIR are consistent with the commenter's concerns. However, increased travel times for farm workers would not result in the conversion of agriculture to non-agricultural use. The potential for increased operating costs is beyond the scope of the analysis, as economic effects of a project shall not be treated as a significant effect on the environment under CEQA [Guidelines §15131(a)]. If increased operating costs resulted in the fallowing of crops, this would not be considered a physical effect of the Project because fallowed land is not considered a non-agricultural use and would be the result of business decisions by growers.

As for the negative impact of farm equipment travelling over the trail, Mitigation Measure AG-4(b) in Section 3.2, *Agricultural Resources*, requires that crossings accommodate farm equipment measuring 19-feet (the largest vehicle, per the North Coast Farmers' NOP letter) and be paved with a surface that can withstand tractor rousers.

No revisions to the Draft EIR are necessary.

Response 21.9

The commenter states that the proposed fencing that would separate trail users from the railroad and from agricultural lands is not tall enough.

The commenter does not provide evidence supporting the statement that a 4.5 feet fence would be inadequate, nor what height fencing would be satisfactory. Refer also to Response 16.11j. A taller fence would block ocean views and scenic coastal vistas, in conflict with Project objectives, and such mitigation would not be proportional to the impact identified.

No revisions to the Draft EIR are necessary.

Response 21.10

The commenter states that the Draft EIR is incorrect in that the Farmers Alternative does not travel on Caltrans property.

The southern portion of the Farmers' Alternative (Alternative 3) extends along Highway 1. The alignment was developed by the CFL design team based on input provided as a result of the NOP comment process and coordination with the farmers through their legal representative Pamela Silkwood, Horan Lloyd. Detailed right-of-way mapping was not conducted nor required to develop this alternative at a conceptual level; therefore, it cannot be either confirmed or denied if it extends within Caltrans ROW.

The description of Alternative 3, in Section 5.2 under *Alternative 3 (Farmers' Alternative)*, does not conclusively state whether the alignment extends within the Caltrans ROW. It does state that the trail edge of pavement would be offset a minimum of 8 feet from the existing Highway 1 edge of pavement, consistent with the Caltrans Highway Design Manual Chapter 1000, Bicycle Transportation Design. It also states that safety issues and design would be explored more thoroughly in coordination with Caltrans if this alternative is selected.

No revisions to the Draft EIR are necessary.

Response 21.11

The commenter states that design features at trail crossings, such as mud mats, would reduce the amount of available agricultural land. The commenter states that lost agricultural land should be re-estimated to incorporate these areas.

Proposed trail crossings, including mud mats and other features, are included in the Project footprint analyzed throughout the EIR. Therefore, the ground disturbance associated with these features was included in the Important Farmland conversion calculations.

In response to this comment, text has been added to the second paragraph under *Methodology* in section 3.2.3 to clarify that the Project footprint includes crossing features.

Response 21.12

The commenter asks whether improvements at the proposed railroad crossings include railroad cross guards and meeting PUC requirements.

As stated in Section 2.4 under *Trail Crossings*, no crossing gates are proposed. The proposed formal crossings would be designed to meet CPUC requirements. This section of the Draft EIR has been revised to clarify this.

Response 21.13

The commenter states that project objective 1 (provide a continuous public trail along the Santa Cruz Branch Line rail corridor) should be modified so that it does not specify that the trail must be along the rail corridor, and recommends changing the finding in Table 5-2 to state Alternative 3 meets this objective as modified.

As described in Section 2.3, the project objectives are based on and consistent with the objectives and policies in the adopted MBSST Network Master Plan, as well as legal obligations associated with the rail line purchase and funding sources. Regardless, CEQA gives agencies very broad discretion in formulating project objectives. "CEQA does not restrict an agency's discretion to identify and pursue a particular project designed to meet a particular set of objectives. CEQA simply requires the agency to thereafter prepare and certify a legally adequate EIR that provides the agency and the public alike with detailed information regarding the proposed project's significant environmental impacts, as well as reasonable alternatives that 'would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen [those impacts].'" (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 276-277.) Here, the RTC here acted within its lawful discretion under CEQA in formulating project objective 1 as currently drafted.

No revisions to the Draft EIR are necessary.

Response 21.14

The commenter states that the EIR incorrectly identifies the Farmers plan as not maximizing ocean views.

As presented in Section 5.2 and Table 5-2, the RTC finds that the Farmers' Alternative (Alternative 3) would not meet project objective 4 (maximize ocean views and scenic coastal vistas along a coastal alignment...) because the alternative alignment remains in the rail cut for much of the northern portion of the alignment, whereas the proposed project extends along coastal side farm roads above the rail cut in some areas, further maximizing coastal/ocean views. The southern portion of Alternative 3 leaves the rail cut and extends along the highway, which generally minimizes coastal/ocean views because it is further inland, and many views are obscured by topography.

No revisions to the Draft EIR are necessary.

Response 21.15

The commenter states that project objective 3 (develop the trail so future rail transportation service along the corridor is not precluded) should be removed from Table 5-2, Project Objectives and Alternative Trail Alignments.

As described in Section 2.3, the project objectives are based on and consistent with the objectives and policies in the adopted MBSST Network Master Plan, which is described in Section 1.2.3. Also refer to **Response 21.13** and **Master Response E**.

No revisions to the Draft EIR are necessary.

Response 21.16

The commenter states that the Farmers Plan should be considered to meet project objective 5 (maximize safety and serenity for experiencing and interpreting the sanctuary) in Table 5-2.

RTC staff concluded that the Farmers' Alternative (Alternative 3) would not meet this project objective because much of the southern half of the proposed alignment under the alternative would be located further inland and, although not on Highway 1, would be along the highway. Because of the decreased ocean visibility and noise and emissions from vehicular traffic, such proximity to the highway would not maximize safety or allow a trail user as positive an experience as would be available from a more seaward location providing greater visual access to the sanctuary. Also refer

to **Response to Comment 21.13** regarding the extent of the RTC's discretion in formulating and interpreting project objectives.

No revisions to the Draft EIR are necessary.

Response 21.17

The commenter states that the Proposed Project should not be found to meet project objective 6 (minimize trail impacts to private lands, including agricultural, residential, and other land uses) because it has major impact to farming operations.

Most of the Proposed Project trail alignment is within publicly owned lands, including portions extending through agricultural lands, which are leased by farmers from public State Parks property. Also refer to **Response to Comment 21.13** regarding the extent of the RTC's discretion in formulating and interpreting project objectives.

No revisions to the Draft EIR are necessary.

Response 21.18

The commenter states that the Proposed Project should not be found to meet project objective 11 (complete project construction by 2020...), and the Farmers plan should be found to meet project objective 11. Also refer to **Response to Comment 21.13** regarding the extent of the RTC's discretion in formulating and interpreting project objectives.

Refer to **Master Response D**.

Response 21.19

The commenter recommends that the analysis of Alternative 3 (Farmers' Alternative) consider the potential for a reduction in GHG emissions due to additional trail access points.

Alternative 3 is addressed in Section 5.2, *Alternatives Evaluated in Draft EIR*. As noted in this section, Alternative 3 would have the same number of trail users and thus the same estimated increase in vehicle trips to the improved parking areas. As described in Section 3.14 under Impact T-4, parking for future vehicle trips is anticipated to spread out across the Project corridor and fully occupy all Project parking lots. Additional trail access points would not have an impact on parking availability. Additionally, as the trail corridor would only be approximately 7.5 miles in total length, the choice of one parking area over another would have very little impact on the overall vehicle miles travelled as a result of Project vehicle trips. The additional trail access points would not result in a reduction in GHG emissions compared to the Proposed Project.

No revisions to the Draft EIR are necessary.

Response 21.20

The commenter states that the Farmers plan will allow for main sections of the railroad to remain for historical purposes.

The northern portion of the Farmers plan (Alternative 3) would require removal of the rail, and the southern portion would retain the rail. Removal of the rail in the northern portions represents a substantial adverse change in the significance of the historic railway, and thus a significant environmental effect. Because the effect cannot be mitigated, it is significant and unavoidable.

No revisions to the Draft EIR are required.

Response 21.21

The commenter states that the entire trail for the farmers plan is accessible by emergency vehicles without traversing farmland, and the Proposed Project will limit access by emergency vehicles to the trail.

The alternatives analysis in Section 5.2 acknowledges that the trail in the farmers plan (Alternative 3) is accessible to emergency vehicles. Under *Alternative 3 (Farmer's Alternative)*, the Public Safety and Services discussion states: "Accessing the trail from Highway would be similar, although the Alternative 3 alignment would be closer south of Scaroni Road, and emergency vehicles would not need to cross the tracks to access the trail, which could reduce emergency response times compared to the Proposed project...."

As discussed in Section 3.12.4, the Proposed Project would provide adequate emergency vehicle access. Also refer to **Response to Comment 12.13**.

Although emergency response times may be minimally reduced under Alternative 3 due to the shorter distance to access the trail alignment from Highway 1 in the southern portion, all alternatives have been planned in accordance with the requirements of the local first response service providers for equipment and vehicles; and emergency response times would not be significantly different based on the similar location and design for each alternative.

No revisions to the Draft EIR are necessary.

Response 21.22

The commenter states that easy access to the trail should be included in the objectives, and the farmers plan has more access points than the proposed plan.

The 11 project objectives were developed based on the objectives of the MBSST Network Master Plan. The trail, parking improvements, and trail connections in between were designed to provide formal access to the trail from Highway 1 at three locations (Davenport Beach, Bonny Doon Beach, and Panther/Yellowbank Beach parking areas). However, the trail can be accessed from several other locations and informal parking areas along the highway. It is acknowledged that the farmers' plan (Alternative 3) may have additional access points from the highway in the southern portion where the trail alignment is outside the rail corridor and along the highway.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration. Also refer to **Response to Comment 21.13** regarding the extent of the RTC's discretion in formulating and interpreting project objectives

No revisions to the Draft EIR are necessary.

Response 21.23

The commenter states that it is untrue the farmers plan has greater transportation impact than the proposed plan, and the impact should be reevaluated.

As discussed in the analysis of Alternative 3 in Section 5.2, the transportation impacts would be similar to those of the Proposed Project, with slightly greater impacts related to design hazards. This is because in the southern portion of the trail alignment, trail users on the Alternative 3 alignment

would be on the inland side of the tracks in the southern portion and thus would be required to cross the tracks to access coastal bluffs and beaches, whereas the trail users on the Proposed Project alignment would already be on the coastal side of the tracks and thus would not have to cross the tracks to get to the coastal bluffs and beaches. The proximity of the Alternative 3 alignment to Highway 1 in the southern portion increases the potential for hazards associated with the highway, compared to the Proposed Project alignment. However, the impact determination of Alternative 3 would be less than significant with mitigation, which is the same as the Proposed Project.

No revisions to the Draft EIR are necessary.

Response 21.24

The commenter suggests that Alternative 3 be implemented south of Baldwin Creek to Wilder Ranch, and a combination of the Proposed Project and Alternative 1 be implemented north of Baldwin Creek.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 22

From: [Oscar Allan](#)
To: [NCRT Draft EIR](#)
Subject: North Coast Rail Trail
Date: Monday, September 24, 2018 2:55:45 PM

Esteemed Rail Trail Proponents,

Looking at the proposed vision for the North Coast Rail Trail I have several concerns relative to public safety and the lack of infrastructure to support the current visitation levels.

That being said I want to focus on two specifically sensitive areas along the Proposed rail trail.

#1 The Coast Road community is the only residential area that sits immediately in the route of the proposed North Coast Rail Trail. It will be unfair for that particular stretch to have to take on the burden of drop off and pick up parking for any new traffic associated with the Rail Trail.

22.1

Additionally while State Parks does control both Laguna Beach and Coast Road beach there is no reasonable bike access to either of those areas that would not negatively impact local residents and agricultural operators in that area. Furthermore please do not consider any new coastal access trails branching out of the Coast Road community as they would lead towards the Sand Hill Bluff area which is a culturally sensitive archeological site.

22.2

#2 At no point should any proposed trails lead the public into the view shed of the private property along Scaroni Road. Independent of my personal feelings of the current ownership of “Red White and Blue Beach” it would be irresponsible and spiteful to lead any public to the temptation of crossing private property in the interest of beach access. Any new beach access along that stretch should be exclusively through the State Park easements at the very south end of the RWNB if at all as that is also an active agricultural area.

22.3

Respectfully,

J. Oscar Allan
831-332-7192

Letter 22

COMMENTER: Oscar Allan

DATE: September 24, 2018

Response 22.1

The commenter expresses an opinion that the Proposed Project would unfairly burden the Coast Road community with increased traffic associated with drop off and pick up parking.

Traffic impacts are analyzed in Section 3.14, *Transportation/Circulation*, of the Draft EIR. It is anticipated that trips generated by the Project would primarily travel to and from existing parking lots that would be improved as part of this Project. On peak days, overflow parking would be accommodated in existing parking location sin informal lots and on the Highway 1 shoulder. Additional trips specifically for drop off and pick up were not modeled, and would not be expected to occur outside of these identified parking areas. However, the concern is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 22.2

The commenter requests that no trails be considered that branch from the Coast Road community towards the Sand Hill Bluff area due to cultural sensitivity.

The Project does not include spur trails in this location.

No revisions to the Draft EIR are necessary.

Response 22.3

The commenter objects to locating a new coastal access trail in the viewshed of private property along Scaroni Road and requests that any new beach access associated with the Project should be located on State Park easements.

The Project does not include spur trails that would provide access to Red White and Blue Beach, nor within the viewshed of private property along Scaroni Road.

No revisions to the Draft EIR are necessary.

Letter 23

From: [Buzz & Jennie Anderson](#)
To: [NCRT Draft EIR](#)
Subject: Public Comment
Date: Wednesday, August 15, 2018 11:56:17 AM

Dear RTC,

The EIR regarding the North Coast is a biased document favoring rail/trail over trail only. | 23.1
There is no need to have old railroad tracks going to Davenport, as the cost involved in
developing a costly rail/trail far exceeds what the public should pay for such an underused
portion of the scenic Monterey Trail. Better to build a less expensive and wider/better trail
down the center of the corridor. It just makes sense. The North Coast tracks are not historic, | 23.2
but the Capitola Trestle is! The RTC should be working to put the issue of the rail/trail vs
trail only to a public vote. It's the democratic thing to do. | 23.3

Tanks for taking my opinion into consideration, Jennifer
Harris-Anderson

Letter 23

COMMENTER: Jennifer Anderson

DATE: August 15, 2018

Response 23.1

The commenter objects to the Proposed Project and expresses concern that the EIR favors the Proposed Project at the expense of other, less costly alternatives.

Refer to **Master Response E**.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 23.2

The commenter states the opinion that the North Coast tracks are not historic.

As discussed in Section 3.5, *Cultural Resources*, the approximate 7.5-mile segment of the Davenport Branch Line in the Project corridor is historically significant for its direct association with the Santa Cruz Portland Cement Company in Davenport and its embodiment of a unique construction method relating to its earthen trestle embankments. As such, it is eligible for listing in the National Register of Historic Places, California Register of Historical Resources, and as a Santa Cruz County Landmark under Criteria A/1/2 and C/3/3, and is considered a historical resource under CEQA.

The commenter's opinion is noted. No revisions to the Draft EIR are necessary.

Response 23.3

The commenter requests that RTC put the Project approval decision to a public vote.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 24

From: [Jeri](#)
To: [NCRT Draft EIR](#); john.leopold@co.santa-cruz.ca.us; rlj12@comcast.net; openup@cats.ucsc.edu; jbertrand@ci.capitola.ca.us; ebottorff167@yahoo.com; zach.friend@co.santa-cruz.ca.us; greg.caput@co.santa-cruz.ca.us; bruce.mcperson@santacruzcounty.us; [Ryan Coonerty](#); sbrown@cityofsantacruz.com; trina.coffman@cityofwatsonville.org; cchase@cityofsantacruz.com
Subject: No freight contract with Progressive Rail
Date: Saturday, August 11, 2018 10:17:03 AM

Hello,

Progressive Rail Co., if awarded the freight contract, could bring a propane gas terminal to Watsonville without the consent of local governments or people.

We do not want a dangerous propane gas terminal in Watsonville, or any such dangerous freight traversing our county.

Please do not award any freight contract to Progressive Rail Co.

Thank you,

Jeri Bodemar & James Scott Smith, residents of Watsonville

24.1

Letter 24

COMMENTER: Jeri Bodemar

DATE: August 11, 2018

Response 24.1

The commenter objects to the Progressive Rail freight contract and expresses concern that the contract was awarded without local government or public approval.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration. Refer also to **Master Response E**.

No revisions to the Draft EIR are necessary.

Letter 25

From: [Chanté Boller](#)
To: [NCRT Draft EIR](#)
Subject: thoughts on the rail trail from a local resident
Date: Monday, September 24, 2018 3:51:42 PM

We do not support the rail trail/ development thereof, Bike Only Trail, or Public Corridor. The North Coast is already a health hazard nightmare. Already we are short of regulation, rangers, and oversight. Spending money to put in a trail for leisure between Santa Cruz and Davenport will only increase the problems that are currently occurring.

- ie. 1. Transient population traffic illegal camping will increase along the trail/ coast. 25.1
- 2. Maintenance equals money =COST COST COAST for upkeep and continued proper management. That money will run out/ it will run down. Who will keep it up? Who will bear the cost of continued maintenance? 25.2
- 3. USE? Who will use this? HHow often? How much traffic? for Marathoners? FOr triathelets? for non residents? How much traffic do we expect to have on this corridor? 25.3
- 4. Going through the ranches is unsafe for farmers and unsafe for people. The dirt in those fields is full of pesticides. Having people in the fields impedes the farmers ability to run the ranches as needed. People do not need to be in the fields!!! 25.4
- 5. TRESPASSERS 25.5

Letter 25

COMMENTER: Chante Boller

DATE: August 11, 2018

Response 25.1

The commenter objects to the Project and states that the Project would increase existing problems with illegal camping.

Illegal camping is addressed under Impact PUB-2 in Section 3.12, *Public Safety and Services*. As noted therein, if illegal encampments were established along the Proposed Project alignment, the local Sheriff would respond upon being informed of their presence. It is the duty of the Sheriff's Office to both cite and relocate those citizens who illegally camp in the unincorporated county public lands. The Sheriff's department would relocate the citizen and all belongings to the appropriate facility in the county, in accordance with the Homeless Services Center, and remove debris and waste from the site. The County would provide appropriate services for individuals that may include transitional shelters, permanent housing programs, and income and employment support, with the goal of reducing the overall homeless population throughout the county (Fish 2018). If ongoing illegal camping is identified along the Proposed Project alignment, regular patrol of the alignment by the Sheriff's Office or SPPO would be instated to ward off the establishment of permanent illegal campers.

No revisions to the Draft EIR are necessary.

Response 25.2

The commenter asks who will maintain the trail/rail during project operation.

Refer to **Master Response F**. The comment does not relate to the adequacy of the EIR or CEQA process.

No revisions to the Draft EIR are necessary.

Response 25.3

The commenter asks who the Project's intended user is, and how much trail traffic would be expected.

The Project is a multi-use trail that would be open to pedestrians and cyclists of all abilities. Users may include walkers, joggers, long-distance runners, cyclists, hikers, beachgoers, and persons with wheelchairs. As noted in Section 2.5, *Project Operation and Maintenance*, the estimated number of trail users is 951 daily on a summer weekend day, with 560 users on the southern half (south of Scaroni Road) and 391 users on the northern half (north of Scaroni Road).

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 25.4

The commenter states that trail users should not pass through agricultural lands because they are unsafe due to pesticides. The commenter also states that trail users crossing through farms would impede farm operations.

Residual agricultural chemicals in the soil is discussed under Impact HAZ-4 in Section 3.8, *Hazards and Hazardous Materials*. As stated therein, implementation of Mitigation Measures HAZ-4(a) and HAZ-4(b) would reduce the exposure of construction workers and the public to health hazards associated with contaminated soils released during ground-disturbing activities to a less than significant level.

Exposure of trail users to pesticides applied on adjacent agricultural land is addressed under Impact HAZ-1. As noted therein, construction workers, trail users, and maintenance personnel could be exposed to agricultural chemicals. However, Mitigation Measures AG-3(b), AG-3(e), and AG-5 in Section 3.2, *Agricultural Resources*, would reduce this impact to a less than significant level. In addition, Mitigation Measure HAZ-1 is recommended to further limit the potential for pesticide exposure and reduce associated health impacts. This measure was added to the Draft EIR in response to comment 16.6, and recommends that State Parks, in consultation with the Department of Pesticide Regulation (DPR) acting as a responsible agency, amend leases with North Coast farmers to prohibit pesticide application within a distance from 50 feet of the North Coast Rail Trail corridor sufficient to protect trail users; and also to require that pesticide use occur only at times of the day when public health and safety can be protected as well as during public hours of the trail, which would be determined through coordination with State Parks, the Coastal Commission, and property owners. With these measures, the potential for trail users to be exposed to pesticides would be less than significant.

The potential for trail users to impede agricultural operations are discussed under Impact AG-3 in Section 3.2, *Agricultural Resources*. As outlined therein, the Project could negatively impact adjacent agricultural operations by placing trail users in proximity to active farmland. Trail users may impact agriculture through trespassing, littering, and generating food safety-related concerns. Although these inconveniences would not result in conversion of farmland to non-agricultural use, they could negatively affect, and thus be considered in conflict with, agricultural operations. Implementation of Mitigation Measures AG-3(a) through AG-3(e) would reduce conflicts between trail users and agricultural operations, thereby limiting the potential for negative effects. This impact of the Proposed Project would be less than significant with mitigation.

No revisions to the Draft EIR are necessary.

Response 25.5

The commenter expresses concern that the Project would result in trespassing.

The potential for trespassing is addressed under Impact AG-3 in Section 3.2, *Agricultural Resources*. Because fencing would be installed between the trail and most active agricultural areas where natural barriers do not already exist, many would-be trespassers would be dissuaded from entering farmland. However, at 4.5-foot tall and comprised of smooth wire, the fence would be scalable for the determined trespasser, as would be true of a taller fence that impeded views more than the 4.5-foot tall fence. Mitigation Measure AG-3(a) would require the installation of no trespassing signs at key locations.

No revisions to the Draft EIR are necessary.

Letter 26

From: [Greg Buzzard](#)
To: [NCRT Draft EIR](#)
Subject: North Coast Rail Trail EIR comment
Date: Wednesday, September 05, 2018 10:40:11 PM

I'd like to register my strong support for rapid action on the current proposal. While I believe Option A (reuse of existing rail bed) is sufficient, I think it is more important and useful to the community that the RTC proceed with building the trail as soon as reasonably feasible. In addition to providing a highly desired trail 8 or so years sooner, the current approach has the benefit of leaving open an option to provide an alternate future use for the rail bed -- perhaps providing separate paths for both recreational strolls as well a quicker fitness oriented traffic.

26.1

I would also like to encourage the RTC to proceed to make the remaining sections of the rail line into a usable trail as soon as possible. Among the many benefits, I believe it would act as a timely stimulus for wide adoption of e-bikes, which I fully believe is one of the most viable and forward-thinking transportation alternatives for this county.

In any case, rapid action on the creation of a contiguous trail is what the community needs and deserves.

Regards,
Greg Buzzard
Aptos CA

Letter 26

COMMENTER: Greg Buzzard

DATE: September 5, 2018

Response 26.1

The commenter expresses support for the Project and encourages expedited approval.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 27

From: [John Carothers](#)
To: [NCRT Draft EIR](#)
Subject: Rail Trail
Date: Monday, August 13, 2018 10:22:58 AM

Dear People-

Let's get this project done! Approve the Rail Trail.

John Carothers

| 27.1

Letter 27

COMMENTER: John Carothers

DATE: September 13, 2018

Response 27.1

The commenter expresses support for the Project.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 28

From: [Jim Cochran](#)
To: [NCRT Draft EIR](#)
Cc: [Rachel Dann](#); [Jim Cochran](#)
Subject: Trail/Rail project
Date: Monday, September 24, 2018 3:27:26 PM

Hi Cory,

I have concern about the routing for the trail in the vicinity of the small community located along Coast Road, which is part of the Old Coast Road that is now called Highway !.

I live at 5221 Coast Road.

I and other neighbors look directly across the RR tracks (actually OVER the below-grade tracks) towards Steve Dellamora's / Billy Ridoni's field. We enjoy seeing the farm activity on the bluff above the tracks.

I would prefer that this portion of the trail be located adjacent to the tracks so that passers-by remain invisible to myself and other Coast Road residents---even though they will actually be closer to our homes..... not to mention that trail-users will look directly into our yards and homes if they are on the bluff.

28.1

I believe that in an earlier version of the map the trail was located next to the tracks.

In years past this portion of the RR track was maintained such that extra-wide farm equipment could pass next to it. Once the brush is cut back again, there will be easily 12' of area available for the trail.

If the trail is routed instead along the bluff, it will be immediately adjacent to agricultural fields, which will need to be protected from incursions by a 6' fence--- and thus the trail-users will not be able to enjoy the ocean view. The combination of the trimmed brush and the difference in elevation will provide a natural barrier from the field—not to mention that it will provide 50 or more feet of separation from crops.

28.2

Until just recently, I hadn't noticed the change from the version I saw some time ago—hence my comment at the last minute.

Thanks again for providing us with the opportunity to participate in this process.

Jim

Letter 28

COMMENTER: Jim Cochran

DATE: August 13, 2018

Response 28.1

The commenter expresses the personal preference that the portion of the trail alignment near the community located along Coast Road be located at a lower elevation adjacent to tracks (within the rail cut) instead of along the bluff above the tracks as proposed to better conceal trail users from the residents.

Scenic vistas are addressed under Impact AES-1 in Section 3.1 *Aesthetics*. As outlined therein, the proposed trail and associated fencing would not substantially obstruct coastal and agricultural views across the rail corridor. As such, this impact of the Proposed Project was found to be less than significant. It should also be noted that CEQA does not require lead agencies to treat adverse effects on private views as environmental effects. (See, e.g., *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 492-494.) “Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons.” (*Ibid.*) “Additionally, California landowners do not have a right of access to air, light and view over adjoining property.” (*Ibid.*) For these reasons, views from private residences and of private residences were not discussed in the Draft EIR.

No revisions to the Draft EIR are necessary.

Response 28.2

The commenter opposes the trail alignment along the bluff due to the need for fencing which would block user’s view of the ocean.

Scenic vistas are addressed under Impact AES-1 in Section 3.1, *Aesthetics*. As outlined therein, proposed fencing would not substantially obstruct coastal and agricultural views across the rail corridor. Proposed fencing on the coastal sides of the trail would be placed and designed to minimize obstructions of scenic vistas. Fencing on the coastal side would be installed primarily adjacent to agricultural areas, and the parts of the corridor that provide scenic views of the coastline are primarily adjacent to natural open space and coastal bluffs.

No revisions to the Draft EIR are necessary. Also refer to **Response to Comment 28.1**.

Letter 29

From: [Val Cole](#)
To: [NCRT Draft EIR](#)
Subject: North Coast Rail Trail Input from a Local
Date: Tuesday, September 18, 2018 2:42:41 PM

Dear RTC,

Thank you for your tireless work on the Rail Trail over more than two decades. I know you have many battle scars from this work, but we are getting close to making this wonderful plan a reality! I am writing you as an avid road and mountain biker, a former Land Trust and Friends of Santa Cruz State Parks board member, and as a parent with two kids who like to enjoy our parks and coastline.

I am extremely excited about the North Coast Segment of the Rail Trail for the following reasons:

1. Over the past two decades, it has become very dangerous to ride bikes or walk along Highway 1 with the advent of cell phones and increased traffic. According to data compiled by TIMS (Transportation Injury Mapping System), between 2006 and 2017 there was 1 cyclist fatality, 26 cyclists injuries, 2 pedestrians deaths and 4 pedestrian injuries along this stretch of Highway 1. A safe rail trail from Davenport to Wilder Ranch will help save lives and enable people to once again enjoy the North Coast riding or walking without danger. It will help mountain bikers safely move between our growing network of parks and offer road riders a safe passage back to town from Bonny Doon or further up the coast. This is a big win!
2. The trail will be a wonderful connector between Santa Cruz, Wilder Ranch, Coast Dairies, San Vicente Redwoods and the many California State beaches that are along the North Coast segment. People will have tremendous, active, ways to move between our wonderful parks! I can already see the cover of Sunset Magazine touting the “active recreation paradise in Santa Cruz.” It will be good for locals and also great for tourism, one of our most defensible industries on this side of the hill.
3. This segment of the rail trail is **fully funded** with public and private funds **which will evaporate if we do not build the trail in the next two years**. As a lead fundraiser for the Land Trust during their latest capital campaign, I personally raised a lot of money for this segment of the Rail Trail, and want to see the generous donors investments bear fruit. I’d also hate to see the federal money evaporate if there are delays. We want our Rail Trail and we want it now!
4. The plan of record has minimal environmental impacts, and utilizes existing trails to the best extent possible. It also complies with requirements of approving state agencies, including California Coastal Commission, Caltrans, and California State Parks. There is goodness in this.
5. The plan of record is the only plan that can be implemented quickly. We have waited since 1995 for the Rail Trail to become a reality. All other plans will result in delays due to the re-start of the entire planning process, as you folks well know. Let’s roll!

In summary, I am fully supportive of building the proposed North Coast Rail Trail project ASAP and opposed to all the alternatives as well as to the no project alternative.

Kind regards and keep the faith,

Val Cole

29.1

Letter 29

COMMENTER: Val Cole

DATE: September 18, 2018

Response 29.1

The commenter expresses general support for the Proposed Project, citing safety, regional connectivity, secured funding, and limited environmental impacts.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

From: [Brian Conner](#)
To: [Supervisor Ryan Coonerty](#); [Sheriff Jim Hart](#); [North Coast Sheriff's Sergeant Stefan Fish](#); [George Dondero](#); [Coastal Commission District Director Dan Carl](#); [NCRT Draft EIR](#)
Cc: [Diana Conner](#)
Subject: Request for Installation of Closed-at-Night Gates for Davenport Parking Areas
Date: Thursday, September 13, 2018 8:55:45 AM
Attachments: [Davenport Project Location Map.pdf](#)

<RTC: please kindly take this email as a comment on the Rail Trail Draft EIR>

Dear Sirs,

We are writing to express our concerns regarding rampant abuses in the Davenport beach area which we feel could best be remedied by limiting overnight unauthorized visitor parking, preferably and primarily by adding locked-at-night gates to the entrances of the parking areas along HWY-1 as part of the Rail Trail improvement project. These many "abuses" significantly impacting the Davenport environment and community include:

- Loud late-night fireworks (all summer long every summer, most recently Aug 24 & 26, Sept 8 & 12, 2018)
- Excessive litter on the beach, the trails, and the parking areas, consisting in-part of bottles (many broken into glass shards), cans, trash, etc. The few trash receptacles in place are often overflowing, and refuse accumulates on the ground beside them.
- Human bio-waste "litter" (piles of feces, bottles of urine, soiled toilet paper)
- Large amounts of graffiti on cliff walls, signs, and other landmarks (natural & man-made)
- Illegal beach camping and campfires
- Extensive RV & van overnight parking (the lot has looked like a KOA for most of the summer with multiple RVs, vans, and similar vehicles parked nightly, many staying for days at a time)

We'd be happy to provide/procure ample evidence for all these abuses upon request, via photos and other records.

We believe that the primary causes of this misuse are visitors to Davenport of the late night, overnight, and/or multi-day variety who are taking advantage of the semi-private beach location, lax parking regulations, and limited enforcement capabilities of our overstretched public resources. As such, we believe a proper next step to try to combat these nuisances and health+safety risks would be more active management of the parking areas in and around Davenport. The "No Parking 10pm - 6am" signs already in place do not seem to have much effect at curbing these problems, especially since these "restrictions" are, almost always, not enforced.

We join our Davenport neighbors in requesting that strong consideration be put towards the installation of locked-at-night gates at the entrances to the main parking lots across HWY-1 from Old Town Davenport (both the RTC lot and the "Miller" lot, as shown in the attached Land Trust map). These measures seem to be working successfully at many of our North Coast State Park beaches, most prominently seen at the beach-parks located in neighboring San Mateo County.

After recently learning about the proposed improvements to the RTC lot as part of the Rail Trail project, this seems like it could be an ideal opportunity to address late-night & overnight parking control measures, putting improvements in place in Davenport as part of the project to improve the parking area there. If such steps are not taken, we do worry that the problems currently witnessed will undoubtedly continue, and probably even worsen, detracting from many of the positive enhancements that we all may hope to see gained at the Davenport terminus of the proposed Rail Trail project.

As residents of Davenport, we welcome an opportunity to work collaboratively with the various local, county, state and other organizations involved to help bring these proposed and requested improvements to fruition. We have little doubt that many other Davenport residents, along with the

30.1

Davenport North Coast Association, feel the same way.

Thank you for your consideration.

Sincerely,

Brian Conner - Davenport resident & Volunteer Steward for Land Trust of SCC at Davenport Bluffs
Diana Conner - Davenport resident & Volunteer with SCC Sheriff Child Safety Program
38 Marine View Ave. (PO Box 333)
Davenport, CA 95017
brianjconner@yahoo.com; dianaleeconner@gmail.com

cc:

- NCRTDraftEIR@sccrtc.org
- Supervisor Ryan Coonerty, ryan@ryancoonerty.com
- Sheriff Jim Hart, jim.hart@santacruzcounty.us
- North Coast Sheriff's Sergeant Stefan Fish, stefan.Fish@santacruzcounty.us
- Regional Transportation Director, George Dondero, gdondero@sccrtc.org
- Coastal Commission District Director, Dan Carl, dan.Carl@coastal.ca.gov

•



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Davenport, CA

-  **Tow Signage**
-  **Miller Lot APN 058-121-04**
-  **RTC Lot APN 058-072-03**
-  **Cemex Lot APN 058-072-01**



Letter 30

COMMENTER: Brian and Diana Conner

DATE: September 13, 2018

Response 30.1

The commenter expresses suggests that parking lot improvements may be an opportunity to address existing problems with overnight parking along Highway 1 near Davenport, which include: late-night fireworks, litter, human waste, graffiti, illegal camping, an overnight parking.

As stated in Section 2.5, signs would be installed to indicate that the trail is closed at night. It is anticipated the parking lots providing access to the trail would be closed from 12:00 a.m. to 5:00 a.m. via signage. However, no gates are proposed as part of the Project. Refer to **Master Response C** for additional discussion about nighttime parking restrictions.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 31

From: [Nanda Carrant](#)
To: [Regional Transportation Commission](#)
Subject: the email listed in Aptos Times bounced back
Date: Saturday, August 18, 2018 11:30:40 AM

NCRT-DraftEIR@sccrtc.org

I am concerned about the environment and the plan for a new rail system.

Walking along the old rail and bridge in La Selva I have watched the monarchs nest in the trees along the tracks in a small grove of trees each season, and the red tail and red shouldered hawk hunt from the rusty old rails, and glide out over the beach, the owls, the swallows, white crown sparrows nest and travel through the area as their throughfare in migration. It is quiet on the ridge above the ocean, the cliff park.

The hillside erodes as I write this. I cannot imagine a rail going along the old railway through this area, and the environment being able to deal with more impact, displacing birds of prey, migratory birds along with the rich life that accumulates from the canyon to the trestle bridge. For me it is like an attempt to improve life while we destroy the living in this quiet refuge for life to sustain.

31.1

I lived in a town in Colorado that has a rail running through it, and the windows would shake, the night is pierced by the sound, the day marked by the presence of the train penetrating back yards with sound, pollution, and cargo that often has dangerous possibilities for the land and sky.

I also am not quite sure why people who have homes along the coast would not feel the impact as I think the value of their homes go down with a train entering the ambience of their back door and yard.

Overall it seems like a large improvement at a terrible cost to so many important elements that need more help along this shoreline already then another transport system that historically has had it is issues throughout history.

Nanda Carrant, La Selva Beach, California.

Letter 31

COMMENTER: Nanda Carrant

DATE: August 18, 2018

Response 31.1

The commenter expresses opposition to rail service, particularly in the La Selva Beach area.

The Project does not include rail service and does not include any improvements near La Selva Beach. The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 32

From: [David Date](#)
To: [NCRT Draft EIR](#)
Subject: North Coast Rail Trail EIR
Date: Monday, September 24, 2018 9:23:04 AM

Good morning!

I regret to inform you that there will never be a commuter train in Santa Cruz County not with the passing of 3 Measure D's. While we inch further down this path, autonomous technologies, electric assist active transportation, even personalized drone air craft will becoming primary modes of transportation. The world is moving magnitudes faster than the current plan to utilize 150 year old technology to address 21st century needs. I know that you know how ridiculous this proposal is. Please tell your colleague next to you and sow a little dissent. We need voices of reason in our local government, not yes men.

32.1

Kind regards,

David Date

Former development director LSBIA

Letter 32

COMMENTER: David Date

DATE: September 24, 2018

Response 32.1

The commenter expresses opposition to a commuter train in Santa Cruz County.

The Project does not include commuter train service, nor any improvements to the existing tracks. The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 33

From: [Mark Davidson](#)
To: [NCRT Draft EIR](#)
Subject: North Coast Rail Trail DEIR feedback
Date: Friday, September 14, 2018 4:06:40 PM

Greetings,

I support the trail only (Alternative 1) option for this project. Passenger rail service from Davenport to Santa Cruz doesn't make any sense given the lack of population and industry/commerce in Davenport. Keeping and maintaining the tracks will detract from an otherwise enjoyable trail experience. The proposed trail fencing and rails has a negative aesthetic on an otherwise beautiful transportation corridor.

Another points is removing the tracks can save funding and simplify the project. The cost overhead in maintaining rail service from Santa Cruz to Davenport will cannibalize scarce transportation funding from other part of the county like the underserved San Lorenzo valley.

Also, passenger rail service between downtown/Boardwalk to the westside Santa Cruz similarly doesn't make any sense. With ride share bikes and scooters coming online quickly, our transportation needs are better served by doubling up on trails: high speed for commuters and people who want to go fast and a slow speed trail for strollers, kids and cruisers.

Passenger rail service between Watsonville and downtown Santa Cruz is up for debate. In my observation I don't think it will have any impact on reducing the traffic load on Hwy 1 since most of Hwy 1 commuter traffic will head over/from Hwy 17.

Thank you,

--Mark

33.1

Letter 33

COMMENTER: Mark Davidson

DATE: September 24, 2018

Response 33.1

The commenter expresses support for Alternative 1 (Trail Only), citing negative aesthetic impacts of fencing between the trail and the rail line; the expense of maintaining rail service; and alternative transport modes.

Aesthetics impacts of the Proposed Project and Alternative 1 are discussed in Section 3.1, *Aesthetics*. As noted in the *Operational Phase* discussion under Impact AES-1 therein, the proposed trail and associated fencing would not substantially obstruct coastal and agricultural views across the rail corridor, as viewed from Highway 1. It should also be clarified that the Proposed Project does not include rail service. As such, maintaining such service would not be within the scope of the Project.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

To Attention of Cori Caletti

submitted via email, Sept 24, 2018

Comments on the North Coast Rail Trail DEIR

From Marty Demare

Living at 5430 Coast Road , a short distance from the rail corridor,

where for years we lived with the rail traffic, annoyed by, but accustomed to, the noisy engines and whistle stops. We do not miss the industrial intrusion into this pastoral area. So the suggestion that rails should be left intact as the preferred project, to serve some theoretical excursion train is disappointing. Such a use is improbable given that the previous rail operator failed to establish such a service (or any other economically viable use) when the tracks were still usable. Since Central Federal Lands is the lead agency and the RTC has accepted a FLAP grant to improve access to the nearby Federal lands, analysis should be guided by how the proposed project would serve to provide access to the Cotoni-Coast Dairies National Monument and respect the years of effort and millions of dollars invested to enhance the values that are attached to the Monument designation: recreation access and resource protection. Likewise the DPR property that will be accessed via the corridor have attached Coastal Act resource protection values.

34.1

Visitors who want a “ through the window” experience of the coastal area can stay in their cars on parallel Hwy 1. To squander resources restoring and maintaining tracks without an identified use is a waste of public resources that would be better spent on improving and enhancing visitor experience of a natural environment.

If the RTC affirms the rails as a historical resource, then the entire rail line could also be so designated and thus the alternatives being examined here and in the Unified Corridor Study are preempted. The rails do not inform the visitor, they look like any other rails nationwide. Rather they are an intrusion and an impediment to the natural experience sought by agencies and funders of the north coast public land acquisitions. If the method of rail bed construction is instructive somehow, then interpretive signage should illustrate the massive environment degradation caused by the roadbed construction method which resulted in the destruction of multiple estuarine systems and resulting loss of vital habitat and subsequent near extirpation of species.

34.2

Again and again, assertions in the DEIR lack supporting data, and use assumptions about future land use in the area which are only proposed or imagined, not planned and funded, nor is there an actual identified access route to Federal land. Lacking verifiable information the public is left without adequate substance to respond to and suggests that this DEIR is inadequate and invites legal challenge.

A few observations:

Laguna Beach access:

The maps indicate that the access trail at Laguna Road from Hwy. 1 across the tracks will be closed.

34.3a

That trail to Laguna Beach follows a farm road leading to one of the least hazardous routes down to a beach. There is parking established across the highway from this entrance and after decades of use visitors will doubtless continue to use this route, undoing closure attempts

34.3a
cont.

Traffic impacts:

The acquisition of North Coast beaches by DPR, the recent series of warm summers and availability of cellular service, enabling social media word of mouth has increased visitation to the beaches dramatically. The traffic projections should be based on measured studies not projections. Did the DEIR preparer look for data from traffic counters observed in place at the Santa Cruz City limits and San Mateo County line in recent years?

Increased impacts on facilities from increased use:

That answer might be NO because there are no facilities. A new restroom facility proposed at Yellow Bank, which will concentrate visitors yet the plan proposes this parking lot be reduced in size. I have observed ~100 vehicles in this lot during peak use days (holidays, hot weather over the hill, events organized on social media). BLM is also considering access to the Monument from this lot, increasing demand for parking. The impacts on natural features from graffiti and trash will be significant.

34.3b

Sincerely,

Marty Demare

Please confirm that you received.

Letter 34

COMMENTER: Marty Demare

DATE: September 24, 2018

Response 34.1

The commenter expresses opposition to rail service in the North Coast area, and recommends analysis of how the Project would provide access to Cotoni-Coast Dairies National Monument and other recreational lands.

Analysis of the Project's connection and potential impact to nearby recreational and open space lands is provided in Section 3.13, *Recreation*. As stated under Impact REC-2 therein, the new trail would provide an opportunity for the public to walk, run, bicycle, and view nature through open space areas; and would improve access to the coastal bluffs and beaches, California Coastal Trail, and Wilder Ranch State Park, including the Coast Dairies property.

The commenter's opposition to rail service is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 34.2

The commenter states that the North Coast rails are not informative or historical, but rather are an impediment to the natural experience sought by agencies and funders of the north coast public land acquisitions. The commenter states that if the rails remain and are described by interpretive signage, then the signage should describe the environmental degradation caused by their construction.

The Davenport Branch Line was historically designed and constructed as an independent branch line to transport cement from the Santa Cruz Portland Cement Company in Davenport. The resource is unique from the larger surrounding rail system and was therefore evaluated as an independent resource, while also taking into consideration its place within the larger context of rail in the Santa Cruz region. Because of its association with the Santa Cruz Cement Company in Davenport and also its embodiment of a unique construction method relating to its earthen trestle embankments, the rail segment was found eligible for listing in the National Register of Historic Places (NRHP), the California Register of Historic Resources (CRHR), and as a Santa Cruz County Landmark under Criteria A/1/2 and C/3/3; it is therefore considered a historical resource under CEQA.

Potential impacts to this historical resource are addressed in Section 3.5, *Cultural Resources*. Mitigation Measure CR-1(a) includes the requirement for installation of an interpretive exhibit that would specifically highlight the historical importance of the Davenport Branch Line. The commenter's opinions that this exhibit should also include information about environmental effects of rail construction does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 34.3

The comment includes the following concerns:

- a) Although the existing informal pedestrian crossing of the rail line across from the Laguna Parking Lot, west of Road Creek, would be closed as part of the Proposed Project, visitors will continue to use this crossing, given the relatively safe access to the beach and decades of use.
- b) The EIR's traffic analysis should be based on traffic counts from nearby areas rather than projections. In addition, the commenter asserts that trail use will increase graffiti and trash.

34.3a. The commenter is referring to an existing, informal pedestrian crossing of the rail line across from the Laguna Parking Lot, west of Road Creek, which would be closed as part of the Proposed Project. The commenter's opinion that people would continue to use this crossing is noted. However, the Project would include fencing on the inland side of the trail to separate trail users and the railroad, which would block visitors from crossing in this location. There are two existing CPUC crossings of the rail line in this vicinity – one approximately 0.4-mile to the west and one 0.6-mile to the east, at Coast Road – which would be improved as part of the Project and be available to visitors as an alternate route.

No revisions to the Draft EIR are necessary.

34.3b. The Transportation Impact Analysis prepared for the Draft EIR (Appendix K) was based in part on traffic volume counts on Highway 1 during a mid-day peak period (11 a.m. to 2 p.m.) on Saturday, October 18, 2017. In addition, estimates of vehicle trips to and from the proposed trail are based on recent use of nearby trails in the North Coast area. Therefore, the analysis was based on traffic counts and not projections, as requested by the commenter.

As discussed in Draft EIR Section 3.1, *Aesthetics*, routine trail maintenance would include graffiti removal and repair and replacement of signage. Mitigation Measure AG-3(c) in Section 3.2, *Agricultural Resources*, also would reduce the impact of littering by requiring regular litter removal along the trail.

No revisions to the Draft EIR are necessary.

From: [Bruce and Concha](#)
To: [NCRT Draft EIR](#)
Subject: Comments re: NCRTDraftEIR
Date: Monday, September 24, 2018 3:51:34 PM

Dear People:

I concur with and endorse the comments below, developed by a collaborative of neighbors.

Please take them into consideration as you refine and iterate the EIR.

Best,

Bruce Duncan
12 3rd Avenue
Davenport, CA 95017
- -

Comments to the
Santa Cruz County Regional Transportation Commission
c/o Cory Caletti
Senior Transportation Planner/Rail Trail Program Manager
NCRTDraftEIR@scrtc.org

35.1

I am submitting the following comments to the North Coast Rail Trail Environmental Impact Report. I support the project, but do feel that significant improvements need to be made to maintenance of the trail and parking access.

PARKING:

Page 3.1-24 “The existing **unpaved parking area at Davenport Beach** would be **paved ... with access path to the proposed trail.**” I appreciate that the project planners incorporated previous suggestions regarding the parking area at the Davenport terminus. If the “daily peak use is estimated at 951 trail users” and the assumption is that half “average trail users would start at the northern section, traveling 3.75 miles and back”, then we believe the 54 spaces as shown in the diagram to be completely inadequate. We currently have the need for at least 100 parking spaces on busy weekends and this is before there are proposed new trail users. This discrepancy needs to be addressed. Lateral parking along the highway is not safe or acceptable.

This parking area should have a gate which can be locked at night to deter late night beach party-goers consistent with State Park beach parking lots. In addition, the parking area west of the highway should include a designated and restricted space outside the gate for bus parking.

TRASH:

Page 3.1-26 The inclusion of trash/recycling containers and plans for routine maintenance for removing graffiti are all good, but it is imperative that an ongoing source funding and hiring for maintenance personnel be included in the EIR. Currently the dumpsters are often overflowing, so they need to be picked up more than once a week. It would be helpful if the project planners would identify the responsible agency for such maintenance, the expected frequency of service, and the staffing and budget available for these operations over time. If County Parks is subcontracted with an MOU, the level of service, and source of sustainable funding should be identified.

TOILETS:

Page 3.1-24 “**restroom facility in a prefabricated structure on a 12-foot by 18-foot pad.**” I appreciate that the project planners incorporated our previous suggestion that the parking area at the Davenport terminus include toilet facilities. Currently, Davenport businesses bear a disproportionate amount of the burden of meeting the needs of the general public for toilet facilities. A public restroom at this site will also reduce the amount of urination and defecation within the right of way and on the bluff lands and beaches. The EIR should provide more detail on the toilets - number of stalls, flush versus pit, etc.

The toilet facilities will only be used if they are maintained and regularly serviced and locked at night, consistent with State Park beach facilities. It would be helpful if the project planners, in the response to comments, identify the responsible agency for such maintenance, the expected frequency of service, and the staffing and budget available for these operations over time.

3.6-Geology and Soils

Section 3.6 of the EIR analyzes the trail’s impact on geological stability of the project corridor and the exposure to seismic and geological hazards. it does not address the effects of trail users on soil erosion and potential drainage issues. Trail users, including mountain bikers, will be veering off the trail, based on both Monterey and San Mateo coast trails usage. What is the expected impact of trail users on soil erosion and drainage rerouting? Are EV bikes and motorized skate boards permitted on the trail? If so, what will be the potential for increased soil erosion and drainage problems? These questions should be addressed and answered in the EIR.

3.12-Public Safety and Services

It is my understanding that the path is to be built to support emergency vehicles including fire trucks which will access the path to deal with injuries and medical emergencies. It is also my understanding that emergency vehicles require a surface 12 feet wide.

35.1
cont.

Thus, the first comment regarding Public Safety & Services ties back to Section 2(Description) where Figure 2-3b shows the Project path only 8 feet wide. This is inadequate with regard to a 12-foot width requirement for emergency vehicles. The Alternate 1 trail width descriptions on page 2-7 lists a typical path cross section as 10 feet—this would also be inadequate for emergency vehicles. The trail width description elsewhere in Section 2 lists 20 feet width a 12-foot wide path which is sufficient. Unless the emergency vehicles are going to travel partly on the path and partly on the shoulder on certain narrower sections of the path, the multiplicity of descriptions and figures needs to be corrected to the proper 12 feet throughout.

For the balance of Public Safety & Service topics the analysis seems to be the same—the EIR considers the only environmental impact to be new buildings/facilities. Apparently, head counts, vehicles and vehicle trips may be increased to serve the increase in injuries, medical emergencies and law enforcement without environmental impact. No forecast of head counts or call out data are provided in Section 3.12. to support a conclusion of no impact on emergency and law enforcement vehicles and personnel.

3.4-Biological Resources

The project description does not document how the project, by maintaining (presumably) the status quo with regards to lack of connectivity between watersheds transected by the project and the ocean, will affect the long-term recovery of threatened salmonids and coastal estuarine habitats. Watershed alteration due to diversions, culverts, channeling (all of which were done to originally create the rail line) is considered an important impediment to salmon recovery and small coastal estuarine integrity. Increasingly, CalTrans is considering how to mitigate these pocket estuary impacts in their redesign/repair of Highway 1 roadway where most estuaries in the Northern Santa Cruz County roadway were seriously damaged by infill, culverts, and diversion. The rail line likewise was created with little regard to the importance of these estuary habitats.

There is no evidence of consideration of improving ecological conditions across the watershed/ocean connections transected by this project (especially the San Vicente Creek, Liddell Creek, Laguna Creek and Majors Creek). How will the project improve/enhance connectivity, particularly with regards to restoring estuarine habitats (e.g. San Vicente Creek watershed)? This should be addressed under the corridor and connectivity sections. How is connectivity currently impeded? How could connectivity be improved? Indeed, the rail corridor is considered a spatial LINK between features as opposed to a barrier, but for salmonids this is clearly not the case.

3.2-Agricultural Resources

35.1
cont.

Pesticide Use. The main pesticide used on north coast non-organic fields is a fumigant which is labelled as a carcinogen and can cause acute respiratory inhalation toxicity. Public exposure to the spraying of this and other chemicals must be addressed to minimize exposure to hikers and bikers on the trail. Adherence to spraying instructions on the label does not insure that areas sprayed may not keep people off the trail and away from chemical drift. Other options should be considered as Regulatory Settings permit spraying to simply be stopped as people walk or ride by the pesticide applicator.

5.13.23 200 foot buffer between agricultural and non-ag lands. It sounds like it is addressed but confusing due to federal vs local ordinances.

Food Safety: Indicates that farmers responsible for monitoring farmlands for human/animal wastes and must stop farming certain fields if contaminated. Burden is on the farmer which needs to be mitigated somehow.

The distance between bathroom facilities must be close enough for hikers and even small children to access, decreasing risk of contamination on the trail or farmlands. Presently there is a 5-mile stretch without restrooms.

3.8 Hazards and Hazardous Materials

Mitigation measures in the Hazardous Materials section refer to mitigation measures in the agriculture section. I have the following comments.

Mitigation Measure AG-3(c)

The mitigation measure refers to the "Trail Manager" as the responsible party to collect litter and manage solid waste. The Trail Manager is funded by the RTC. The project description does not clearly define any parameters for the funding of the trail or the Trail Manager. In addition, this mitigation measure does not adequately define what "... as needed" or "reasonable time frame" means in relation to the emptying of trash and the collection of trash along the trail. Trash and human waste along the trail is likely to be a significant issue with normal use of the trail and the additional impact of homeless people that will camp along the trail. Homeless people have hauled thousands of pounds of trash out along Highway 1 that has been cleaned up by CalTrans on a number of occasions. Large trucks were required to remove mattresses, shopping carts, tarps, tents, and all manner of waste and trash. Homeless people will see the bike trail as an opportunity to access areas away from town and move large amounts of material out to camps.

Current parking lots with waste disposal at Bonny Doon Beach, Davenport, and Davenport Landing are often covered with litter and the dumpsters are overflowing. The dumpsters are only emptied once per week and this is not

35.1
cont.

adequate. The Trail Master will need resources to clean and haul solid waste more than once a week.

The funding for the trail manager must be better defined and secured and there must be adequate funding for regular trail clean up (example: twice weekly). The RTC cannot be allowed to underfund the maintenance of the trail and the removal of solid waste from the trail and parking areas.

AG-5. I do not see where the EIR addresses the possible impacts of pesticide application on trail users. AG-5 appears to argue that the EIR does not need to address the impact of pesticide use on trail users and I feel this assumption is wrong. There needs to be a system put in place where trail users are notified of pesticide applications while they are in progress. In addition, drift of pesticides is known to occur with wind born fog. Trail users will be subject to pesticide drift and this should be monitored. Interpretive signs should directly address how trail users can avoid pesticide exposure.

35.1
cont.

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~~~~~

Bruce Andrew Duncan & Concepcion Munoz  
12 3rd Avenue - PO Box 384  
Davenport, CA 95017  
831-245-6915

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Letter 35

COMMENTER: Bruce Duncan

DATE: September 24, 2018

Response 35.1

The commenter concurs with comments from Brian McElroy (Letter 56) regarding maintenance of the trail and parking areas, and provides those comments verbatim.

Please refer to **Response to Comments 56.2 and 56.3** and **Master Response F**.

No further response or revisions to the Draft EIR are necessary to address this comment.

North Coast Rail Trail EIR

Comments on Public Draft EIR

This includes written comments from the person below on the Public Draft Environmental Impact Report (EIR) for the North Coast Rail Trail project. Comments should be focused on the sufficiency of the EIR in identifying and analyzing the possible environment impacts of the project and ways to avoid or mitigate the significant impacts (CEQA Guidelines sec. 15201).

First and Last Name: Alison Edwards

Mailing Address: Po Box 110 Davenport CA

Email Address: alison.edwards02@gmail.com

Comments must be submitted in writing at the August 22 or 23, 2018, public meetings; emailed to NCRTDraftEIR@scrtc.org; or sent to the address below by 5:00 PM on Monday, September 24, 2018.

Cory Caletti, Sr. Transportation Planner
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, California 95060
NCRTDraftEIR@scrtc.org

Comments:

- ① Agricultural impact warrants A1 or 3. 36.1
- ② Additional people on the north coast will mean more trash + littering (already a BIG problem) Garbage cans are overflowing. Its windy here + that garbage goes everywhere. Who will take care of this? How often? who will pay for it? 36.2
- ③ More people will mean more cars. What will the county do to address parking? 36.3

Continued on back

North Coast Rail Trail EIR

overflow (beyond the spaces in the new lots) onto HW 1? It's ugly + dangerous + will really need to be addressed. More law enforcement will be needed on a regular basis, who will pay for this?

36.3
cont.

④ Homeless people already are living along the current bike path in Wildcat Ranch. It's a public safety hazard - a fire hazard + is dangerous (drugs, people, etc.) What will the county do to address this public safety hazard? How will it be enforced? By whom? How often? Who will pay for it?

36.4

⑤ The county needs to have new designated law enforcement position for the North Coast to manage all of the above issues. Please be sure that the county addresses this directly in the final report.

Thank you.

Letter 36

COMMENTER: Alison Edwards

DATE: August 22, 2018

Response 36.1

The commenter expresses support for Alternatives 1 and 3, citing reduced agricultural impacts.

As shown in Table 5-5 in Section 5.0, *Project Alternatives*, Alternative 1 (Trail Only) and Alternative 3 (Farmers' Alternative) would both result in substantially less impact to agricultural resources compared to the Proposed Project. Alternative 1 would be environmentally superior to Alternative 3 because the southern portion of Alternative 1 would remain on the rail bed whereas Alternative 3 would extend along agricultural land.

The commenter's preference is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 36.2

The commenter expresses concern over increased litter, which is already a problem, and asks who will be responsible for maintenance along the corridor and if funding is available to support maintenance activities.

Litter is discussed under Impact AES-4 in Section 3.1, *Aesthetics*, and Impact AG-3 in Section 3.2, *Agricultural Resources*. Mitigation Measure AG-3(c) requires that the Trail Manager ensure that solid waste is collected regularly and remove litter on a regular basis. Refer to **Master Response F** for a discussion of trail maintenance and funding.

The comment does not relate to the adequacy of the EIR or CEQA process. No revisions to the Draft EIR are necessary.

Response 36.3

The commenter expresses concern for the visual and safety impacts of overflow parking during Project operation. The commenter asks what will be done to address overflow parking impacts and how management of overflow parking will be financed.

Section 3.1, *Aesthetics*, discusses the Project's potential impacts on visual quality and scenic resources. According to this analysis, all Project-related impacts were found to be less than significant or mitigated to less than significant levels.

Refer to **Master Response C** for a discussion of the parking evaluation. The three affected parking lots along the Project corridor would retain a sufficient supply of parking space to meet public demand on average non-summer days.

Impacts of the Project on police services are discussed in Section 3.12, *Public Safety and Services*, and were identified to be less than significant.

Refer to **Master Response F** for a discussion of trail maintenance and funding.

No revisions to the Draft EIR are necessary.

Response 36.4

The commenter expresses concern for public safety hazards associated with homeless camps along the corridor. The commenter asks what the County will do to address these safety issues.

Illegal camping is addressed under Impact PUB-2 in Section 3.12, *Public Safety and Services*. As noted therein, if illegal encampments were established along the Proposed Project alignment, the local Sheriff would respond upon being informed of their presence. It is the duty of the Sheriff's Office to both cite and relocate those citizens who illegally camp in the unincorporated county public lands. The Sheriff's department would relocate the citizen and all belongings to the appropriate facility in the county, in accordance with the Homeless Services Center, and remove debris and waste from the site. The County would provide appropriate services for individuals that may include transitional shelters, permanent housing programs, and income and employment support, with the goal of reducing the overall homeless population throughout the county (Fish 2018). If ongoing illegal camping is identified along the Proposed Project alignment, regular patrol of the alignment by the Sheriff's Office or SPPO would be instated to ward off the establishment of permanent illegal campers.

No revisions to the Draft EIR are necessary.

Letter 37

From: [Roland Edwards](#)
To: [NCRT Draft EIR](#)
Subject: NO on the Rail Trail!!!!
Date: Monday, September 24, 2018 3:57:43 PM

We do not support the rail trail/ development thereof, Bike Only Trail, or Public Corridor. The North Coast is already a health hazard nightmare. Already we are short of regulation, rangers, and oversight. Spending money to put in a trail for leisure between Santa Cruz and Davenport will only increase the problems that are currently occurring.

First and Foremostly:

1. TRESPASSERS. We are residents on the coast, on 175 private acres which this trail runs adjacent to. We are already inundated by the over spill of the clients (wrongly in the Area Closed No Access zones) from Wilder Ranch/ Coastal Bluff Trails. It is already a nightmare. The rail Trail has put a map with benches exactly at both ends of the road bisecting the parcels of our Private Property. WHY?

37.1

Followed by...

2. Transient population traffic illegal camping will increase along the trail/ coast.
3. Maintenance equals money =COST COST COAST for upkeep and continued proper management. That money will run out/ it will run down. Who will keep it up? Who will bear the cost of continued maintenance?

37.2

4. USE? Who will use this? HOW often? How much traffic? for Marathoners? FOR triathelets? for non residents? How much traffic do we expect to have on this corridor?

5. Going through the ranches is unsafe for farmers and unsafe for people. The dirt in those fields is full of pesticides. Having people in the fields impedes the farmers ability to run the ranches as needed. People do not need to be in the fields!!!

37.3

Letter 37

COMMENTER: Roland Edwards

DATE: September 24, 2018

Response 37.1

The commenter expresses opposition to the Project and all identified Alternatives, citing trespassing concerns.

Trespassing is addressed under Impact AG-3 in Section 3.2, *Agricultural Resources*. The discussion acknowledges that the proposed 4.5-foot tall fence would be scalable, and that the potential for vandalism, theft, or other direct impacts to adjacent farmland from trespassing could occur. As a result, Mitigation Measure AG-3(b) (Install No Trespassing Signs Prior to Operation) is required, which would inform trail users of the legal ramifications for trespassing.

The commenter's opposition is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 37.2

The commenter expresses concern over illegal camping, maintenance costs (and their source), and asks who the intended user of the Project would be, and how much traffic is anticipated on the corridor.

Illegal camping is addressed under Impact PUB-2 in Section 3.12, *Public Safety and Services*, and summarized in Response 36.4, above.

The trail and parking lots would be maintained and operated by RTC, likely through a contract with a private firm, State Parks, County Parks and Recreation, or some combination thereof through formal agreements. Refer to **Master Response F** for further discussion of trail maintenance and funding.

The Project is a multi-use trail that would be open to pedestrians and cyclists of all abilities. Users may include walkers, joggers, long-distance runners, cyclists, hikers, beachgoers, and persons with wheelchairs. As noted in Section 2.5, *Project Operation and Maintenance*, the estimated number of trail users is 951 daily on a summer weekend day, with 560 users on the southern half (south of Scaroni Road) and 391 users on the northern half (north of Scaroni Road).

No revisions to the Draft EIR are necessary.

Response 37.3

The commenter states that trail users should not pass through agricultural lands because they are unsafe due to pesticides. The commenter also states that trail users crossing through farms would impede farm operations.

This is the same comment as Comment 25.4. Refer to **Response to Comment 25.4**.

No revisions to the Draft EIR are necessary.

Letter 38

From: [Tai Farmer](#)
To: [NCRT Draft EIR](#)
Subject: North Coast Section of the SRTC's Rail Trail
Date: Friday, September 07, 2018 3:13:28 PM

I am a home owner and resident in the old town of Davenport.

I believe the rail trail would be a great asset for community recreation, but it is vital for SCCRTC to identify an ongoing revenue source for maintenance.

To protect and offset impacts to the North Coast, conditions for approval of this coastal development project need to require dedicated funding and mechanisms to support sufficient natural resource management and law enforcement into perpetuity.

Best,
Nitai Farmer

38.1

Letter 38

COMMENTER: Nitai Farmer

DATE: September 7, 2018

Response 38.1

The commenter expresses support for the Project but stresses the importance of an ongoing revenue source for maintenance, natural resource management, and law enforcement.

Refer to **Master Response F** for a discussion of trail operations and maintenance. Funding for trail construction, maintenance, and operation would be provided or secured by RTC by using Measure D funds but may include other sources. Funding for the Proposed Project include allocations for reasonable and prudent mitigation costs.

Impacts of the Project on law enforcement are discussed in Section 3.12, *Public Safety and Services*, and were identified to be less than significant.

No revisions to the Draft EIR are necessary.

Letter 39

From: [Bob F](#)
To: [Regional Transportation Commission](#)
Subject: Adding Rail to Trail Concerns
Date: Monday, September 24, 2018 12:00:18 PM

I've actually been trying to send this in a timely manner to NCRT-DraftEIR@sccrtc.org (and circulate to more if possible) as noted in the Aptos Times.

This actually comes down to a pretty simple choice. Either cater to outside interests (provide taxpayer money to allow questionable freight service) or provide a tremendous quality of life for locals by encouraging (and linking together) more useful and friendly communities with a bonus safe effective passageway for functional and recreational activity for all (which means TRAIL ONLY).

Filtering out all the obvious BS from profit organizations makes everything clear. For them to dangle a possible passenger service is nonsense. Anyone with any logic following through on any implementation, can perceive any such "promise" as impractical, just simply considering the aspects of safety and costs (even totally ignoring lack of regular ridership).

A two-way passenger service is extremely dangerous on a single track! The lawsuits piled up from overlooked actions could even shut down the system. Please Google and read the following that was printed in the local newspapers. (Implementing an All-Express rail system in the Central Valley will do more to safely alleviate the HWY 1 woes during rush hours - Google "All-Express Rail System a Better Path into the future" or "All-Express: Improvements in transportation (and housing)".)

"Pajaronian - Quality of Life is Precious" 7/13/18 + "Sentinel - Passenger Service is More Complex than Freight" 7/11/18
"Sentinel - There is Misleading Information about rail trail" 5/11/18
"Pajaronian - A Clear and Pending Danger" 12/7/17
"Pajaronian - Trail and Rail" 12/2/17

Train incidents would mount at openings at traffic intersections, not to mention vandalism / defects in the "safety barrier" would be very detrimental on the peace of mind for parents with preschoolers. Please don't make such a mistake to allow any unnecessary powered vehicles along this corridor that should be full of safe activity for all!

Bob Fifield
Aptos

39.1

Letter 39

COMMENTER: Bob Fifield

DATE: September 24, 2018

Response 39.1

The commenter expresses opposition to passenger rail service and support for Alternative 1 (Trail Only).

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 40

From: [E. Hansen](#)
To: [NCRT Draft EIR](#)
Subject: Eliminate Alternate 1, Trail Only from the Finalized Environmental Impact Report for the North Coast Rail Trail Project.
Date: Monday, September 24, 2018 4:10:37 PM

I support the proposed North Coast Rail Trail Project as it will benefit the entire Santa Cruz County Community despite the negative environmental impacts. Local values consistently represent equality and therefore access to the North Coast Trail Project should be for the enjoyment by all, regardless of physical limitations. A combined Rail and Trail allows for that equality to continue. Alternate 1 is exclusionary to people who may be unable to use a project consisting of a trail only.

Removal of an active transportation facility as required by Alternate 1, Trail Only has the potential of significant unavoidable impacts on the environment beyond that identified by the EIR. Elimination of the existing railroad tracks, ties and contaminated soil from past rail, industrial and agricultural operations will result in a decrease in air quality and increase of greenhouse gas emissions related to construction equipment, trucking and impacts on existing transportation systems.

I urge the Santa Cruz County Regional Transportation Commission to eliminate Alternate 1, Trail Only from the finalized Environmental Impact Report for the North Coast Rail Trail Project.

Erik Hansen
Watsonville Resident

40.1

Letter 40

COMMENTER: Erik Hansen

DATE: September 24, 2018

Response 40.1

The commenter expresses support for the Proposed Project and opposition to Alternative 1 (Trail Only). The commenter states that Alternative 1 would result in significant impacts not identified in the Draft EIR, including air quality and GHG emissions associated with disposing of the existing railroad ties and contaminated soil.

The commenter's preference for the Proposed Project is noted. It should be clarified, however, that the Draft EIR does address impacts associated with Alternative 1, including those identified by the commenter. Specifically, the potential impact of hauling railroad ties to a disposal facility is addressed in Section 3.3.4 under Impact AIR-2. This analysis assumed that contaminated materials would require disposal in specialized facilities ranging from 35 miles to 80 miles from the Project site.

No revisions to the Draft EIR are necessary.

Letter 41

Grey Hayes, PhD
Ecologist
PO Box 216
Davenport, CA 95017
(831) 728-8050

9/24/2018 3:45 pm

Cory Caletti
Senior Transportation Planner
1523 Pacific Avenue
Santa Cruz, CA 95060

via email: NCRTDraftEIR@sccrtc.org

re: Comments on the DEIR for the North Coast Rail Trail Project

Hello,

I am submitting the following comments as part of the public comment period for the Draft Environmental Impact Report for the North Coast Rail Trail Project.

Before the comments, I here describe my expertise and background. I have extensive training and experience in ecology, focusing specifically on the habitats and species through which the proposed project would pass. I received my PhD in Environmental Studies at UC Santa Cruz in 2002 with a focus on species conservation techniques in coastal grasslands. For many years in the mid 1990's, I farmed fields at 4 Mile Beach. I have also managed and restored a variety of coastal habitats along the North Coast bluffs and at Younger Lagoon Reserve at Terrace Point. I am personally familiar with most of the segments of the proposed project and have witnessed changes in those areas since 1986. I am also familiar with the surrounding matrix of lands, both natural and agricultural, and the land use changes over that time frame.

41.1

To summarize my comments, project proponents have done an inadequate job of informing the public about the impacts of the project alternative and should improve and recirculate the DEIR at such a time when those analyses and disclosures are complete.

Many thanks,



Grey

Recreational Impacts Analysis

Appendix K, the Transportation Impacts Analysis forms the basis for the DEIR analysis of recreational impacts. This Analysis relies on data from Google Earth on two dates, one representing 'peak use' and 'normal off peak use' as baseline for recreational uses along the project corridor.

Two standards of significance are considered:

- A. Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated
- B. Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment

41.1
cont.

Note that the DEIR authors fail to mention anything at all about the human dimensions of natural resource management (Fulton, Nelson, Anderson, & Lime, 2000), which are increasingly being applied to natural resource lands such as by BLM and State Parks. In order to accommodate such planning processes, these managers will need the maximum amount of decision making flexibility to control access via location of trail entrances and placement and size of parking facilities. The effort by this lead agency appears to circumvent that flexibility, unless formal discussion have occurred outside of this process and without informing the public.

There is an extensive literature on social carrying capacity (Graefe, Vaske, & Kuss, 1984; Manning, Lime, & Hof, 1996) that is lacking in the DEIR. Social carrying capacity analyses should have informed the project proponents as the users of the proposed project should be afforded the kind/types of experiences that have been planned apparently without a scientific approach. Project proponents posit a certain cap, number, of future visitors on the proposed project, though future use will undoubtedly exceed any projected number in the very long term. As this is commonly the case, the best management practice for this field is monitoring and adaptive management using social carrying capacity analyses (Lime, Anderson, & Thompson, 2004).

41.2

Passive recreation, including wildlife viewing, will likely be an important use of the proposed project. But, the best available science for wildlife viewing (Manfredo & Larson, 1993) is not in evidence in the plan.

- To what degree will the placement of the trail entrances and parking lots for the proposed project negatively affect the ability of neighboring public lands managers to control activities in order to address the human dimensions of natural resource management?
- How will the lead agency adaptively manage the proposed project in the future to accommodate the future needs of adjoining natural resource managers so that they can address the human dimensions of natural resource management?

41.3

Questions:

- Why is the Transportation Impacts Analysis (Appendix K of the DEIR) listed as a 'Draft' document?

41.4

- How specifically do the authors of the Transportation Impacts Analysis (Appendix K of the DEIR) derive the estimated 951/day additional recreational users resulting from the proposed project alternatives?
- How will the lead agency manage the proposed project to maintain use at the projected/analyzed additional 951 users/day level?
- Why do the project proponents use the number of vehicles relate to analyze recreational use of the parks surrounding the proposed project alternatives?
- State Parks has calculated use of its parks, why were these data not presented to the public to establish a recreational use baseline?
- What is the current recreational use (# users) baseline for Wilder Ranch State Park?
- What is the current recreational use (# users) baseline for County beaches in the vicinity of the proposed project alternatives?
- What is the current recreational use (# users) baseline for Davenport Beach?
- What is the current recreational use baseline (# users) for bicyclists using the Highway 1 corridor adjacent to the proposed project alternatives, including major bicycling events?
- What % increase is the projected 951 users/day over what is currently experienced in the vicinity of the proposed project alternatives?
- How certain were the authors of the Transportation Impacts Analysis about the satellite image dates being correct for their data collection using Google Earth?
- What time of day were the Google Earth satellite images taken?
- Where the times of day actual peak times of day, as well as peak times of year?
- Why did the Transportation Impacts Analysis not use several peak dates to increase the accuracy of vehicle parking lot use?
- Why did the authors of the Transportation Impacts Analysis suggest that “No in-person field data could be collected that would represent a peak day.”
 - What were the barriers to collecting in-person data?
 - How are observing these barriers in alignment with the public disclosure requirements of CEQA?
- What is the existing, baseline recreational use in the vicinity of the proposed project in terms of user days per year?
- What is the anticipated increased recreational use from the proposed project in terms of user days per year?
- What is the social carrying capacity of the natural areas surrounding the proposed project?
- If the social carrying capacity of the trail is exceeded, how would this impact adjoining recreational infrastructure?

41.5

The DEIR states (3.13-10), without evidence:

“Although the Proposed Project trail would increase accessibility to and use of state parks, open space, and beaches along the project alignment, it is expected that the use of these facilities would be passive, and that recreators would not significantly degrade the existing facilities.”

And (same page)

“The new trail users are not anticipated to increase the use of other existing recreational facilities such that it would result in a substantial physical deterioration of the facilities.”

41.6a

Questions:

- See prior questions about baseline recreational use.
- What is the biological carrying capacity of the parks surrounding the proposed project?
- How do these unsubstantiated statements conform to CEQA requirements of informing the public about the potential impacts of the proposed project alternatives?
- What is the baseline condition of ‘existing facilities?’
- How close are the ‘existing facilities’ to being degraded?
- What is the threshold degradation of ‘existing facilities’ which the DEIR authors use to posit what would be ‘substantial’ or ‘significant?’
 - Does CEQA require informing the public of the existing baseline condition of ‘existing facilities’ that could be impacted by the proposed project?
- What are ‘recreational facilities?’
- Does the DEIR authors’ definition of ‘recreational facilities’ include wildlife habitat, waterways, and beaches?
- What are specific metrics of ‘physical deterioration’ of recreational facilities?
- Why did the DEIR authors not reference State Parks by interview or through examining their documents to determine the existing conditions of the existing recreational facilities on their lands adjacent to the proposed project?
 - What has been the cause of deterioration of State Parks’ facilities to date?
 - To what specific, enumerated degree will the increased accessibility of visitors to State Parks caused by this project contribute to additional degradation of facilities?

41.6b

The DEIR authors, without providing the public any substantive evidence, conclude: *“Impact REC-1 THE PROJECT WOULD RESULT IN INCREASED USE BUT NOT SUBSTANTIAL PHYSICAL DETERIORATION OF EXISTING RECREATIONAL FACILITIES. (PROPOSED PROJECT: LESS THAN SIGNIFICANT, ALTERNATIVE 1: LESS THAN SIGNIFICANT)”*

- What specific data, including baseline and projected use and baseline and projected facility status, do the DEIR authors use to come to the previously stated conclusions?
- Citing case law, what is the standard of evidence the DEIR authors use for providing the public adequate information under CEQA?

41.7

The second threshold for recreational impacts in the DEIR is: *“Threshold B: Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment”*

The DEIR authors avoid any analysis of the need to expand recreational facilities adjacent to the proposed project alternatives, stating: *“Impact REC-2 THE PROJECT WOULD RESULT IN CONSTRUCTION OF A NEW RECREATIONAL FACILITY. (PROPOSED PROJECT: LESS THAN SIGNIFICANT, ALTERNATIVE 1: LESS THAN SIGNIFICANT)”*

41.8

Questions:

- How do the DEIR authors conclude that their own admitted project result of increased accessibility to neighboring parks will not also require additional construction of recreational facilities to accommodate the increased use?

As noted by BLM’s Mr. Blom’s comments regarding the proposed project, the federal funding for this project requires increased access to Federal lands.

- How do the federal funding requirements relate to the need to construct new recreational facilities as a result of the proposed project alternatives?
- In what ways are project proponents avoiding segmentation of the CEQA process, given that access to federal lands is a pre requisite of the funding for the project?
- What are the specific traits of the types of consultation between BLM and the project proponents that would characterize a segmentation of CEQA versus a process that describes and analyzes ‘the whole of the action’?

41.9

Consistency with Existing Plans

- What specific elements of the Wilder Ranch General Plan relate to the proposed project alternatives?
- How are the specific Wilder Ranch General Plan elements consistent or not consistent with the proposed project alternatives?
- What specific elements of the County’s North Coast Beaches Plan relate to the proposed project alternatives?
- How are the specific of the County’s North Coast Beaches Plan elements consistent or not consistent with the proposed project alternatives?

41.10

Cumulative Impacts

The DEIR authors state (section 4.1):

“To analyze a proposed project’s contribution to cumulative impacts, CEQA requires the lead agency to identify past, present, and probable future projects in the vicinity, summarize their effects, identify the incremental contribution of the proposed project to any significant cumulative impacts occurring in the project region, and recommend mitigation measures as appropriate (CEQA Guidelines Section 15130[b]). Mitigation measures should focus on any cumulatively considerable incremental contribution from the proposed project or alternative to any significant cumulative effect created by the past, present, and probable future projects, together with the proposed project or alternative (CEQA Guidelines Section 15130[a][3]; see also CEQA Guidelines Section 15126.2[a][4]).

Section 15130 of the State CEQA Guidelines permits two approaches for identifying cumulative projects to analyze. The first is the “list” approach, based on a list of past, present, and probable future projects that produce related or cumulative impacts. The list may include projects both within and outside the North Coast area. The second is the “projections” approach, based on a summary of projections contained in an adopted plan or related planning document, such as a regional transportation plan, or in an EIR prepared for such a plan. The projections may be supplemented with additional information such as regional modeling. A reasonable combination of the two approaches may also be used.”

41.11

- Why did the DEIR authors overlook the Wilder Ranch General Plan, the County’s North Coast Beaches Plan, and the Coastal Development Permit for Coast Dairies when considering cumulative impacts?

- What are the currently planned developments at Wilder Ranch State Park, including trails, parking lots, campgrounds, and other improvements?
 - What additional user #'s/day are anticipated by this new use?
- What are the currently planned developments by the County for its North Coast beaches, including trails, parking lots, and other improvements?
 - What additional user #'s/day are anticipated by this new use?
- What are the anticipated user #'s/day anticipated by the proposed increased access at San Vicente Redwoods, which anticipates to exit in the vicinity of this project?
- What are the approved entrance locations for the Cotoni Coast Dairies, under existing Coastal Development Permits?
 - What additional user #'s/day are anticipated by this new use?
- What are the cumulative impacts of the proposed project along with the currently planned recreational developments at Wilder Ranch State Park, County North Coast Beaches, San Vicente Redwoods, and at the Cotoni Coast Dairies?

41.12

Biological and Wetland Impacts

With most of the specific mitigations for impacts to biota deferred to a future “Project-specific Biological Resources Mitigation and Management Plan (MMP)” ...

- How will the project proponents determine when additional CEQA analysis will be implemented for future projects related to this DEIR?

41.13

At the same time, this DEIR suggests vaguely worded “mitigations” that would be sufficient to construct the project alternatives without further analysis.

- Citing case law, what threshold of level of detail for mitigations are the DEIR authors using to justify adequately informing the public as well as avoiding or mitigating impacts?

41.14

Mitigation-related activities themselves often have negative impacts to biota. And so:

- How does removing the specific mitigation planning from this DEIR make this CEQA project ‘the whole of the action’ as required by law?

41.15

The project proponents propose impacting ESHA.

- What types of activities are allowed within ESHA?
- How does this project comply with ESHA protections under the Coastal Act?
- Are the proposed project alternatives considered ‘interpretive’ activities?
- How would the public ascertain the difference between recreational, transportation, and interpretive activities as they pertain to allowable use within ESHA?

41.16

The majority of direct and indirect impacts to ESHA will occur in the most proximity to the parking lots and entrances used for the proposed project alternatives (see citations about wildlife and recreation impacts). Parking lot placement would also impact ESHA on adjoining lands.

- To what extent do the project proponents agree that there will be direct and indirect impacts related to the proposed entrances and parking lots?
- How did the location of ESHA, sensitive biological resources, and wetland resources inform the placement of the various parking lots?
- Using GIS analyses, where would parking lots ben placed for the proposed parking lots, so that they would provide the most spatial separation from ESHA?

41.17

The project alternatives would negatively impact California red-legged frog in a number of ways.

- Is there one or many populations of California red-legged frog in the vicinity of the proposed project alternatives?
- What is (are) the current baseline population(s) of California red-legged frog in the vicinity of the proposed project alternatives?
- What is a minimum viable population size of California red-legged frog?
- To what degree might the proposed project alternatives increase the potential for introducing pathogens or invasive species that would negatively impact California red-legged frog? What evidence do the EIR authors use to support this answer?

41.18

The majority of direct and indirect impacts to biological and wetlands resources will occur in the most proximity to the parking lots and entrances used for the proposed project alternatives. Parking lot placement would also impact biological and wetlands resources on adjoining lands.

For instance, the presence of people in and near natural areas has been shown to have negative effects on wildlife (George & Crooks, 2006; Reed & Merenlender, 2008, 2011; Taylor & Knight, 2003). Best management practices for recreation use in natural areas has long used carrying capacity analyses paired with establishment of limits of acceptable change to inform adaptive management should sensitive natural resources be impacted more than was planned (Leung & Marion, 2000; Simón, Narangajavana, & Marqués, 2004).

- Do the project proponents agree that there will be indirect impacts related to the proposed entrances and parking lots?
- How did the location of ESHA, sensitive biological resources, and wetland resources inform the placement of the various parking lots?
- Using GIS analyses, where would parking lots ben placed for the proposed parking lots, so that they would provide the most spatial separation from the most sensitive biological, aesthetic, and wetland resources?

41.19

There is too little discussion in the DEIR about the impacts of recreation on wildlife. Wildlife can be negatively impacted by increased presence of even those involved in passive recreation. Impacts may require species-specific buffers (Blumstein, Anthony, Harcourt, & Ross, 2003) but some species require more than just spatial separation (Fernández-Juricic, Venier, Renison, & Blumstein, 2005)

41.20a

Public Safety and Services

The DEIR authors curiously avoid any discussion of public safety and services associated with increased recreational use (sect. 3.17.7), suggesting that such issues pertain only to increasing residential or employment populations.

- What is the current baseline of response times for emergencies in the vicinity of the proposed project alternatives?
- What is the current baseline of incident numbers for emergencies in the vicinity of the proposed project alternatives?
- What is the current baseline of incident types including those involving recreational users for emergencies in the vicinity of the proposed alternatives?

41.20b

NEPA

- Why did the project proponents not complete a NEPA analysis alongside this CEQA process for the proposed project?
- How do NEPA and CEQA processes deal differently with the alternatives analysis process?
- If a NEPA process is used, how will the alternatives considered in CEQA be used as part of the NEPA process?
- How will the future NEPA process be informed by this CEQA process- how do the two processes interact?
- Given the timing of a future NEPA process and the BLM's management planning process for Cotoni Coast Dairies, how will those two processes interact?

41.21

Predispositional Discussion

- How have project proponents consulted with BLM in planning for this project?
- What conclusions were reached during those consultations?
- In what ways were these discussions not predispositional to the Federal land use planning process?
- What are the specific traits of the types of consultation between BLM and the project proponents that would characterize a predispositional process versus a non-predispositional process?

41.22

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Letter 41

COMMENTER: Grey Hayes

DATE: September 24, 2018

Response 41.1

The commenter provides a summary of his expertise and background, and summarizes his comments as indicating that the Draft EIR should be improved and recirculated. The commenter then states that the Draft EIR fails to include the human dimensions of natural resource management and the need for managers to have flexibility to control access. The commenter also questions the placement of trail entrances and parking lots in terms of neighboring public land managers' ability to control activities, including future needs, to address the human dimension of natural resource management.

The commenter's summary of his experience and background does not pertain to the adequacy of the EIR or the CEQA Process. The comment is noted.

Regarding the commenter's claim that the Draft EIR should be improved and recirculated, refer to **Master Response A**.

Anticipated public use of the Project would inform interpretive features and wildlife viewing locations.

In EIR Section 3.4.4, Mitigation Measure BIO-8(c) requires development of a Project-specific biological resources Mitigation and Management Plan (MMP) for impacts to biological resources. This mitigation measure has been revised to include consideration of experienced-based management approaches, the science of recreation ecology, and social carrying capacity analysis such as discussed in Manfredo and Larson (1993); Knight and Gutzwiller (1995); Leung and Marion (2000); Manning, Lime, and Hof (1996); and Simon, Narangajavana, and Marques (2004) in the development of this component of the MMP.

As prescribed in EIR Section 3.4.4, Mitigation Measure BIO-8(c) will require monitoring the effects of public use on the biological resources over time and employ adaptive management. Accordingly, over time, a qualified biologist will identify any shortcomings that might arise in meeting various biological performance standards, in enhancing the ecological functions and values of sensitive habitat mitigation areas, including CRLF habitat and for wildlife movement, and in ensuring the long-term viability of enhanced, restored, or newly-created biological resources.

This same adaptive management mechanism can be used for ascertaining the sufficiency of the parking lots, trail access, facilities development and management, and interpretive design features associated with the project. If monitoring information indicates any need for the modification or expansion of any project-related facilities, the RTC can consider its options at the time. If the RTC chooses to proceed with project modifications, it will comply with any applicable CEQA requirements that might be triggered. Any proposal that would lead to new significant effects or substantial increases in the severity of any previously identified significant effects would likely trigger the need for a supplemental EIR. Changes with more modest impacts could possibly proceed with an addendum to this EIR. (See CEQA Guidelines, §§ 15162 – 15164.)

The Draft EIR has been revised to include these details.

Also refer to **Response to Comment 2.25**.

Response 41.2

The commenter suggests that social carrying capacity analysis should inform the types of user experiences planned for the Proposed Project and Alternatives. The commenter also questions the projected number of users identified in the EIR and recommends monitoring and adaptive management. The commenter recommends a scientific reference on passive recreation, including wildlife viewing.

Refer to **Response to Comment 41.1**.

Response 41.3

The commenter asks how the placement of trail entrances and parking lots would negatively affect management of neighboring public lands, and how will the lead agency accordingly adaptively manage the project in the future.

The parking improvements and paths to the trail are existing and would be improved to provide ADA access. They are located predominately on public lands owned by State Parks or under Caltrans jurisdiction, and it is not anticipated there would be a substantial adverse effect on other neighboring public lands or the management thereof.

The project would be adaptively managed in the future through the Operations & Maintenance Plan, which would be regularly reviewed and updated, as well as through implementation of Mitigation Measure BIO-8(c), Biological Resources MMP, which is an adaptive mitigation and monitoring plan for biological resources.

No revisions to the Draft EIR are necessary.

Response 41.4

The commenter asks why the Transportation Impact Analysis is listed as a draft document.

This document was included as Appendix K in the Draft EIR, which is the RTC released as a draft document for public review, prior to publication of the Final EIR.

In response to this comment, the “Draft” label has been removed from Appendix K in the Final EIR.

Response 41.5

The commenter presents several questions related to the recreational impact analysis.

- a) How do the authors of the Transportation Impact Analysis derive the estimate 951/day additional users?
- b) How will the lead agency manage the project to maintain use at the projected 951 users/day?
- c) Why is the number of vehicles used to analyze recreational use of parks surrounding project alternatives?
- d) Why wasn't State Parks data used to establish a recreational baseline?
- e) What is the current recreational use baseline for Wilder Ranch State Park, North Coast beaches, and bicyclists on Highway 1?
- f) What is the % increase the projected 951 users/day represents over what is currently experienced in the area?

- g) How certain were the authors of the Transportation Impacts Analysis about the satellite image dates being correct for Google Earth, what time of day were they taken, do they represent peak times of day as well as peak times of year, and why weren't several peak dates used to increase accuracy?
- h) Why is it that "no in-person field data could be collected that would represent a peak day"?
- i) What is the existing baseline recreation use in the vicinity of the project in terms of user days per year?
- j) What is the social carrying capacity of the natural areas surrounding the proposed project, and if the social carrying capacity of the trail is exceeded, how would it impact adjoining recreational infrastructure?

41.5a. The method for deriving the estimated 951/day additional users is described in Section 3.14.3, *Methodology and Significance Thresholds* (Transportation/Circulation) of the Draft EIR, as well as in Appendix K, Transportation Impact Analysis.

41.5b. The projected number of users is an estimate developed for purposes of analysis, as allowed by the CEQA Guidelines §15144, which permits lead agencies to engage in "some degree of forecasting," and there is no burden on the lead agency to maintain the estimate or control the number of trail users. However, as described in Section 2.5, *Project Operation and Maintenance*, a Trail Manager would be identified and an Operations and Maintenance (O&M) Plan would be developed to determine appropriate maintenance activities and frequency based on the estimated number of users. If the number of users changes substantially, the O&M needs may change, and the O&M Plan would be updated accordingly.

41.5c. The number of vehicles is used to estimate trail users because it is expected most trail users would arrive by vehicle, as opposed to bike or pedestrian modes, because of the relatively remote location from an urbanized area. As such, this number is also used to estimate recreational use of parks surrounding the project alternatives for the same reason.

41.5d. Estimated vehicle use was used to establish both the baseline and estimated number of additional users for consistency (i.e., comparing apples to apples).

41.5e. The Transportation Impact Analysis prepared for the Draft EIR provides counts of recreational use on existing trails near the Project corridor, including at a trail in Wilder Ranch State Park (refer to Appendix K, page 20). These counts serve as a baseline for estimating future use of the proposed trail. In addition, the Transportation Impact Analysis provides counts of parking demand along the Project corridor, which is associated with existing recreational use of the North Coast area (Appendix K, Table 3 on page 12).

41.5f. The Draft EIR evaluates the Project's effects on traffic based on the estimated change in vehicle delay at key intersections. Although this approach factors in the increase in vehicle trips from the Project, it does not involve an explicit calculation of the percent increase in traffic volume beyond existing conditions. This methodology is standard across California for determining a project's traffic impacts.

41.5g. The Transportation Impact Analysis relies on Google Earth satellite imagery taken on Friday, September 1, 2017. This date was verified by the "Imagery Date" labeled in the Google Earth application when viewing the satellite imagery. The commenter may view the same imagery in Google Earth by selecting the "Show historical imagery" function and scrolling to the same date.

Although Google Earth does not provide an exact timestamp for satellite images, it is evident that the images used in the Transportation Impact Analysis were taken at a midday time, based on the position of shadows and the volume of parked cars in the North Coast area.

41.5h. The Transportation Impact Analysis relies on parking counts from September 1, 2017, as representative of typical parking demand during peak days. In addition, this analysis includes two field surveys of parking demand during off-peak times, for comparative purposes. It is not necessary to survey parking on multiple peak days to set a reasonably accurate baseline for parking demand.

Satellite imagery is adequate for the purpose of conducting parking counts along the Project corridor. The imagery included in the Transportation Impact Analysis has a high enough resolution to enable a precise count of parked cars in lots along the Project corridor and on the shoulders of Highway 1.

41.5i. The Draft EIR estimates the increase in recreational use of the North Coast area in terms of the number of trail users per day. Please refer to Section 3.14.3 of the Draft EIR, *Methodology and Significance Thresholds*, for an explanation of this methodology.

41.5j. The commenter does not define the term “social carrying capacity” or explain its relevance to the Draft EIR. Social impacts, while relevant when decision-makers consider a project, do not pertain to the Draft EIR’s analysis of environmental impacts, and need not be considered to address the significance thresholds identified as A and B in Response to Comment 41.6 below. Nonetheless, it is not anticipated that the carrying capacity of the trail would be exceeded based on the estimated number of trail users. The potential environmental impacts of the trail users on adjoining recreational infrastructure is addressed in Section 3.13.4 under Impact REC-1.

Response 41.6

The commenter presents several questions related to the recreational impact analysis.

- a) The commenter states that the Draft EIR makes conclusions about impacts to recreational facilities without evidence and poses several questions, which are addressed below.
- b) See prior questions about baseline recreational use.
- c) What is the biological carrying capacity of the parks surrounding the project?
- d) How do the unsubstantiated statements (regarding the conclusions of the recreation analysis and included in the commenter’s letter) conform to CEQA requirements of informing the public about impacts?
- e) What is the baseline condition of “existing facilities”?
- f) How close are the existing facilities to being degraded?
- g) What is considered substantial or significant degradation?
- h) What are recreational facilities, and does it include wildlife habitat, waterways and beaches?
- i) What are the specific metrics of physical deterioration of recreational facilities?
- j) Why did the DEIR authors not reference State Parks by interview or examining their documents to determine the existing conditions of the existing recreational facilities?

41.6a. As is common practice and industry standard, the impact analysis is based on the State CEQA Guidelines Appendix G, Environmental Checklist Form, for potential impacts to Recreation, as presented in Section 3.13.3, *Methodology and Significance Thresholds*, and as follows.

A significant impact would occur if implementation of the Project would:

- A. Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated; or
- B. Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.

These Appendix G questions consider the potential change caused by the Project in comparison to baseline conditions as presented in Section 3.13.1, *Existing Conditions*, based on the professional experience and opinion of the environmental analyst. The impacts were determined less than significant for the reasons described in Section 3.13.4 under Impact REC-1 and Impact REC-2.

41.6b. Refer to Response to Comment 41.5.

41.6c. Refer to Section 3.4, *Biological Resources*, of the Draft EIR. It includes a comprehensive discussion of existing biological resources and the methodology used to determine potential impacts, based on guidance and coordination with relevant regulatory agencies, including the California Coastal Commission, California Department of Fish and Wildlife and State Parks.

41.6d. Refer to the beginning of this **Response to Comment 41.6**.

41.6e. The baseline or existing conditions are described in Section 3.13.1, *Existing Conditions*, of the Recreation analysis.

41.6f. The existing facilities described in Section 3.13.1 are not close to being degraded relative to their current use.

41.6g. According to Merriam-Webster dictionary, “substantial” is an important or essential amount. According to English Oxford dictionary, it is of considerable importance, size or worth; or large.¹¹

41.6h. According to Merriam-Webster dictionary, “recreation” is something people do to relax or have fun. According to English Oxford, it is an activity done for enjoyment when one is not working, and a “facility” is a place, amenity or piece of equipment provided for a particular purpose. Thus, in consideration of the significance thresholds identified as A and B above, “recreational facilities” in the North Coast area includes parks and trails, as stated in the first sentence under Impact REC-1 in Section 3.13.4.¹² The impact discussion also talks about open space and beaches. Potential impacts to wildlife habitat and waterways are addressed in Sections 3.4, Biological Resources, and 3.9, Hydrology and Water Quality.

41.6i. It would be the anticipated visual observation that said recreational facilities (e.g., parks and trails) would degrade or become worse over time. For example, the physical deterioration of trails would be the pavement cracking and crumbling, potholes, etc.

41.6j. As stated in Section 3.10.3, the author of the analysis reviewed existing plans and conducted a field visit to determine the existing conditions.

Response 41.7

The commenter states that the conclusions for Impact REC-1 is not based on substantial evidence, and that Impact REC-2 avoids analysis of the need to expand recreational facilities.

¹¹ Merriam Webster, s.v. “substantial.” Accessed January 29, 2019. <https://www.merriam-webster.com/dictionary/substantial>; *ibid.*, “recreation.” Accessed January 29, 2019. <https://www.merriam-webster.com/dictionary/recreation>

¹² Oxford English, s.v. “substantial.” Accessed January 29, 2018. <https://en.oxforddictionaries.com/definition/substantial>; *ibid.*, “recreation.” Accessed January 29, 2019. <https://en.oxforddictionaries.com/definition/recreation>.

The RTC disagrees. The conclusion that the Proposed Project – which would provide the public with a new recreational facility – would not cause deterioration of *other* recreational facilities is abundantly supported by analysis and evidence, as well as being intuitively obvious. No peer reviewed study or special scientific analysis is necessary to establish this point. Indeed, the informed opinions of RTC planning staff, as well as those of its consultants, are substantial evidence. (See, e.g., *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1380; *Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 866; *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 413.)

Response 41.8

The commenter encourages the RTC to further analyze the effect that project implementation would have on neighboring parks as accessibility to these parks would be improved, and would like further explanation as to why this would not also require additional construction of recreational facilities to accommodate the increased use.

As described in Section 3.13, *Recreation*, the project analysis acknowledges that an increased number of recreators would utilize the North Coast area as a result of the construction of the North Coast Rail Trail, in addition to the other planned in recreational opportunities in the North Coast area. The trail alignment would provide connectivity along the North Coast, improving accessibility to neighboring parks and recreational opportunities within Santa Cruz County, and would itself provide an additional recreational amenity for the County. Local recreational facilities are overseen by individual operators who manage the lands to continuously evaluate the adequacy of amenities, public services and overall maintenance provided by each facility. Therefore, changes or degradation within local recreational facilities would be observed and managed for. Furthermore, the project in itself would provide an additional recreational opportunity throughout Northern Santa Cruz County. In addition, the uses of the trail and/or neighboring parks that may occur through the increase in accessibility would be passive in nature; users would largely pass through park facilities or use them for further walking, hiking and/or bike riding. Therefore, the additional use of neighboring parks is not expected to result in the need for additional parks or facilities to accommodate for the expanded population of recreators who may utilize the facilities as a result of the Proposed Project.

No revisions to the Draft EIR are necessary.

Response 41.9

The commenter asks how federal funding requirements relate to the need to construct new recreational facilities and how segmentation of the CEQA process is being avoided.

The Project supports access to federal lands by improving the existing parking areas at Davenport Beach, Bonny Doon Beach, and Panther/Yellowbank Beach and by improving the access across Highway 1 in Davenport.

As described in **Master Response E**, the Project has independent utility as a discrete trail segment with logical termini and could be considered as a stand-alone project without segmentation. The RTC considers the existing Davenport Beach parking area located at the Highway 1/Ocean Street intersection to be a logical north end terminus, which in conjunction with the south end terminus at the Wilder Ranch parking lot, provides the project with independent utility.

Response 41.10

The commenter asks how the Wilder Ranch General Plan and the North Coast Beaches Plan relate to the Project.

Section 3.10, *Land Use and Planning*, of the Draft EIR identifies the Wilder Ranch General Plan and evaluates the project's consistency with the plan.

This section of the Draft EIR has been revised to include and address the North Coast Beaches Plan as well.

Response 41.11

The commenter encourages the RTC to further analyze the cumulative impact that the Project would have on recreational resources, taking into consideration the Wilder Ranch General Plan, the County's North Coast Beaches Unified Plan, and the Coastal Development Permit for the Coast Dairies Property.

As described in Sections 3.13, *Recreation*, and 4.1.14, (Cumulative) Recreation, of the Draft EIR, the project analysis acknowledges that an increased number of recreators would utilize the North Coast as a result of the construction of the North Coast Rail Trail, in addition to the other planned recreational opportunities along the North Coast of Santa Cruz County. Section 3.10, *Land Use and Planning*, further discusses the Project's consistency with applicable plans and policies, including the Wilder Ranch General Plan. Through implementation of the Project and future planned recreational projects, including San Vicente Redwoods and the Cotoni-Coast Dairies properties, additional trails and public services, including parking and restrooms, would become available to support the growing population utilizing the North Coast area.

The operators of each recreational facility would manage these lands continuously, providing an ongoing evaluation as to the adequacy of amenities and maintenance for each area. The planning for each area includes the common goal of providing public access while maintaining resource protection, and would be operated continuously to meet these goals. In addition, the uses planned for recreation along the North Coast are passive uses in nature, including walking, hiking and biking; these uses would not physically degrade addition facilities beyond expected use, nor would they require the addition of recreational facilities beyond those planned through each project.

The Santa Cruz County Parks, Open Space and Cultural Services North Coast Beaches Unified Plan (North Coast Beaches Unified Plan) includes a discussion of beaches along the North Coast from Greyhound Rock Beach on the north to Laguna Creek Beach on the south. The majority of the Project would be constructed within this area, including the proposed improvements at Davenport Beach, Bonny Doon Beach and Panther/Yellowbank Beach parking areas.

The Draft EIR has been revised to include an overview of the North Coast Beaches Unified Plan in Section 3.10.2, *Regulatory Setting* (Land Use and Planning), and Section 3.13.2, *Regulatory Setting* (Recreation). Additionally, the Plan has been considered Sections 3.10.4 under Impact LUP-2: The Project Would Not Conflict with Applicable Plans and Policies.

Response 41.12

The commenter would like to know plans for development of Wilder Ranch State Park and North Coast Beaches, the expected use of San Vicente Redwoods, the approved entrance locations for the Cotoni Coast Dairies property, and the anticipated increase in use projected for this project. Finally,

the commenter would like to know the cumulative impacts of the proposed projects along the North Coast, including Wilder Ranch State Park, the North Coast Beaches, San Vicente Redwoods and Cotoni Coast Dairies would be.

The existing planning document for Wilder Ranch has been discussed in Sections 3.10, Land Use and Planning, and 3.13, Recreation, of the Draft EIR. The North Coast Beaches Unified Plan, which was prepared in 1990 by the County of Santa Cruz Department of Parks, Open Space and Cultural Services and includes the proposed trail alignment corridor, has been added to these chapters.

The goals of the Project align with the planning documents and goals that have been established for both Wilder Ranch State Park and the North Coast Beaches. These include expanding recreational opportunities throughout the County, protecting and preserving natural resources and educating the public on the resources throughout the North Coast. Any expansion of recreation opportunities at Wilder Ranch State Park and the North Coast Beaches would occur in accordance with these goals, although there are no specific plans beyond those published.

The Cotoni Coast Dairies National Monument and San Vicente Redwoods are discussed in Sections 3.10, Land Use and Planning, and 3.13, Recreation. Both these facilities are in the planning phase and are expected to support walking, hiking, running, nature viewing and educational programs. At this time, there are no projected use numbers available for these facilities, and it has not been determined what the final use for the lands within each area will be. At the Cotoni Coast Dairies National Monument, the expected parking facility and main entrance to the National Monument would be located on Laguna Road, across Highway 1 from the proposed trail alignment at Laguna Creek Beach. At the time of implementation, the Bureau of Land Management, Caltrans and RTC will coordinate to determine safe corridors for use between the recreational facilities and Highway 1.

The cumulative impact of the Proposed Project, when looked at in relation to the future planned recreation along the North Coast, including Wilder Ranch State Park, the North Coast Beaches, San Vicente Redwoods and the Cotoni-Coast Dairies National Monument, have been analyzed in in Section 4.1.14, *Recreation*. This section analyses known and expected future recreational development planned for the North Coast of Santa Cruz County, in relation to the expected increase in use as these projects are developed.

The North Coast Beaches Unified Plan has been added to the setting and impact analyses in Chapters 3.10 Land Use and 3.13 Recreation. No further changes to the EIR would be necessary.

Response 41.13

The commenter asks when additional CEQA analysis will be implemented for future projects related to this EIR, in relation to the project-specific Biological Resources Mitigation and Management Plan.

Mitigation Measure BIO-8(c), Develop Project-specific Biological Resources Mitigation and Management Plan for Impacts to Biological Resources Resulting from Trail Construction, provides for an adaptive approach to compensating for adverse impacts and managing biological resources in consultation with the regulatory agencies who will be determining permit requirements. If implementation of the Biological Resources MMP includes future projects (e.g., restoration) that could result in additional environmental impacts not identified in this EIR, those would be evaluated by CFL/RTC and the permitting agency at that time and appropriate environmental documentation (e.g., EIR addendum, supplemental EIR, CEQA exemption, IS/MND) would be prepared.

Response 41.14

The commenter asks, citing case law, what threshold of level of detail for mitigations are the Draft EIR authors using to justify adequately informing the public as well as avoiding or mitigating impacts?

The mitigation measures have been developed in accordance with CEQA Guidelines 15126.4 and include sufficient detail for the public to understand how, what, where, when and why the mitigation will be implemented. In many instances, the measures include performance standards that will guide the formulation of more specifics after project approval. This approach has found favor in numerous court decisions. (See, e.g., *Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-1029; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275–1276; and *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 793–794.)

For example, the adaptive mitigation measures such as Mitigation Measure BIO-8(c), Develop Project-specific Biological Resources Mitigation and Management Plan, have been developed with performance standards to guide project-specific mitigation in the future, such that it is not deferred, as allowed by CEQA Guidelines 15126.4(a) and the above-cited court decisions.

No revisions to the Draft EIR are necessary.

Response 41.15

The commenter asks how removing specific mitigation planning from this Draft EIR makes this CEQA project “the whole of the action” as required by law.

As stated above for Response to Comment 31.14, the mitigation identified in the Draft EIR was developed in accordance with CEQA Guidelines 15126.4 and contains sufficient detail or performance standards and thus is not removed from the project or deferred. The RTC prepared a Draft EIR that addresses the whole of the action as required by law, and did not piecemeal or segment the project. Also refer to **Response to Comment 41.14** and **Master Response E**.

Response 41.16

The commenter asks about the Project’s relationship to ESHA under the Coastal Act.

The concept of ESHA under the provisions of the Coastal Act is described in Section 3.4.2, *Regulatory Setting*, of the Draft EIR.

No revisions to the EIR are necessary.

Response 41.17

The commenter asks how the “proposed entrances and parking lots” would affect environmentally sensitive habitat area (ESHA), how the location of biological resources informed the siting of parking lots, and where parking lots should be placed to provide adequate buffers from ESHA.

The Project includes trail connections from and improvements to three existing parking areas: Davenport Beach: North, Bonny Doon Beach, and Panther/Yellowbank Beach. No new parking lots would be constructed as part of the Project. Therefore, the siting of parking lot improvements would not result in conflicts with ESHA or other sensitive biological resources.

No revisions to the Draft EIR are necessary.

Response 41.18

The commenter asks about the population dynamics and baseline population(s) of CRLF in the vicinity of the Study Area, and the potential for the project to introduce pathogens and invasive species that could impact CRLF.

Comprehensive studies that track populations, movement, or metapopulations of CRLF in the vicinity of the Study Area have not been conducted. There are a number of breeding locations within dispersal distance (predominantly 1 mile, but up to 2 miles) of each other. Juvenile and adult CRLF have been observed in non-breeding aquatic habitat, puddles, ditches and upland habitats throughout the area, both during the rainy season and during foggy summer periods (Mitcham 2018)¹³.

Juveniles disperse to non-breeding habitat, typically away from adults (USFWS 2010)¹⁴, to avoid predation (including by conspecifics) and to reach maturity before returning to or colonizing breeding habitat (Allaback and Laabs 2010)¹⁵, with the majority of individuals moving during the first significant rain event of rain season (Allaback and Laabs 2010). Post metamorphic dispersal has been shown to be critical to the establishment of regional metapopulations¹⁶ (Bulger et al. 2003)¹⁷. A few individuals disperse further than the nearest non-breeding habitat; conservation measures should include provisions for these outliers in order to protect genetic exchange (Fellers and Kleeman 2007)¹⁸. Adults also leave breeding habitat for non-breeding aquatic habitat in certain environments, such as breeding ponds near streams (Bulger et al. 2003, Fellers and Kleeman 2007, Keung 2015)¹⁹. Observations of juveniles and adults in non-breeding and upland habitats in the area indicate that non-breeding, upland, and movement or dispersal habitats are critical to the protection of CRLF in the area. Radiotracking and drift net studies have confirmed this dynamic (Allaback and Laabs 2010, Fellers and Kleeman 2007, Tatarian 2008)²⁰.

When moving toward breeding locations (typically during heavy rain events), most CRLF move overland in relatively straight paths toward breeding sites regardless of terrain or topography (Bulger et al. 2003, Fellers and Kleeman 2007, Keung 2015). During overland movement, CRLF use

¹³ Mitcham, C. 2018. Fish and Wildlife Biologist, USFWS. Personal Communication via phone with Erin McGinty, Biologist, EcoSystems West Consulting Group regarding CRLF dispersal on the north coast of Santa Cruz County. August 2018.

¹⁴ U.S. Fish and Wildlife Service (USFWS). 2010. Revised Designation of Critical Habitat for California Red-Legged Frog; Final Rule. Federal Register Vol. 75, No. 51 March 17, 2010. Viewed online at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2010_register&docid=fr17mr10-23

¹⁵ Allaback, M. and D. Laabs. 2010. *Rana Draytonii* (California red-legged frog). Dispersal.

¹⁶ A metapopulation is a set of breeding sites within an area, where typical migration from one local occurrence or breeding site to other areas containing suitable habitat is possible, but not routine. Within this rule, we [USFWS] refer[s] to these local occurrences as populations. The movement (i.e., dispersal) of frogs between areas containing suitable upland and aquatic habitats is restricted due to inhospitable conditions around and between areas of suitable habitats. Because many of the areas of suitable habitats may be small and support small numbers of frogs, local extinction of these small populations may be common. The persistence of a metapopulation depends on the combined dynamics of these local extinctions and the subsequent recolonization of these areas through dispersal (USFWS 2005).

¹⁷ Bulger, J., N. Scott, and R. Seymour. 2003. Terrestrial Activity and conservation of adult California red-legged frogs *Rana aurora draytonii* in coastal forests and grasslands. *Biological Conservation* 110 (2003) 85-95.

¹⁸ Fellers, G. and P. Kleeman. 2007. California Red-legged Frog (*Rana Draytonii*) Movement and Habitat Use: Implications for Conservation. *Journal of Herpetology*, Vol. 41, No. 2, pp. 276-286, 2007.

¹⁹ Keung, N. 2015. Longitudinal Distribution and Summer Diurnal Microhabitat Use of California Red-legged Frog (*Rana draytonii*) in Coastal Waddell Creek. Master's Thesis for San Jose State University. May 2015.

²⁰ Tatarian, P. 2008. Movement Patterns of California Red-legged Frogs (*Rana draytonii*) in an Inland California Environment. *Herpetological Conservation and Biology* 3(2): 155-169.

ground cover for refuge if available, but also move across grassland and cultivated fields (Bulger et al. 2003, Fellers and Kleeman 2007). CRLF are also known to move smaller distances (up to 100 feet) during the summer during fog or drizzle (Fellers and Kleeman 2007, Keung 2015). This behavior has been observed on the North Coast (Mitcham 2018). These smaller movements may not be considered dispersal (Fellers and Kleeman 2007), but still indicate the need for protection of all habitat types and biological monitoring even during the dry season.

To successfully protect CRLF populations in the vicinity of the Study Area, the Biological Resources MMP (Mitigation Measure BIO-8c) would address the conservation of breeding and non-breeding aquatic habitat, associated uplands, as well as intermediate movement and dispersal habitats.

The Project may introduce pathogens, such as chytrid fungus, through increased human presence in aquatic environments in the Study Area. Chytrid and other pathogens may be introduced to the Study Area through clothing, boots, equipment, and vehicle tires that have come into contact with contaminated sediments or water (USFWS 2005)²¹.

The Proposed Project (and Alternatives) are less likely to result in the introduction of non-native predators, such as bullfrog, crayfish, and centrarchid fish. Invasive plant species that could degrade CRLF habitat would be managed as part of the Biological Resources MMP and Wetland MMP.

No revisions to the Draft EIR are necessary.

Response 41.19

The commenter states that the presence of people in and near natural areas can have adverse effects on wildlife. Based on this fact, the commenter asks a series of questions that are almost identical to those in Comment 41.17.

Draft EIR Section 3.4, *Biological Resources*, acknowledges that construction and operation of the Project could potentially have adverse effects on sensitive wildlife. The commenter's statement does not conflict with the Draft EIR's analysis of this issue. Parking lot improvements would be located within existing parking lots; no new lots would be constructed. These locations support relatively fewer sensitive biological resources than other locations along the alignment, as shown in Figures 3.4-2(a) through 3.4-2(f) and Figures 3.4-3(a) through 3.4-3(f). Please also refer to **Response 41.17** for a discussion of the effects of entrances and parking lots on sensitive biological resources.

No revisions to the Draft EIR are necessary.

Response 41.20

The commenter states that the Draft EIR authors avoid discussion of public safety and services associated with increased recreational use and asks about the baseline of response times, incident numbers for emergencies, and incidents involving recreational users.

As described in Section 3.12.3, *Methodology and Significance Thresholds* (Public Health & Safety), CEQA does not treat impacts on service ratios or response times to be adverse effects on the environment. Rather, what matters under CEQA is whether new or expanded physical facilities, which could result in environmental effects, is required to maintain adequate service ratios or response time (*City of Hayward v. Board of Trustees of the California State University* (2015) 242

²¹ U.S. Fish and Wildlife Service (USFWS). 2005b. Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog. August 2005.

Cal.App.4th 833,843). The Draft EIR authors consulted service providers, and it was determined that no new or expanded physical facilities would be needed to serve the Project.

No revisions to the Draft EIR are necessary.

Response 41.21

The commenter asks why the NEPA process isn't being completed alongside the CEQA process, how will the NEPA process deal differently with the alternatives than CEQA, be informed by the CEQA process, and relate to BLM's planning process for Cotoni Coast Dairies?

Refer to **Response to Comment 20.2**.

No revisions to the Draft EIR are necessary.

Response 41.22

The commenter asks about consultation with BLM, what conclusions were reached, and in what ways the discussions were not predisposed to the federal land use planning process.

Refer to **Response to Comment 20.2**.

No revisions to the Draft EIR are necessary.

Letter 42

From: [Daniel Heppner](#)
To: [NCRT Draft EIR](#)
Subject: Lack of good information on RTC's project
Date: Thursday, August 30, 2018 10:23:33 PM

Hello,

I'm a Santa Cruz County Resident in support of the proposed rail with trail option. I think it is important for the future of our county to have multiple transportation options besides sitting in traffic to get around. However, I think a big reason for the push back on this is the poor communication.

I'd really like to see a better source of truth on this whole project, ideally from the RTC itself. I find it hard to find good information on the current stage of the project, the current plan, dates, etc. I know all this information is available by looking in the right places and opening the right PDFs, but I think it is really important that the RTC invest in a good website to educate the public so they can make informed decisions. There will always be people claiming that the RTC is biased but I think something like this could make a big impact on people's opinions.

Here's a good website on the bus network redesign in Dublin which is being done by Jarett Walker: <https://www.busconnects.ie/>
I think this can be used as an example.

Let me know if I can be of more help with this.

--

Daniel Heppner
<http://danielheppner.com/>

42.1

Letter 42

COMMENTER: Daniel Heppner

DATE: August 30, 2018

Response 42.1

The commenter requests improvements to the RTC website including easily accessible links to project information and status updates.

Project information is provided on the RTC's website (www.sccrtc.org) and additional information will be posted as it is developed. The RTC's home page also contains a section called "Quick Links" where a "Coastal Trail / Rail Trail" link is provided for further information about other projects in process, general background, and various resource documents.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 43

From: pacobell73@gmail.com
To: [NCRT Draft EIR](#)
Subject: EIR REPORT - rail-with-trail makes most sense
Date: Thursday, August 16, 2018 7:16:42 PM

Hello -

I am California resident and I have taken the time to review time DEIR report issues by SCCRTC. There is little question that the **rail-with-trail** option is the smartest, most inclusive and will provide the region with greater transportation options.

Population will only increase over time. Having the railroad in place will allow the region to address this growing population in the future.

The trail-only option is limiting, ableist and serves a much smaller population. It is recreational at best and will isolate Santa Cruz county from the greater Bay Area.

Good luck with this corridor. Progressive Rail is a good partner and was a smart choice for the line's new operator.

- Paul Iverson
pacobell73@gmail.com
215.620.0763

43.1

Letter 43

COMMENTER: Paul Iverson

DATE: August 30, 2018

Response 43.1

The commenter expresses support for the Proposed Project, noting that the trail-only option is limiting in terms of transportation options.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 44

From: [DSRC Jens](#)
To: [NCRT Draft EIR](#)
Subject: NC RTP
Date: Sunday, September 16, 2018 9:20:48 PM

I was reading about the proposed North Coast Rail Trail Project. I am still learning about but I remembered seeing a disturbing video about the (literally) miles of homeless encampments on a similar trail in Orange County. On YouTube type: "Orange County homeless bike trail". It will blow your mind.

My question is, do you know if the Santa Cruz Regional Transportation Commission (RCT) is taking steps with the NC RTP to prevent what has happened in Southern Cal.? Are there preventative measures baked into the plan to prevent homeless encampment into the NC RTP? If not then what are the reasons for not addressing this potential problem?

44.1

Thanks,
Dave Jensen
Scott's Valley

Letter 44

COMMENTER: Dave Jensen

DATE: August 16, 2018

Response 44.1

The commenter is concerned about homeless encampments establishing along the trail alignment, which has occurred in Orange County, and would like preventative measures incorporated into the planning for the trail alignment.

As described in Section 3.12, *Public Safety and Services*, of the Draft EIR, the local Sheriff would respond in the event that illegal encampments were established along the North Coast Rail Trail alignment. The project includes the establishment of a Trail Manager, who would develop and oversee the Operations & Maintenance Plan. This plan includes regular monitoring and coordination with local agencies, as applicable, to ensure that the trail alignment is being maintained to provide safe conditions for the public, and to minimize potential hazards along the alignment. Measures to discourage encampments can be discussed and included in this process.

No revisions to the Draft EIR are necessary.

North Coast Rail Trail EIR

Comments on Public Draft EIR

This includes written comments from the person below on the Public Draft Environmental Impact Report (EIR) for the North Coast Rail Trail project. Comments should be focused on the sufficiency of the EIR in identifying and analyzing the possible environment impacts of the project and ways to avoid or mitigate the significant impacts (CEQA Guidelines sec. 15201).

First and Last Name: Ryan Judson

Mailing Address: P.O. BOX 74 Davenport Ca 93015

Email Address: leifjudson@gmail.com

Comments must be submitted in writing at the August 22 or 23, 2018, public meetings; emailed to NCRTDraftEIR@sccrtc.org; or sent to the address below by 5:00 PM on Monday, September 24, 2018.

Cory Caletti, Sr. Transportation Planner
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, California 95060
NCRTDraftEIR@sccrtc.org

Comments:

A system for dealing with the transient population is a mandatory portion of this rail trail project.

45.1

It is imperative that all parking lots and bedrooms be closed and policed after sunset.

It is also imperative that the trail itself is policed and kept free from negative activity after sunset.

Continued on back

Letter 45

COMMENTER: Ryan Judson

DATE: August 22, 2018

Response 45.1

The commenter is concerned about the transient population and would like measures in place to limit use of the facilities after sunset and ensure there is adequate policing to minimize negative activities that may occur along the trail.

As described in Section 3.12, *Public Safety and Services*, of the Draft EIR, the local Sheriff would respond to complaints about illegal encampments and negative activities that are reported along the trail or in the parking areas. Also refer to **Response to Comment 44.1**.

No revisions to the Draft EIR are necessary.

From: kollabolla@hawaiiintel.net
To: [NCRT Draft EIR](#); [Regional Transportation Commission](#)
Subject: Santa Cruz "Pedestrian" Rail Service
Date: Saturday, September 15, 2018 5:50:36 PM

To whom it may concern;

I was born in Santa Cruz (there's a plaque in the old hospital building with my name on it) .

We need the proposed rail passenger service.

Anyone who looks at the current highway traffic, at all times of the day or night, can see there is a very bad problem which will only get worse in the near future.

I have seen many changes through the years including the last few years where a small group of very wealthy people are attempting to turn this area into their personal playground.

Seniors ,such as my wife and myself, do not wish to dress up in our fancy biking outfits, nor have the funds to purchase the necessary \$3K bicycle to go along with the look....and. most importantly, the health to allow us to ride 7 miles (one way) into town.

The vast numbers of service workers for the aforementioned weathies, in their non fancy autos on the highway, don't want to get on a bike either....they are tired enough already.

We need a commuter train, preferably electric, which can ferry people from one end of the county to the other.

It needs to be the same price as the buses and it needs to run on a schedule that would interlace with their routes.

Such as service would benefit not only workers but students and tourists.

The fancy wealthy bike riders who purchased cheap lots along

46.1a

the railroad lines, that think they can increase their profits by forcing the rails to be torn out....well...they need to just...move along.

46.1b

This letter contains not only my personal thoughts on this matter but also those of my wife and our friends.

Thank you

Philip and Yamindira Kanagasundaram-Branum

3029 Corte Cabrillo Aptos California

Sept 15th 2018

Letter 46

COMMENTER: Philip Yamindira Kanagasudaram

DATE: September 15, 2018

Response 46.1

The commenter expresses support for passenger rail service.

The Proposed Project does not include passenger rail service, or any improvements to the existing rail line.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 47

From: [Neal Langholz](#)
To: [NCRTR Draft EIR](#)
Subject: Rail Trail
Date: Friday, September 21, 2018 8:27:07 AM

Dear RTC,

Thank you for your tireless work on the Rail Trail over more than two decades. I know you have many battle scars from this work, but we are getting close to making this wonderful plan a reality! I am writing you as an avid road and mountain biker, a former Land Trust and Friends of Santa Cruz State Parks board member, and as a parent with two kids who like to enjoy our parks and coastline.

I am extremely excited about the North Coast Segment of the Rail Trail for the following reasons:

1. Over the past two decades, it has become very dangerous to ride bikes or walk along Highway 1 with the advent of cell phones and increased traffic. According to data compiled by TIMS (Transportation Injury Mapping System), between 2006 and 2017 there was 1 cyclist fatality, 26 cyclists injuries, 2 pedestrians deaths and 4 pedestrian injuries along this stretch of Highway 1. A safe rail trail from Davenport to Wilder Ranch will help save lives and enable people to once again enjoy the North Coast riding or walking without danger. It will help mountain bikers safely move between our growing network of parks and offer road riders a safe passage back to town from Bonny Doon or further up the coast. This is a big win!
2. The trail will be a wonderful connector between Santa Cruz, Wilder Ranch, Coast Dairies, San Vicente Redwoods and the many California State beaches that are along the North Coast segment. People will have tremendous, active, ways to move between our wonderful parks! I can already see the cover of Sunset Magazine touting the "active recreation paradise in Santa Cruz." It will be good for locals and also great for tourism, one of our most defensible industries on this side of the hill.
3. This segment of the rail trail is **fully funded** with public and private funds **which will evaporate if we do not build the trail in the next two years**. As a lead fundraiser for the Land Trust during their latest capital campaign, I personally raised a lot of money for this segment of the Rail Trail, and want to see the generous donors investments bear fruit. I'd also hate to see the federal money evaporate if there are delays. We want our Rail Trail and we want it now!
4. The plan of record has minimal environmental impacts, and utilizes existing trails to the best extent possible. It also complies with requirements of approving state agencies, including California Coastal Commission, Caltrans, and California State Parks. There is goodness in this.
5. The plan of record is the only plan that can be implemented quickly. We have waited since 1995 for the Rail Trail to become a reality. All other plans will result in delays due to the re-start of the entire planning process, as you folks well know. Let's roll!

In summary, I am fully supportive of building the proposed North Coast Rail Trail project ASAP and opposed to all the alternatives as well as to the no project alternative.

Thanks

47.1

--
Cell: (831) 818-4822
Neal Langholz
Broker Associate
Karon Properties
BRE#00933904

Letter 47

COMMENTER: Neal Langholz

DATE: September 21, 2018

Response 47.1

The commenter expresses support for the Proposed Project, citing safety concerns biking or walking along Highway 1, potential connections to recreational opportunities, funding considerations, low environmental impacts, and timing.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 48

From: [M.L](#)
To: [NCRT Draft EIR](#)
Subject: Rail Trail
Date: Saturday, September 08, 2018 7:43:45 AM

I would like to endorse the idea/ plan to develop a path/bike trail along the coast/rail road tracks. I believe many people would use it to commute. It would get bikes off the roads, and increase liveability in Santa Cruz County. I do not think keeping the tracks and trying to have a rail service would be cost efficient or used much. Let's develop a path as soon as possible. Less expensive option and quicker result. Mary Lee Light

48.1

Mary Lee
mll95003@yahoo.com

Letter 48

COMMENTER: Mary Lee

DATE: September 8, 2018

Response 48.1

The commenter expresses support for the Project, but states that retaining the tracks and implementing rail service would be cost inefficient and underutilized.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

From: geri.lieby
To: [NCRT Draft EIR](#)
Subject: Draft EIR
Date: Friday, August 24, 2018 2:55:23 PM

Geri Lieby

[310 Everson Drive](#)

[Santa Cruz, CA 95060](#)

glieby@gmail.com

I fully support the RTC proposed North Coast Rail Trail. It best meets the goals of recreation, historical preservation and most importantly has the potential to reduce the carbon footprint of the area by promoting alternative transportation methods. The environmental impacts, both real and projected can best be mitigated by this project.

49.1a

Alternative 1 is based on flawed data regarding paying back the dollars used to purchase the tracks. It does not promote the use of alternative transportation. It destroys an historical feature of the coast and will not promote recreation as it has limited appeal.

Alternative 2 on the inland side is not in keeping with the idea of a coastal trail as views would be greatly limited and thus would not be used for recreation. The farmer's option is equally unattractive for trail users. Both also destroy the historical heritage of the tracks. Mitigations for farmers in the original plan will meet the

needs of farmers. Mitigations for habitat impacts are doable and will actually improve the habitats in the original plan. Not so in plans 1 or 2.

49.1b

To do nothing would be a sad waste of a great opportunity to create a beneficial rail trail for visitors and residents alike, now and into the future.

--

Sent from Gmail Mobile

Letter 49

COMMENTER: Geri Lieby

DATE: August 24, 2018

Response 49.1

The commenter expresses support for the Proposed Project and summarizes impacts associated with Alternative 1 and Alternative 2.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 50

From: [David Lieby](#)
To: [NCRT Draft EIR](#)
Subject: Comments on the draft EIR
Date: Tuesday, August 28, 2018 9:30:00 AM

North Coast Rail Trail Project EIR Comments

Dear Commissioners,

I live in a condominium across Chestnut Street from the existing, active, rail line used by Roaring Camp. My wife and I ride a tandem bicycle wherever we can. This includes shopping, going out to eat, and excursions all over the county.

We have ridden out tandem to Davenport once. We rode along the bluffs starting from Cowell's Beach, through Natural Bridges, took the available trails to Wilder Ranch, then to the Four Mile beach area, then to Davenport on Highway 1. On the way back we rode on Highway 1 until we could reconnect with the bike path at Wilder Ranch. We have not done this again due to having to be on Highway 1 with the traffic. We go to Davenport by car now as we feel the present arrangement for bicycles is too dangerous.

We could save a lot of CO2 emissions by being able to ride our bicycle for trips to Davenport instead of taking out car.

In reference to CR-1; It is my belief that placing signs for people to read indicating that there was a historical resource is all well and good if you arrive too late to save that resource. Historical resources are something that I feel need to be saved if they still exist. I have seen historical things disappear and they are incredibly hard to bring back.

I am convinced that choosing any of the alternatives to a Rail Trail will set the whole process back at least a few years, perhaps a decade. The amount of environmental impact of the CO2 emissions over that period, that could be avoided by having a trail, may be huge.

While I was leaving the meeting held on August 23 at 50 Ocean Street in Davenport I overheard the gentleman who talked earlier in support of Trail Now telling the representative from the SCCRTC that if the rail was not removed from the plan he would be sure the process was tied up in court with law suits, so it may be difficult to get this done in a timely manner anyway.

Best Regards,
David Lieby
310 Everson Drive
Santa Cruz, CA 95060
dlieby@gmail.com

50.1

Letter 50

COMMENTER: David Lieby

DATE: August 28, 2018

Response 50.1

The commenter expresses support for the Proposed Project, citing safety concerns of bicycling along Highway 1 and the potential decrease in CO₂ emissions that would occur if they could bike to Davenport. The commenter additionally states the opinion that signage is inadequate mitigation for the removal of an historic resource. Finally, the commenter states the opinion that any of the Project Alternatives would cause schedule delays.

The commenter's statements about safety and CO₂ emissions are noted. Impacts associated with removing the Davenport Branch Line were found to be significant and unavoidable for Alternatives 1 and 3, which would both remove the most fundamental components of the identified historic resource. The commenter's opinion about identified mitigation for these alternatives, which include signage, is noted.

Refer to **Master Response D** for a discussion of schedule and timeframes for the Proposed Project and each Alternative.

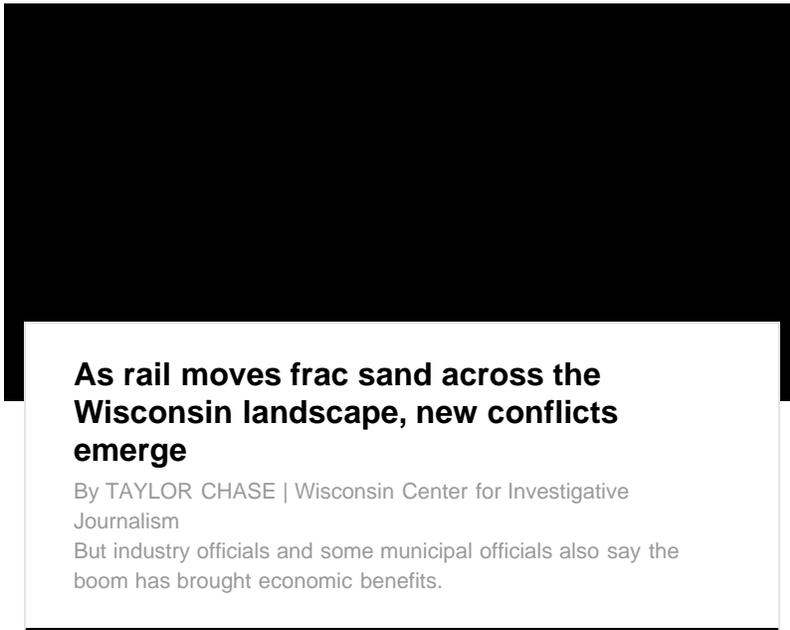
No revisions to the Draft EIR are necessary.

From: [Carol Long](#)
To: [NCRT Draft EIR](#); john.leopold@co.santa-cruz.ca.us; ebottorff167@yahoo.com; zach.friend@co.santa-cruz.ca.us; ryan.coonerty@santacruzcounty.us; greg.caput@co.santa-cruz.ca.us; bruce.mcperson@co.santa-cruz.ca.us; jbertrand@ci.capitola.ca.us; sbrown@cityofsantacruz.com; rlj12@comcast.net; trina.coffman@cityofwatsonville.org; cchase@cityofsantacruz.com; openup@cats.ucsc.edu
Subject: Progressive Rail Freight contract
Date: Friday, August 10, 2018 10:06:23 PM
Attachments: [Progressive-Rail-Proposal-for-Operator-of-Rail-Service-Jan-4-2018.pdf](#)

Progressive Rail is known in Minnesota & Wisconsin for health, traffic, & safety concerns as well as toxic spills from facilities built in conjunction with their business, and from their freight cars.

<https://issuu.com/thisweeklive/docs/twfl05-20-11>, &

[As rail moves frac sand across the Wisconsin landscape, new conflicts emerge](#)) 15-35 derailments/yr, 4-11 train related deaths/yr 2008-2013, in Wisconsin, according to the Cap Times.



51.1

Before approving Progressive's contract, read, from the Santa Cruz County Greenway's website (<https://sccgreenway.org/news/2018/5/25/news-stories-from-communities-where-progressive-rail-operates>):

"Things to consider before signing a Progressive Rail contract

In a [presentation delivered to the RTC in October](#), on page 9 PGR Director of Marketing Brandon Bauer states "Our marketing strategy is to, quite simply, connect our customers to larger markets, further away via PGR lines." At the April 19 RTC

meeting, Fellon made it clear that PGR is not interested in confining freight to Watsonville. They want to establish and grow a freight business that spans the entire 32-mile branch line. According to PGR President/Owner Dave Fellon they have [“customers who have already provided their interest in expanding their operations to include Santa Cruz.”](#)

Other than [Lansing Trade](#) whose interest in constructing a Propane Distribution Terminal in Watsonville was mentioned in [PGR's January 2018 proposal](#), Progressive rail has not stated who these potential customers are. Whoever they are, if the RTC signs a contract with Progressive Rail and their customers want to bring their business to our county, [federal preemption](#) and [interstate commerce laws](#) might allow them to do so even if Santa Cruz County community members would rather they didn't."

Do not approve this contract from an irresponsible & unresponsive company, which could bring a propane distribution terminal to Watsonville without our consent. see attachment: Progressive Rail: Proposal for Operator of Rail Service"

Thank you,
Carol Long

51.1
cont.



MOVING YOU FORWARD

January 4, 2018

Proposal for Operator of Rail Service

Mr. Luis Pavel Mendez
Deputy Director
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, CA 95060-3911

Dear Mr. Mendez,

Progressive Rail Incorporated ("PGR") is pleased to submit a Proposal for Operator of Rail Service in accordance with the Santa Cruz County Regional Transportation Commission ("SCCRTC") Request For Proposals ("RFP") dated December 8, 2017. Please accept this letter as our Transmittal Letter and the enclosed booklet ("Booklet") as a detailed supplement of information that summarizes our vision and service plan for the Santa Cruz Branch Line. In preparation for this submittal, we have performed the following activities:

- An onsite inspection of the entire 32 miles of rail;
- An onsite inspection of all the bridges on the Branch Line with the assistance of A.R.E., an Irvine-based railroad bridge engineering firm;
- An onsite inspection of all the railroad crossings with a goal to work with the municipalities to evaluate Locomotive Horn Signal Quiet Zones from Grove Lane Crossing in Capitola to Swift Avenue in Santa Cruz;
- A meeting with the Santa Cruz Beach Boardwalk management to explore partnerships for passenger excursions;
- A meeting with Ms. Christina Watson of the Transit Authority for Monterrey County to understand their plans and progress in developing a fast rail corridor to Salinas and how the Santa Cruz Branch Line might benefit from their experiences and ongoing efforts;
- Meetings with potential freight customers in Watsonville;
- Engaging PGR's existing customers within its six-state network that would consider locating on the Santa Cruz Branch Line;
- Given that PGR is already a major handling carrier for Union Pacific, meeting with representatives to advise them of our aspirations to become the Operator of the Branch Line; and
- Retaining two rail advisors, one of whom is very familiar with the Branch Line operations, to meet with train manufacturers to explore environmentally friendly and California-compliant locomotives and train sets.

Our objective as Operator is to exceed all expectations of the SCCRTC, and to become a meaningful and well-respected company in California. We are passionate about the environment and continuously translate our values into demonstrable actions. For the Branch Line specifically, we appreciate how that railroad can provide meaningful relief to congested highways. Our plan is to aggressively build upon the freight service already in place and to reinstate passenger services to the entire Branch Line. We propose to do all this in a manner that is respectful to and accepted by the citizens of the municipalities where we operate.

It may be helpful for SCCRTC to know that the experiences with regard to operatorship of the Santa Cruz Branch Line are similar to those of the Piedmont & Northern Railway in Gastonia, North Carolina, owned by the North Carolina Department of Transportation (“NCDOT”). In that case, PGR was selected amongst a number of bidders in a competitive RFP and has subsequently become operator of the railroad. We invite SCCRTC to contact the NCDOT directly to discuss the matter. Contact information is provided on page 56 of the Booklet.

In accordance with your RFP, the following information is provided:

1. I, Craig McKenzie, Chairman and Chief Executive Officer of PGR, am authorized to obligate the company for the purposes of this proposal. My signature follows this letter. Our principal office location is 21778 Highview Avenue, Lakeville, Minnesota 55044.
2. As Operator, PGR will open an office in Santa Cruz County. In that office we will have a dedicated, full-time T&E team, reporting to a General Manager on location, and a Marketing Team. The size of the staff in Santa Cruz will expand commensurate with scope and scale of the activities and growth of the Branch Line.
3. PGR plans to operate as the Santa Cruz Scenic Railway (“SCSR”).
4. PGR has support functions for the SCSR that are centrally located in its Lakeville headquarters. These functions will include Maintenance of Way, Mechanical, Signals & Crossings, FRA Compliance, HS&E, Legal, Finance, Administration, and T&E.
5. From time to time, contractors will be brought in to perform specific works under the direction of our functional team leaders. These contractors will include:
 - a. **MOW:** Railworks, 12740 Lakeland Road Unit B, Santa Fe Springs, CA 90670; et al.
 - b. **Bridge Engineering:** American Rail Engineers, 18 Technology Drive, Suite 205, Irvine, CA 92618
 - c. **Bridge Repairs:** Koppers, 6405 Metcalf, Suite 106, Mission, KS 66202; Ames Construction, 8333 E. Hartford Drive, Scottsdale, AZ 85255; et al.
 - d. **Signals & Crossings:** Midsouth Rail Services, 601 Old Sterlington Road, Sterlington, LA 71280.
6. All correspondence can be sent to me, Craig McKenzie, with my email address as cmckenzie@progressiverail.com
7. The structure of PGR and the relationship of a new, wholly-owned subsidiary, Santa Cruz Scenic Railway LLC, is presented on page 54 of the Booklet. The organization of the team and reporting relationships between key personnel on the ground in Santa Cruz and support staff is presented on page 55 of the Booklet. We anticipate the number of staff permanently located in Santa Cruz to expand significantly as progress is made in growing freight and passenger service. Our executive management who will oversee all the activities of SCSR are provided on page 8 of the Booklet.

8. PGR is fully compliant with all federal and state regulations. Our safety record is provided on page 18 of the Booklet. Our FRA and CPUC Compliance is provided on page 26 of the Booklet, and our forward-looking Safety & Compliance Plan is provided on page 35 of the Booklet.
9. Our Mobilization Plan is provided on page 57 of the Booklet.
10. Our Service Plan is provided on pages 27 through 47 of the Booklet and comprises a Master Operating Plan, a Freight Plan, a Resource Plan, a Maintenance Plan, a Safety & Compliance Plan, a Quiet Zone Plan, a Marketing Plan, and an Excursion Plan. Within these plans are details to the specific requests listed in the RFP on pages 5 and 6.
11. With regard to compliance with the provisions of the trackage rights agreement with the Santa Cruz, Big Trees & Pacific Railway Co, this confirmation is provided on page 53 of the Booklet.
12. A detailed Maintenance Plan is provided on pages 29 through 34 of the Booklet.
13. A projected 5-year financial plan for the SCSR is provided on pages 49 through 52 of the Booklet. A high-level summary of PGR's financial statements can be found on pages 14 through 17 of the Booklet. PGR's historical financial statements can be provided upon further request. For information, PGR carries \$50 million of liability insurance.
14. Concerning revenue sharing between PGR and SCCRTC, our recommendation is provided on page 53 of the Booklet. In essence, we are receptive to the terms of the previous agreement with IPH, but are open to further discussions with the SCCRTC and have a few provisos stated in our recommendation.
15. PGR can provide any number of references of parties willing to endorse our company. In response to a request for at least three references, PGR is pleased to submit four references provided on page 56 of the Booklet.
16. PGR acknowledges that all contents of this Transmittal Letter and supplemental Booklet can be made public.

In closing, PGR is very pleased to be considered as a candidate to become the Operator of Rail Service for the Santa Cruz Branch Line. Please do not hesitate to contact us if there are any questions.

Respectfully,



Chairman & Chief Executive Officer

Copy to Dave Fellon, Owner of Progressive Rail Inc.



PROPOSAL FOR OPERATOR OF RAIL SERVICE

January 4, 2018



TO THE MEMBERS OF THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION

Dear Members of the SCCRTC,

The difference between Progressive Rail Incorporated (“PGR”) and other short line holding companies is our commitment to wholly focus on taking the long range view by way of investing, reinventing and creating quantifiable value back to our customers, communities and Class One railroads. PGR works day and night to allow stakeholders to benefit from the relationship and we believe this allows us to stand out amongst the competition. At PGR, we grow railroads -- through development and supporting customers of our service.

Progressive Rail is a proven turnaround artist that is wildly passionate about reconnecting the local citizens, businesses both big and small, and, our environment with a passionate partner that is well prepared to make history in a good way with the Santa Cruz County Regional Transportation Commission (“SCCRTC”).

It’s those exact tracks that PGR is at the ready to create a new legacy. For sure executing the successful resurrection of a underutilized railroad is precisely where PGR excels, having taken over several lines from the brink of abandonment which are now thriving conduits of commerce. In just one of more than a dozen examples is PGR’s Wisconsin Northern Railroad where we acquired 37 miles of two rusty coat hangers in the mud and rotted ties that today generates over 70,000 rail cars a year rolling over some of the most heavy duty track in the State of Wisconsin.

Creating a compelling freight proposition goes well beyond rail service. Oftentimes we have found that the effort needs to be catalyzed, which is why PGR invests in the needs of shippers that includes real estate, securing warehouses for storage and transloading, and constructing equipment to facilitate work flow. Then, with its in-house expertise, PGR can help customers navigate the Class One railroads to efficiently and cost-effectively connect to the rest of North America.

Looking westward to California, PGR has always been highly interested in this geography and is why we are most interested to work with the SCCRTC to make a compelling and environmentally beneficial business case of how both freight and a renewed passenger service commitment can occur with a true level of professionalism and safety.

Not that long ago in railroad history the Suntan Special was a prime example of how carriers like the Southern Pacific Transportation Company were by far the absolute best conduits to commerce and the goodwill ambassadors for the communities served. History can and will repeat itself in a good way; let’s work together to bring the good back along with the people too.

Sincerely,



DAVE FELLON
OWNER



Dear Members of the SCCRTC:

Five years ago the SCCRTC made a forward-looking and wise decision to purchase the Santa Cruz Branch Line. Today that rationale is even more compelling.

The Branch Line is perfectly situated to be further developed for freight and passengers. Highways in Santa Cruz county are congested at peak times and PGR can directly help relieve that stress by leveraging the rail infrastructure to take a number of trucks, commuters, and tourists off the highways. But it doesn't stop here.

PGR has an unblemished record spanning over two decades of providing comprehensively customer-focused freight rail service and fostering industrial development through direct investments in rail, real estate, buildings and equipment. Beginning in Watsonville, PGR is ready to enable the Branch Line to reach its full potential in freight.

PGR has successfully produced passenger excursions including Polar Express, Thomas the Tank, and other family oriented events. PGR also has an exclusive, close-knit alliance with American Heritage Railways the licensor for Polar Express. PGR's mission is to produce thematic shuttles and excursions that transport tourists to the Boardwalk beach area, including a revival of the spectacular Suntan Special, as well as launch westward to Davenport to showcase the natural beauty that includes sunsets on the cliffs above or picnics down on San Vicente Beach, Secret Beach, Bonny Doon, and Shark Fin Cove.

How we conduct business sets us apart. We live by our high standards on health, safety and the protecting the environment. We invest heavily in rail integrity and FRA compliance. For Santa Cruz urban areas we will pay particular attention to horn signal noise and the carbon footprint of our locomotives. For excursions we will orchestrate remarkable rail journeys and destinations that, in the case of Davenport, includes participation or oversight in cliff and beach safety, security, and waste management. Last, we welcome participating or even championing the Rail Trail project.

In closing, PGR aims to create a new positive legacy for the Branch Line and Santa Cruz county. All inquiries related to this proposal may be directed to me at 218.324.2001 or cmckenzie@progressiverail.com.

Sincerely,



CRAIG MCKENZIE
CHAIRMAN & CEO



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OVERVIEW OF PGR



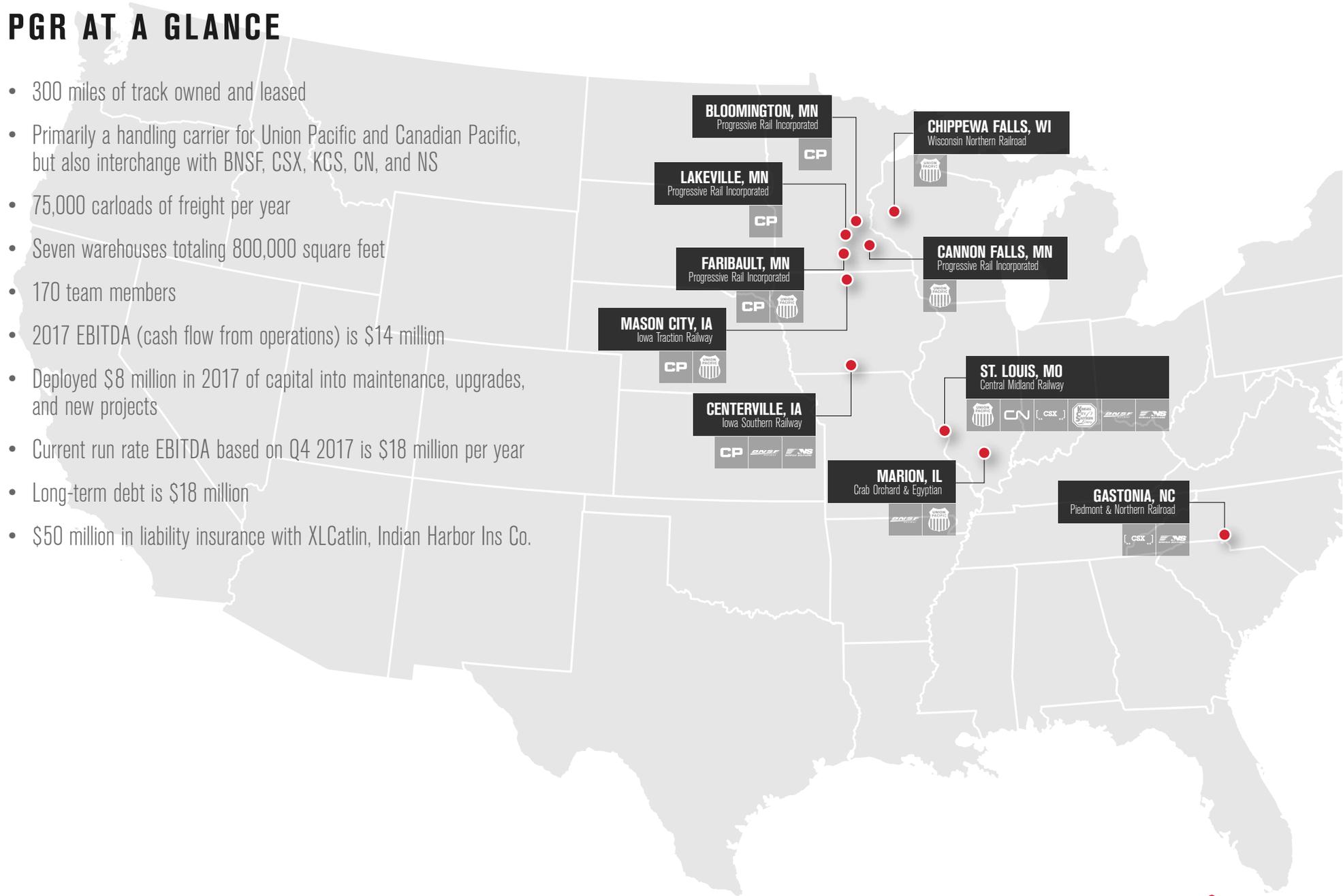
OUR HISTORY

- Progressive Rail Incorporated (PGR) is a shortline railroad operating several separate shortlines in Minnesota, Missouri, Illinois, Iowa, North Carolina, and Wisconsin.
- Headquartered in Lakeville, Minnesota, PGR was established in 1996 and expanded its operations in 2001 to include a second Minnesota line.
- In 2004, PGR leased 37 miles of nearly abandoned track running north from Chippewa Falls, WI and transformed it into the Wisconsin Northern Railroad, PGR's flagship asset.
- In 2007, PGR acquired the Central Midland Railway operating 60 miles of track from St. Louis to Union, MO.
- In 2010, PGR acquired the Iowa Traction Railway Company in Mason City, Iowa which is the last freight railroad in the United States that draws its power source from overhead electric lines.
- In 2012, the Crab Orchard and Egyptian Railroad in Marion, IL was added to the PGR family and in 2016 PGR expanded operations in southern Iowa with the acquisition of the Iowa Southern Railway operating out of Centerville, IA.
- In the summer of 2017 PGR made a move down south and is now operating the Piedmont and Northern Railroad in Gastonia, NC.
- Across PGR's network, we have seven rail and truck served warehouse storage facilities totaling over 800,000 square feet to facilitate our transloading businesses.
- This year PGR launched its newly branded business "Red Diamond Processing and Packaging" that focuses on handling and modifying food byproducts primarily for use as animal feed.
- Our philosophy has always been to provide a comprehensive rail service to our valued customers on our entire rail network. PGR many times takes the lead by focusing on economic development opportunities, including identifying Greenfield multi-modal transloading and storage facility projects for our existing and new customers, working with local municipalities and state governments to restore or build new infrastructure, and identifying ways to go beyond rail and help enterprises with their logistics needs.



PGR AT A GLANCE

- 300 miles of track owned and leased
- Primarily a handling carrier for Union Pacific and Canadian Pacific, but also interchange with BNSF, CSX, KCS, CN, and NS
- 75,000 carloads of freight per year
- Seven warehouses totaling 800,000 square feet
- 170 team members
- 2017 EBITDA (cash flow from operations) is \$14 million
- Deployed \$8 million in 2017 of capital into maintenance, upgrades, and new projects
- Current run rate EBITDA based on Q4 2017 is \$18 million per year
- Long-term debt is \$18 million
- \$50 million in liability insurance with XLCatlin, Indian Harbor Ins Co.



PGR AT A GLANCE



CRAIG MCKENZIE

CHAIRMAN & CEO

218-324-2001

cmckenzie@progressiverail.com



DUSTIN HEICHEL

MANAGING DIRECTOR, OPERATIONS

651-888-9468

dheichel@progressiverail.com



JEREMY URLACHER

MANAGING DIRECTOR, OPERATION SERVICES

612-791-3254

jurlacher@progressiverail.com



JIM THORNTON

MANAGING DIRECTOR, LEGAL

404-539-5421

jthornton@progressiverail.com



NICK DILLON

MANAGING DIRECTOR, FINANCE

612-385-1423

ndillon@progressiverail.com



DAVE FELLON

PRESIDENT & OWNER

612-791-3255

dfellon@progressiverail.com



INDUSTRIAL DEVELOPMENT LED BY PGR



DIRECT SERVICE



CUSTOMER SERVICE 24/7/365



JEANETTE LENTZ

SENIOR MANAGER, OPERATIONS

612-791-5400

jlentz@progressiverail.com

Who doesn't like good service? I know I do and I also appreciate the experience no matter what I am buying rather it be just a tank of gas or a brand new car.

I am in charge of Progressive Rail's Customer Solutions team and we take customer service very seriously. It all starts by knowing what our customers need before they need it and then be there with a backup plan if a supply chain interruption occurs well away from PGR Lines. The bottom line is PGR is truly our shippers life line for both raw materials in and finished goods out to markets throughout North America. Thats a big responsibility and frankly we love the challenge.

Finally, and I find this unique to PGR, my department answers to and is incentivized by PGR's Sales & Marketing team which only further underscores how intertwined customer service is with sales. In effect we walk the talk when you hear the phrase "service after the sale".



PASSENGER EXCURSION AND EVENTS

MUTUAL COOPERATION AGREEMENT

THIS MUTUAL COOPERATION AGREEMENT (this "Agreement") is made as of January 5, 2017, by and among Progressive Rail Incorporated ("PGR") and American Heritage Railways, Inc. ("American Heritage"). PGR and American Heritage are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, PGR owns or operates six shortline railroads in five states;

WHEREAS, PGR's business is primarily focused on the transportation, transloading and temporary storage of freight and goods ("Freight Operations");

WHEREAS, American Heritage owns or operates three shortline railroads in three states;

WHEREAS, American Heritage is a tourist rail operator and expert in rail-related special event management ("Excursion Operations"); and

WHEREAS, the Parties intend to engage in cooperation on matters of mutual interest and concern, including helping the other Party with its Freight Operations or Excursion Operations, as applicable.

AGREEMENTS

NOW, THEREFORE, the Parties agree as follows:

1. PGR agrees that American Heritage will have the exclusive right to conduct Excursion Operations on PGR Railroads, as hereinafter defined. The Parties will negotiate in good faith a mutually satisfactory revenue sharing agreement for any Excursion Operations that occur on PGR Railroads before beginning operations. Notwithstanding the foregoing, nothing herein should be construed to require PGR to conduct Excursion Operations on PGR Railroads. For purposes of this Agreement, "PGR Railroads" means all railroads currently owned or operated by PGR or its affiliates as well as any railroads subsequently acquired. If American Heritage declines to conduct Excursion Operations on a PGR Railroad, however, PGR may conduct its own Excursion Operations or contract with a third party to conduct Excursion Operations on such PGR Railroad only.

2. American Heritage agrees that PGR will have exclusive rights to conduct Freight Operations on American Heritage Railroads, as hereinafter defined. The Parties will negotiate in good faith a mutually satisfactory revenue sharing agreement for any Freight Operations that occur on American Heritage Railroads before beginning operations. Notwithstanding the foregoing, nothing herein should be construed to require American Heritage to conduct Freight Operations on American Heritage Railroads. For purposes of this Agreement, "American Heritage Railroads" means all railroads currently owned or operated by American Heritage or its affiliates as well as any railroads subsequently acquired. If PGR declines to conduct Freight

Partnership Agreement executed with American Heritage Railways in January 2017.

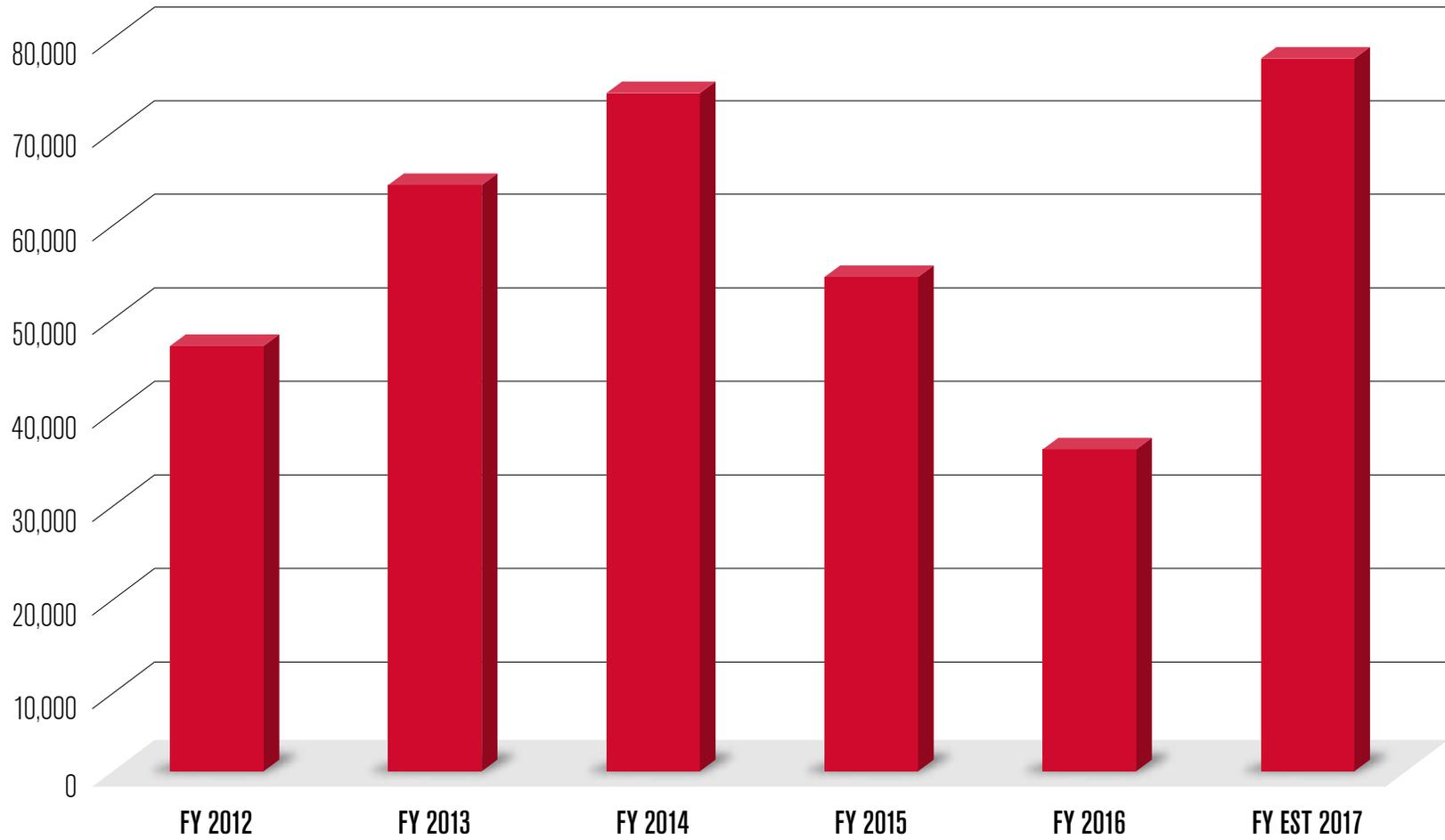
With AHR and Rail Events as our strategic partner, PGR is poised to extend and build on the success of Polar Express.



RAIL EVENT EXPERIENCES ORGANIZED BY PGR



CARLOAD VOLUMES



BALANCE SHEET

Progressive Rail, Inc. and Affiliate
Combined Balance Sheets
As of October 31, 2017 and December 31, 2016

ASSETS

	December 31, 2017 (Unaudited)	December 31, 2016 (Audited)
Current Assets	\$ 10,569,471	\$ 9,581,002
Property and Equipment	59,690,494	54,177,704
Less - Accumulated Depreciation	22,661,427	21,410,502
Property and Equipment, Net	37,029,067	32,767,202
Other Assets	5,094,983	4,969,678
Total Assets	\$ 52,693,521	\$ 47,317,882

LIABILITIES AND STOCKHOLDERS

Current Liabilities	\$ 8,860,012	\$ 5,339,364
Long-Term Liabilities	14,609,321	14,818,753
Total Liabilities	23,469,333	20,158,117
Total Equity - Progressive Rail, Inc.	28,857,445	26,758,506
Non-Controlling Interest in Subsidiaries	366,743	401,259
Total Stockholder Equity	29,224,188	27,159,765
Total Liabilities and Stockholder Equity	\$ 52,693,521	\$ 47,317,882



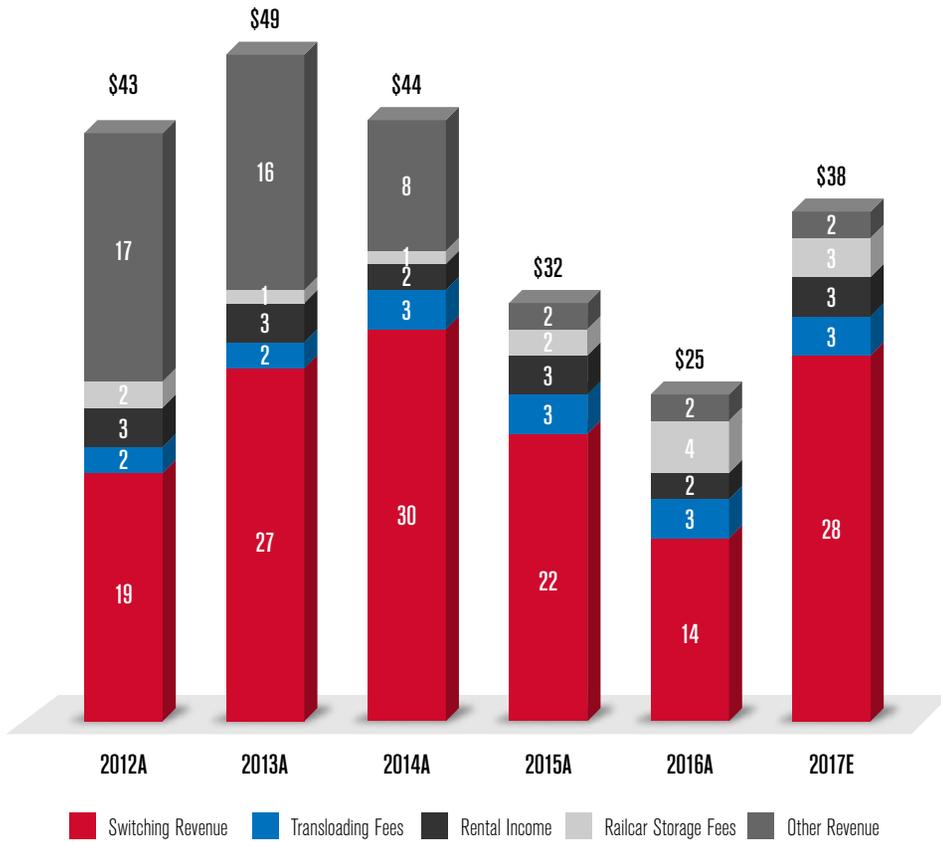
CASH FLOW FROM OPERATIONS

Progressive Rail, Inc. and Affiliate
Unaudited Combined Statements of Operations
 For the Ten Months Ended October 31, 2017

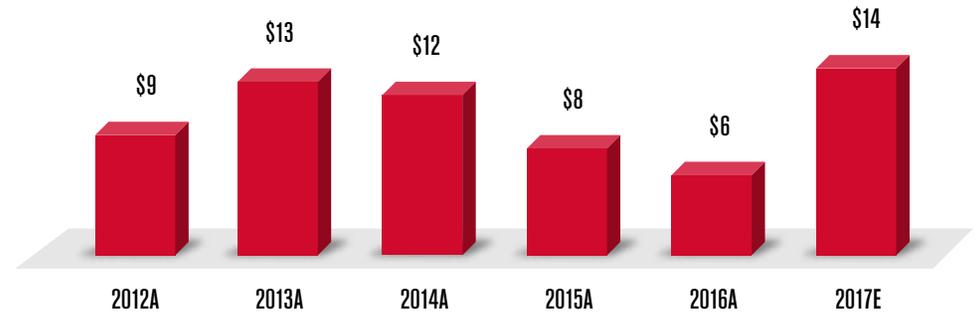
	YTD October 31, 2017
Revenues	\$ 30,747,556
Cost of Sales	631,800
Gross Profit	30,115,756
Operating Expenses	25,820,441
Income from Operations	4,295,315
Other Expense	(1,211,182)
Income Before Income Taxes	3,084,133
Provision for Income Taxes	122,611
Net Income	\$ 2,961,522
Net Loss Attributable to Non-Controlling Interests	(15,484)
Net Income Attributable to Progressive Rail, Inc.	\$ 2,946,038
EBITDA	\$ 6,971,851
New Business Start-Up Expenses	683,178
Staff Short Term Incentive Payments	2,241,642
Non-Recurring Site Maintenance	1,346,670
Professional Services/Consulting	100,246
Employment Termination Related Expenses	246,415
Other Non-Recurring Expenses	139,150
Adjusted EBITDA - 10.31.17	11,729,154
Nov-Dec EBITDA Forecast	2,110,039
2017E Adjusted EBITDA	13,839,139



RECENT FINANCIAL HISTORY



REVENUE (\$ in millions)

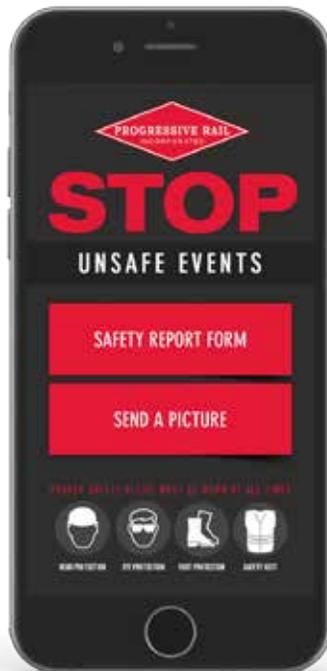


EBITDA (\$ in millions)

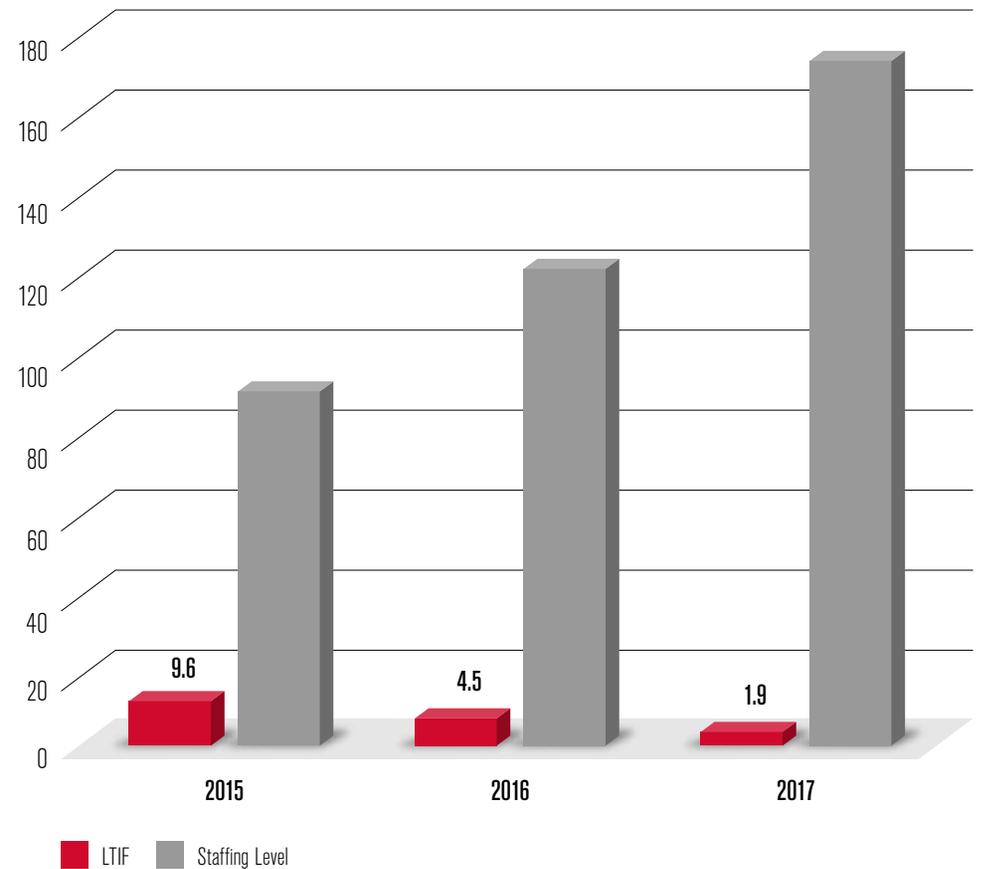


SAFETY RECORD

- Our goal is zero incidents
- We have an embedded safety culture with pay at risk for safety performance
- LTIF, defined as recordable incidents per 100,000 work-hours, continues to improve despite rapid growth
- Industry standards are 1.5 – 4.0; ours is 1.9
- Developed in-house smart phone APP called STOP (Safety Training Observation Program) to report, track, and close-out safety issues



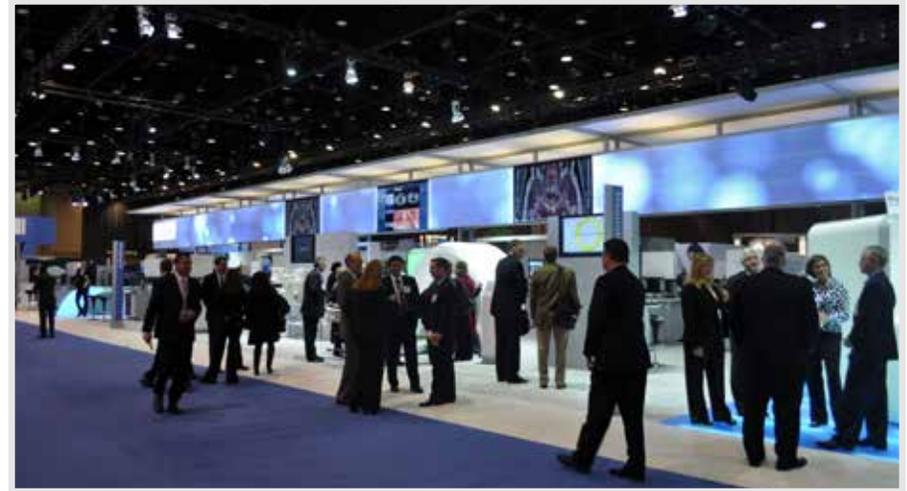
HEADCOUNT & LOST TIME INCIDENT FREQUENCY



SALES & MARKETING - *Tradeshows*



NAWLA Trader's Market
Tradeshow Booth Exhibitor
Las Vegas, NV



Transload Distribution Association of North America
Tradeshow Booth Exhibitor
Carefree, AZ



National Hardwood Lumber Association
Tradeshow Booth Exhibitor
Washington, D.C.



American Frozen Foods Institute Convention
Tradeshow Booth Exhibitor
San Diego, CA



SALES & MARKETING - Customer and Industry Newsletter Promotions



PROGRESSIVE RAIL
ON THE RIGHT TRACK

MooS FLASH!

Fresh, LTM, inventory across areas.

Continued: It plays a huge role in increasing production volume and butterfat components. It is highly digestible and increases body condition.

But not all contained is equal, especially when it comes to Lansing Trade's contained, why?

- Priority rail shipments are dispatched from the deep South to LaCrosse, WI in order to keep the warehouse full and, by extension, lower carrying costs.
- Once the rail cars are unloaded the contained is properly stored and continuously aerated to ensure maximum freshness.
- The exceptionally clean and fully dedicated contained warehouse ensures zero chance for any cross contamination issues.
- By volume buying power positions the Lansing Trade Group with the first choice in securing the highest quality contained from the growers.
- Freshness and product integrity care during both in transit and in storage makes for a noticeable difference.

LANSING TRADE GROUP, LLC



Amy Moy West
913-827-8225
amoy@lansingtrade.com

What's the next step?

Contact Amy Moy West

- Any size grazing law, straight truck or tractor trailer is loaded in LaCrosse, WI.
- Customer pick-ups or deliveries to your farm are coordinated and scheduled.
- A local service. Locally available. Locally focused.

PER build it. You lease it.

Build that storage space, whether you build with form and rebar or precast, right now, a Per-Form products from Progressive Rail, an innovator in the formwork industry, can build to your location and speed back to our national network. PER forms are designed for you to produce and hold either pre-cast or cast-in-place concrete. You are back producing in no time.

Mike D. Reardon
Sales Director
613-791-3255
mreardon@prform.com

Stewart M. Miller & Barbara D. Bennett
Michael J. Miller
613-791-3255
smiller@prform.com

The President of PerForm
Jordan Smith
618-910-8273
jsmith@prform.com



PROGRESSIVE RAIL



WISHBONE

Progressive Rail Transportation | March 11, 2014

We wish we could have it all - the lowest prices, variety in selections and exceptional, un-dimmed service.

For anyone in the landscape supply business, your wish is a reality with Live Bone, P&T Bone Transportation. Since 1984, Live and Bone have offered a stunning array of geological gems sourced throughout North America and crated to the perfect size without the steep price tag for landscape settings. Beyond decorative aggregate, Bone Transportation also offers well-sorted crushed field rock, bedding sand and natural western red cedar ground cover.

When the operational backbone of Bone Transportation truly distinguishes itself are Bone and Live Bone, together they have over 30 years experience in exceeding customer's highest expectations, understanding modern tractor trailer rig to any landscape supply house or job site at the exact time and day requested.

Being special requires an on-time reality in what Live and Bone are all about thanks to their genuine dedication to providing something that has been rock solid from electric, geological masterpieces for industry within your landscape center's product mix.

For more information about the decorative aggregate, crushed field rock, bedding sand and western red cedar mulch for sale to you:

Lisa Bonas
800-235-6381 ext. 105
lisa@bonetrans.com

We'll absolutely still transportation backbone is by far the most efficient, allowing Bone Transportation to offer their reduced customer base better pricing at a level of service you will never lose a favor of transportation with.

PER's Crisp Richard & Sigourney Reardon is also making yet another crucial delivery of volume, PER's Bone Transportation will begin loading in LaCrosse, Wisconsin.




PROGRESSIVE RAIL

POWERTRAIN

Progressive Rail Transportation | December 11, 2013



In your motor vehicle the term powertrain describes the main components that generate power and deliver it to the road.

When the term powertrain comes up in discussing parts of a vehicle's mechanical, transportation - they assure the main components in your transmission are performing perfectly to deliver power to the wheels.

Reico is a long-established company that specializes in the leasing, renting, and repairing of locomotives. In fact, Reico has been providing total locomotive solutions to Class 1, regional and short line railroads as well as private industries, transit agencies and government institutions for over 60 years.

What separates Reico from its competitors?

The core foundation of Reico is a commitment to service of the highest standards. Our products are delivered to customers. Our products are done right the first time and delivered on time, every time. Quality matters. Reico maintains a genuine culture of innovation, collaboration and a results-focused commitment amongst its team members.

Yes, Reico will maintain. They are experts at selling covered freight car releases with warranty options.

Who do I contact at Reico?

Mike D. Reardon
613-791-3255
mreardon@reico.com

Reico Locomotive Inc.
3074 N. 84th Ave
Albion, IA 52201

There are other powertrains giving the rolls in **transportation, agriculture, military, and construction**. Progressive Rail is your powertrain that will help you generate more business further away, via rail. Call us today.

Tom D. Reardon
Sales Director
613-791-3255
treardon@reico.com

Stewart M. Miller & Barbara D. Bennett
Michael J. Miller
613-791-3255
smiller@reico.com

Ray President of Reico
Jordan Smith
618-910-8273
jsmith@reico.com



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SERVICE PLAN



OBJECTIVES AS OPERATOR

OVERALL OBJECTIVES:

- Exceed all SCCRTC expectations of PGR as Operator of Branch Line
- Expand tax base by catalyzing sustainable development connected to Branch Line
- Be a most-admired company in California
- Directly improve the environment where we operate

BY:

- Providing freight service in Watsonville immediately and growing it through concentrated marketing efforts
- Providing passenger and freight rail service over the entire line within three years
- Championing solutions to key issues such as noise abatement, crossing safety, coastal rail trail, & water drainage
- Designing passenger service as modern, but nostalgic experience that becomes a tourist attraction in itself
- Providing exemplary rail service, that is safe, efficient, & respectful of all stakeholders
- Going beyond rail service to drive local industrial development
- Making direct local investments in rail, real estate, buildings, & equipment
- Bringing existing PGR customers to SCC and link SCC to PGR's network



FRA & CPUC COMPLIANCE

Progressive Rail Inc.:

- Is the parent company for seven railroads in six states, which are all in full compliance with federal and state laws.
- Complies with Title 49 CFR 172.700 hazardous materials communications, emergency response information, training requirements, and security plans.
- Complies with Title 49 CFR 174.1 – 174.750 Carriage by Rail.
- Complies with applicable parts of Title 49 CFR 200-299 Federal railroad administration. Plans and submissions are on file with the FRA.
- Complies with (EPCRA) Emergency Planning and Community right to know act reporting in all states.
- Works directly with state pollution control agencies with outside engineering firms to monitor air quality and storm water runoff at our trans loading locations.
- Is compliant with local counties in regards to hazardous waste generation with license on file.
- Works with state inspectors to ensure its responsible compliance with local communities.
- Has no operations presently in California, but is in contact with CPUC to establish that relationship and we are confident that the above will ensure our full compliance.



MASTER OPERATING PLAN

- PGR will name its railroad the Santa Cruz Scenic Railway.
- PGR will first focus on Watsonville with its Freight Plan.
- PGR has a locomotive refurbishment program underway; a SW 1200 or SW 1500 will be located at Watsonville to continue freight service to existing customers.
- Two dual-qualified engineers will be based in Watsonville; one will be the General Manager who will report to the COO in Lakeville, MN. Functional support will be provided as per the Resource Plan.
- Our centralized MOW team has already inspected the entire 31 miles of track, as well as inspected all the major bridges with A.R.E., a railroad engineering firm based in Los Angeles. MOW professionals will be deployed to work with the SCCRTC and oversee works per the Maintenance Plan.
- Our centralized Health, Safety & Environment team, along with our FRA Compliance team, will proactively set standards and engage authorities regarding our Safety & Compliance Plan.
- Our centralized Signals & Crossings team is set to inspect all the crossings. An integrated team will be formed to spearhead the Quiet Zone Plan with the respective municipalities.
- Our centralized Marketing team will recruit an on-the-ground representative who will be based locally to deploy the Marketing Plan.
- An integrated business development team will be formed to pursue all tourist experiences per our Passenger Excursion Plan.



WATSONVILLE FREIGHT PLAN

- Freight service already exists in Watsonville on the Branch line, but has much more potential than current car load levels.
- PGR's proven formula is to secure a transloading warehouse as a means to market the railroad to target customers; a warehouse at 880 W Beach Road, Watsonville, is a property we have identified.
- The agriculture industry has opted for trucking of outbound fruits and vegetables. Our goal is to develop a fast corridor with UP for shipping refrigerated freight outbound to the Midwest, with proteins on the return trip.
- Agriculture demand for plastic mulch, liquid and dry fertilizers, insecticides is perfect for rail, and we are ready to make a compelling proposition to farmers.
- Dimensional lumber and construction materials, specialty rock and other landscape supplies are perfect commodities for long hauls.
- Lansing Trading, one of the preeminent energy traders in the US, is poised to partner with PGR to construct a propane distribution terminal.
- We have no plans for rail car storage.



800 W Beach Road



MAINTENANCE OF WAY PLAN



LEON HOYT

GENERAL MANAGER, MAINTENANCE OF WAY

715-563-4327

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- Our MOW team is equipped to handle any and all defects there may be, from insufficient ballast or cross level issues to switches and turn outs. We are also equipped with a on-track brush cutter and have licensed herbicide applicators on staff.
- American Rail Engineers Corporation (ARE) performed an assessment of the Santa Cruz Branch Line for Progressive Rail on December 17, 2017. The assessment was completed by David Anderson P.E., a practiced railroad bridge engineer licensed by the State of California as a Professional Engineer.
- PGR plans to use its planned transloading warehouse in Watsonville as a laydown yard for rail and ties, as well as storage facility for rolling stock.
- Our working assumption is that the SCCRTC will restore the track conditions on the line to appropriate standards and that PGR will be responsible for proper maintenance.
- PGR is prepared to oversee any of the SCCRTC works.



BRIDGE INSPECTIONS

MP	Section	Bridge Type	Length	# of Spans	Span Type	Year Built	Super Condition	Sub Condition	Deck Type	Ballast Deck Condition	Bridge Tie Condition	Deferred Maintenance	Capital Cost next 10 years	Annual Maintenance (10-yr avg)	Notes
0.86	1 of 1	ODPT	218	14	Timber	1940	Fair	Good	Open		Good	\$ 7,500.00	\$ 25,000.00	\$ 5,000.00	Stringer thru bolts missing. Need to add stringer through bolts.
1.06a	1 of 3	ODPT	180	13	Timber	1950	Fair	Fair to Good	Open		Fair to Poor	\$ 5,000.00		\$ 4,500.00	Spot bridge tie replacement required. Some fire damage.
1.06b	2 of 3	TPGOD	301	5	Steel	1906	Fair to Good	Fair	Open		Fair to Poor	\$ 4,000.00	\$ 50,000.00	\$ 5,000.00	Up to 50% of top flange of floor beams; stringers in good condition.
1.06c	3 of 3	ODPT	91	6	Timber	1950	Fair	Fair to Good	Open		Fair to Poor	\$ 7,000.00		\$ 4,000.00	Spot bridge tie replacement required and walkway & railing repair needed. Some fire damage.
2.73		OHH	n/a	n/a	CIP PS Concrete	1967	Good	Good	n/a				\$ -	\$ -	Overhead highway.
4.45	1 of 1	ODPT	60	4		1932	Good	Good	Open		Good	\$ 10,000.00	\$ -	\$ 500.00	Ties replaced in 2002.
4.87	1 of 1	BDPT	195	13	Timber	1909	Fair	Fair	Ballasted	Fair		\$ 25,000.00		\$ 5,000.00	Ballast retainers needing maintenance. Substructure & superstructure in a wet environment.
5.52	1 of 1	BDPT	15	1	Timber	1904	Fair	Fair	Ballasted	Fair		\$ 15,000.00		\$ 7,500.00	Ballast holes, moderate to heavy decay of deck. Some severely decayed piles needing posting.
5.54	1 of 1	BDPT	135	9	Timber	1923	Good	Good	Ballasted	Fair		\$ 15,000.00		\$ 2,500.00	Ballast retainer deterioration.
6.01	1 of 1	BDPT	90	6	Timber	1926	Good	Good	Ballasted	Fair				\$ 2,500.00	
6.14	1 of 1	BDPT	30	2	Timber	1927	Good	Fair	Ballasted	Fair				\$ 1,500.00	Back wall deterioration.
6.25	1 of 1	BDPT	120	8	Timber	1909	Fair	Fair	Ballasted	Fair		\$ 30,000.00		\$ 4,500.00	Ballast retainer low. Ends of cross ties exposed on deck. Ballast retainers need to be raised.
8.32	1 of 1	BDPT	15	1	Timber	1916	Good	Fair	Ballasted	Fair				\$ 1,500.00	
8.64a	1 of 2	PS Concrete Tub	48	1	Concrete	1975	Good	Fair	Ballasted	Good		\$ 10,000.00			Strut bearing plate corroded and pier 2 concrete spalling around bearing plates. Plates need replacement with larger plate and concrete repaired.
8.64b	2 of 2	ODPT	112	8	Timber	1932	Good	Fair	Open		Fair	\$ 15,000.00		\$ 4,500.00	Bent bracing moderate to severe decay.
9.09	1 of 1	Deck Plate Girders	330	8	Steel Trestle	2014?	Good	Good	Open		Good			\$ -	Superstructure and steel towers recently replaced.
10.45	1 of 1	BDPT	240	16	Timber	1928	Fair	Poor	Ballasted	Fair		\$ 80,000.00		\$ 10,000.00	Bent bracing poor. Piling good to fair. Overall bent condition poor due to bracing condition.
11.16	1 of 1	BDPT	240	16	Timber	1928	Fair	Fair	Ballasted	Fair				\$ 10,000.00	Bent bracing condition moderate decay.
12.03	1 of 1	OHH	n/a	n/a	Steel w/ Concrete Deck	1953	Fair	Fair	n/a	n/a		\$ -	\$ -	\$ -	Highway overhead. Assuming maintenance by others. DOT says structurally obsolete.
12.30	1 of 1	Deck Steel Plate	89	2	Steel w/ Concrete Deck	1948	Fair	Fair	Ballasted	Fair					Seismic retrofit in 1996. Caltrans responsible for substructure maintenance. Railroad responsible for superstructure maintenance.
12.34	1 of 1	Steel Plate Girder	218	4	Steel	1969	Fair	Fair	Open		Good			\$ 2,500.00	Wood plank walkways.
12.39	1 of 1	Steel Plate Girder	60	1	Steel	1925	Fair	Fair	Open		Good			\$ 1,500.00	Wood plank walkways. Bridge ties replaced in 1994.
12.71a	1 of 2	Steel Plate Girder	160	2	Steel	1969	Fair	Good	Open		Good				Steel grated walkways. Bridge ties replaced in 1994.
12.71b	2 of 2	Through Plate Girder	71	1	Steel	1929	Fair	Fair	Open		Good			\$ 1,500.00	Wood plank walkways. Bridge ties replaced in 1994.
12.83	1 of 1	Through Plate Girder	137	2	Steel	1948	Fair	Fair	Ballasted		Fair				Seismic retrofit in 1996. Caltrans responsible for substructure maintenance. Railroad responsible for superstructure maintenance.



BRIDGE INSPECTIONS (CONT'D)

MP	Section	Bridge Type	Length	# of Spans	Span Type	Year Built	Super Condition	Sub Condition	Deck Type	Ballast Deck Condition	Bridge Tie Condition	Deferred Maintenance	Capital Cost next 10 years	Annual Maintenance (10-yr avg)	Notes
14.85	1 of 1	PS Concrete	52	2	Concrete	1971	Good	Good	Ballasted		Fair				Low vehicular clearance of 14' 1". Cable seismic retrofit.
15.89a	1 of 5	Precast Concrete Box	120	3	Concrete	1970	Good	Good	Ballasted		Fair			\$ 2,500.00	Crib wall with moderate decay. Cable seismic retrofit.
15.89b	2 of 5	ODPT	215	15	Timber	1904	Fair	Fair to Poor	Open		Fair	\$ 65,000.00		\$ 10,000.00	Bent longitudinal bracing, several with severe deterioration. Bridge ties replaced in 1997.
15.89c	3 of 5	Pin connected deck truss	148	1	Steel	1903	Fair	Fair	Open		Fair		\$ 175,000.00	\$ 2,500.00	Stringers rate very poorly. Up to 29% section loss observed in top stringer flange. Vertical member U1-L1 has holes in flanges. Recommend that stringers and floor beams be replaced or strengthened for sustained loading using light 4 axle locomotives.
15.89d	4 of 5	ODPT	40	3	Timber	1904		Fair to Poor	Open		Fair	\$ 15,000.00		\$ 2,500.00	Bent bracing has moderate to severe deterioration. Timber walkway and railing in Fair to poor condition.
15.89e	5 of 5	Prestressed Concrete	60	1	Concrete	1971	Good	Good	Ballasted		Fair				Some damage from underpass vehicular traffic.
17.30	1 of 1	Precast Concrete Box	240	8	Concrete	1977	Good	Good	Ballasted		Fair				
18.84	1 of 1	Precast Concrete Box	420	7	Concrete	1970	Good	Good	Ballasted		Fair				
19.43a	1 of 2	Through Truss	240	2	Steel	1904	Fair	Fair	Open		Fair	\$ 100,000.00		\$ 2,500.00	Floor beams have section loss up to 100% at top and bottom of stringer connection. Bottom lateral bracing members have severe section loss, stringers have bottom flange section loss. Bridge ties replaced in 1996.
19.43b	2 of 2	Steel Deck Girder	60	1	Steel	1904	Fair	Fair	Open		Fair	\$ 15,000.00		\$ 2,500.00	Moderate corrosion throughout. Bridge ties replaced in 1996, severe decay of isolated ties. Girder bracing moderate to severe section loss.
20.18	1 of 1	ODPT OHR	n/a	n/a	Timber	1999	n/a	n/a	Solid Timber		n/a	\$ -	\$ -	\$ -	Overhead roadway.
22.29	1 of 1	ODPT	330	22	Timber	1928	Fair	Fair	Open		Fair	\$ 30,000.00		\$ 10,000.00	Bridge ties replaced in 1996. Moderate decay of stringers. Moderate to severe decay of isolated timber bracing.
23.47	1 of 1	ODPT	15	1	Timber	1935	Fair	Fair	Open		Fair			\$ 1,500.00	Bridge ties replaced in 1997.
23.54	1 of 1	ODPT	16	1	Timber	1913	Fair to Poor	Fair to Poor	Open		Fair	\$ 20,000.00		\$ 1,500.00	Bridge ties replaced in 1997. Longitudinal struts failing. Back walls leaning in with decayed timbers. Stringer replacements needed of sustained regular traffic.
26.09	1 of 1	ODPT	11	1	Timber	1937	Fair	Fair	Open		Fair			\$ 1,000.00	Bridge ties replaced in 1997.
26.55	1 of 1	ODPT	11	1	Timber	1937	Fair	Fair	Open		Fair	\$ 2,500.00		\$ 1,500.00	Back wall planks have decay.
4.45		Retaining Wall													Wall is a Steel H pile soldier wall in good condition.
Selva Beach Area		Retaining Wall										\$ 15,000.00		\$ 500.00	Tree sections, sections wall failing with washouts.
Leonard Gulch		Retaining Wall													Timber crib wall in Good condition.
TOTAL												\$ 456,000.00	\$ 280,000.00	\$ 112,500.00	



MOW - WATSONVILLE

MP 1 to 4.6

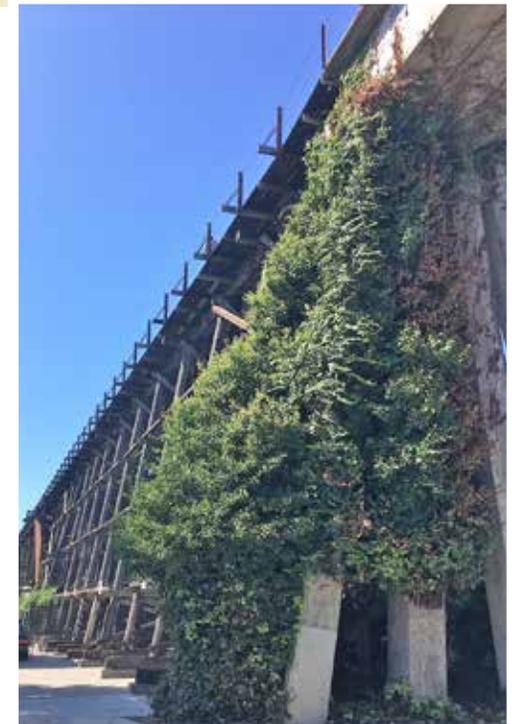
- Bridges are in fair condition. Evidence of encampments under bridge and fire damage on ties.
- Ties and rail are in good shape, and every 5th tie needs to be replaced. Rail is 119# and qualifies as #1 relay. Surfacing looks good in profile and alignment. Dry weather aids in this and lack of train traffic. Vegetation is clear in this area.
- Requires \$300,000 in immediate repairs; \$800,000 in maintenance over next three years.
- Crossings ok, but need maintenance/upgrades; est \$45,000 in asphalt removal in flanges
- Unable to inspect this area due to trespassers.

MP 5.2 to 6.5

- Between MP 6 and 5.8, there are several mudslides that cover 500 track feet. Estimate \$280,000 to build retaining wall and remove mud.
- MP 5.5 washout. Estimate \$100,000 for small repair.
- MP 5.2 washout. Large in damage and surface area. Possible bridge construction to span the separation caused by the damage or 2 large culverts. Property owners upstream will need to also address their erosion. Estimate \$975,000-\$1,200,000 for repair.
- Ties are in good shape; every 5th tie to be replaced in tangent and every 3rd in curves. Rail is 119# and qualifies as #1 relay, with 90-112# rail sprinkled between. Surfacing needed for profile and for water shed through ties. This section has lots of vegetation and large trees overgrowing track. \$315,00 in immediate repairs and \$875,000 in maintenance over next three years.

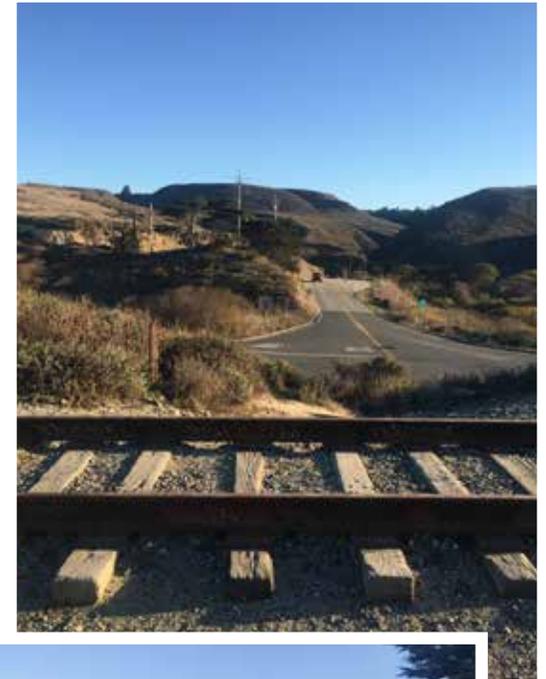
MOW – CAPITOLA TO SANTA CRUZ

- Capitola bridge will need rivets replaced due to extreme rust. Bridge structure will need to be sanded and coated with a non-rusting enamel. Wooden stringers and floor beams need to be replaced or strengthened. Security should be upgraded. A detailed cost estimate would need to be undertaken.
- Rail and ties are 119# with every 5th tie to be replaced in tangent and every 3rd in curves.
- Surfacing will be needed to adjust movement of ties on the grade. Ballast needs to be added.
- There are locations where stairs have been placed to allow for pedestrians to walk to public beaches. Pedestrian crossings needed with proper signage and lights.
- Estimate \$200,000 immediate repairs with \$875,000 in maintenance over next three years.
- Bridge at 19.43 has reported earthquake damage.
- Boardwalk clearance signs and cross bucks are needed to provide pedestrians with protection. Estimate \$85,000.
- Santa Cruz beach road running rail has cross bucks that need to be updated.



MOW – SANTA CRUZ TO DAVENPORT

- Ties are in fair shape. Every 5th tie will need to be replaced.
- Track surfacing will be needed to address water drainage.
- There is an old siding by Panther beach that could be rebuilt. Requires two switches and track restoration for an estimated cost of \$270,000.
- \$350,000 in immediate repair costs and \$815,000 in a 3 yr maintenance program.
- Davenport has several industry & siding switches, that need to be rehabbed. Switches in the siding rehab total estimated costing-\$25,000
- Removal of industry switch and straight railing area-\$50,000
- There are several crossings that have been paved over or have had the flange ways filled in. The number of these crossings that need to be addressed are unknown.



SAFETY & COMPLIANCE PLAN



JASON WELSH

GENERAL MANAGER, HSE

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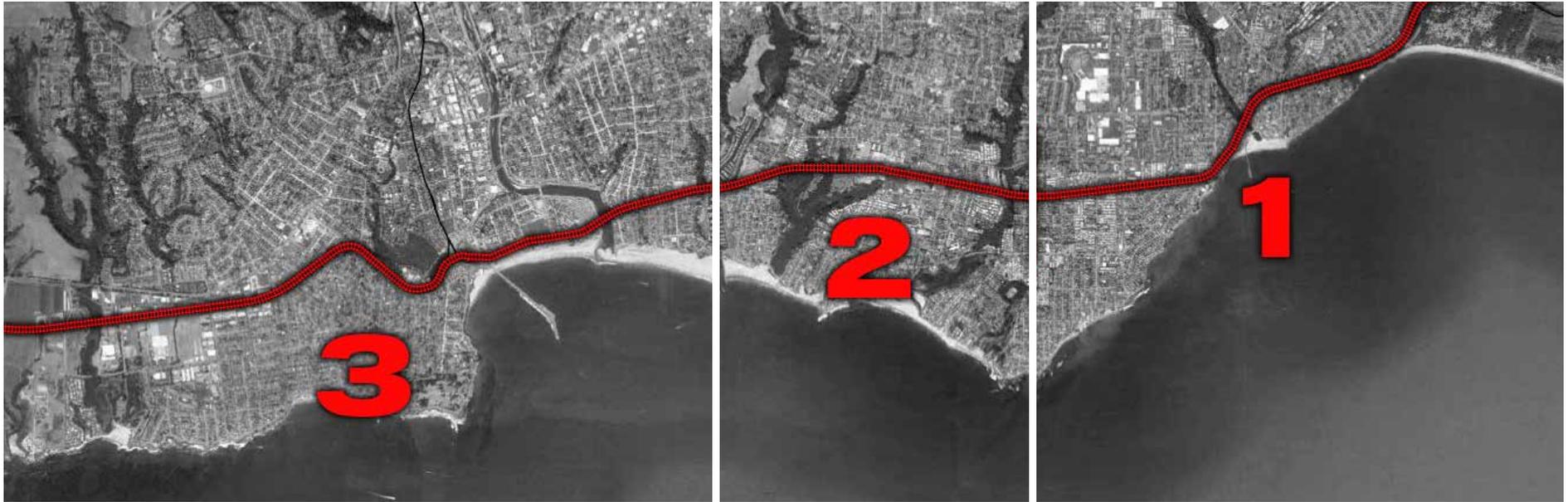
SAFETY COMES FIRST

The most important part of work is providing for family. I want every team member at PGR to go home in the same condition they arrived. In fact, if I can help them learn a better way to perform in any environment, maybe they will take some of that knowledge home and be healthier in their personal life as well.

- Review historical FRA recordkeeping and overall compliance; identify any gaps and fill them.
- Audit Code of Federal Regulations CFR 49 Parts 200-299
- Immediately contact and invite FRA local representative to meet on the operating segment to establish a new baseline.
- Submit advice letter to CPUC for notification of CPCN transfer. Immediately contact CPUC and invite representative on location to establish baseline.
- Create Signals & Crossings Plan.
- Roll out STOP program.



QUIET ZONE PLAN



- Our goal is to eliminate the use of locomotive horn signals in urban areas that include Santa Cruz, Live Oak, and Capitola
- Three independent Quiet Zones would extend from:
 1. Grove Lane crossing (MP 15.13) in the City of Capitola to the border of the unincorporated community of Live Oak
 2. Live Oak community (defers to Santa Cruz county) crossings
 3. From the border of Live Oak to Swift Ave. crossing (MP 21.59) in the City of Santa Cruz
- Both cities and Santa Cruz County would legally establish the Quiet Zones independently
- PGR would champion the effort by working with the three jurisdictions, undertake the required technical design and engineering work, and liaise with the FRA.

QUIET ZONE PLAN



THE STREET CROSSINGS THAT WOULD BE AFFECTED ARE AS FOLLOWS:

SANTA CRUZ

- MP 19.05 – Sea Bright Ave.
- MP 19.22 – Mott Ave.
- MP 19.71 – Cliff St./Beach Av
- MP 19.77 – Westbrook St.
- MP 19.83 – Main St.
- MP 19.97 – Pacific Ave.
- MP 20.75 – California St.
- MP 20.79 – Bay St.
- MP 20.87 – Lennox St.
- MP 21.02 – Dufour St.
- MP 21.08 – Bellevue St.
- MP 21.14 – Younglove Ave.
- MP 21.18 – Seaside St.
- MP 21.20 – Rankin St.
- MP 21.40 – Almar Ave.
- MP 21.45 – Fair Ave.
- MP 21.59 – Swift Ave.

LIVE OAK (SANTA CRUZ COUNTY)

- MP 16.88 – 38th Ave.
- MP 17.21 – 30th Ave.
- MP 17.87 – 17th Ave.
- MP 18.42 – 7th Ave.

CAPITOLA

- MP 15.52 – Monterey Ave.
- MP 16.38 – 47th Ave.
- MP 16.75 – 41st Ave.

QUIET ZONE PLAN

- Minimum safety improvements to make at each at-grade crossing may include (and also not be limited to):
 - Automatic warning devices (lights and gates)
 - four-quadrant lanes & signage
 - LED flashing lights
- Level of protection determined by diagnostic team review
 - Required to assess collision risks at each crossing
 - Comprised of local government, railroad, and Caltrans
 - Team issues determination of additional measures needed
- Certification of the Quiet Zones
 - Local government certifies to FRA that risk reduction achieved
 - QZ takes effect after all safety improvements are made



PASSENGER EXCURSION PLAN

- PGR will work eagerly with authorities as part of the California State Rail Plan to relieve congested roadways and provide rail solutions for freight and passenger transportation. How tourist and commuter services differ or overlap will be an important aspect.
- Anticipating some public resistance in the Capitola to Santa Cruz corridor as train service is reinstated, our goal is to create an endearing proposition that is safe, green, quiet, and efficient. We favor nostalgic train designs, which we believe would respect the rich heritage of the area and the Boardwalk.
- Reinstating the Suntan Special will be a transformational project and will take several years to develop. PGR has already started these efforts and we believe we have a workable solution whereby we provide service between Watsonville Junction and Santa Cruz and the San Jose leg is provided by TAMC. PGR aims to work closely with the Boardwalk to provide package incentives to tourists.
- Recognizing it will take time to plan, educate the public, secure quiet zones, and execute the excursions we envisage, we plan to focus at the outset on the coastal rail west and north of Santa Cruz. We will call this route the Sunset Special, but will provide several offerings.



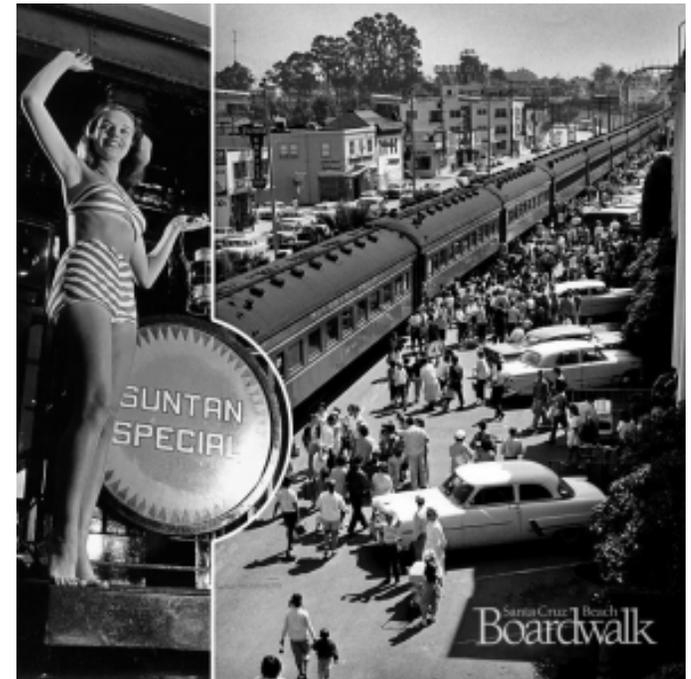
SUNTAN SPECIAL

- Travel seamlessly across an urban landscape that opens to a scenic coastline
- Enjoy the journey on modern, safe, clean, and comfortable trains
- Glide past traffic congestion on reliable
- Transfer quickly and easily between high-speed train and a PGR local train with coordinated arrivals and departures with significantly reduced wait times
- Plan entire door-to-door trips, and purchase a single ticket using a portal that coordinates with the Boardwalk ticket sales
- Coordinated planning and investments among railroads and the Boardwalk will ensure that rail operators will benefit from the strategies in this plan.
- Provides a new tourist attraction that is a throwback to a past era
 - Improves safety and reduces the demand on emergency responders
 - Lowers greenhouse gas emissions
 - Enhance livability for everyone.



SUNTAN SPECIAL

- Our goal is to reestablish the historic Suntan Special by providing weekend passenger service from San Jose Diridon station to the Santa Cruz Boardwalk via Watsonville Junction.
- Approach is to partner with Transit Authority for Monterey County (TAMC) and the Santa Cruz Boardwalk. Discussions with both parties have commenced.
- TAMC would provide service for the San Jose to Watsonville Junction leg. Passengers would cross platform to the awaiting PGR train, which would provide service to and from the Santa Cruz Boardwalk.
- Total travel time is expected to be 1:06 hrs for the 51 mile San Jose leg via TAMC and 1:15 hrs for the 20 mile Santa Cruz leg on PGR's train. Total travel time is 2 hrs 36 minutes assuming a 15 minute transfer at Watsonville Junction. The historic Suntan Special travel time was 2 hours for this route.
- Scheduled service initially would be one morning train to Santa Cruz and a return train late afternoon.
- Service would be expanded in response to demand.



Preliminary Timetable

	To Santa Cruz	
San Jose Diridon	07:30	
Watsonville Junction	08:36	08:51
Santa Cruz Boardwalk	10:06	
	To San Jose	
Santa Cruz Boardwalk	17:00	
Watsonville Junction	18:15	18:30
San Jose Diridon	19:36	



SUNTAN SPECIAL – TAMC LEG



- We believe Santa Cruz can benefit from TAMC's efforts on the Salinas Rail Extension project
- In discussions with Christina Watson, Principal Transportation Planner, at TAMC
- Alternative approaches that include PGR gaining trackage rights on the UP line or initiating negotiations with Caltrain to provide service are viewed as less optimal

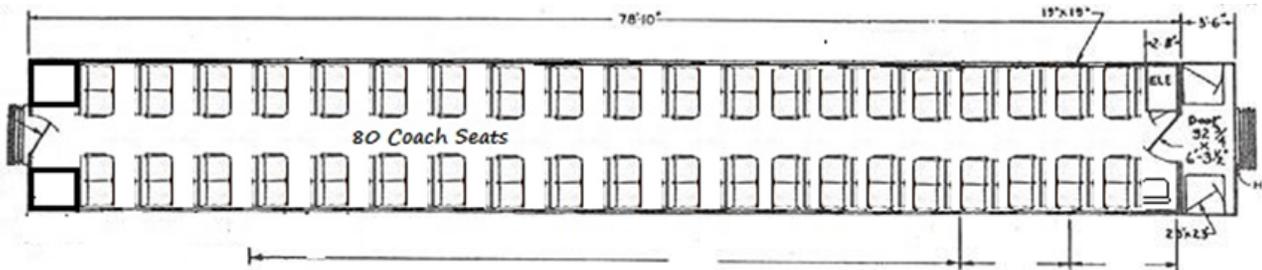
CONCEPTUAL LOCOMOTIVE

- In discussions with National Railway Equipment (NRE) to purchase fully refurbished quiet, N-ViroMotive hybrid diesel/electric gensets that can be configured with nostalgic covered wagon cowling.
- Approach is to set out a locomotive at each end of the train for ease of changing direction and for providing redundancy in the event of a power issue.
- The units are U.S. Environmental Protection Agency (EPA) Tier II certified using Tier III Off-Road certified industrial diesel engines.
- The N-ViroMotive product line is also recognized by the California Air Resources Board as Ultra-Low Emitting Locomotives.



CONCEPTUAL PASSENGER CARS

- Passenger car trainset design will comprise:
 - six coach fare cars,
 - two lounge class cars with observation domes,
 - a bar car in-between.
- Passenger cars have been identified in Florida, Connecticut, and Illinois.
- In discussions with Relco Locomotive in Albia, Iowa, to refurbish and modernize cars to provide wheelchair access.
- Train capacity would be circa 500 to 1,000 passengers depending on demand.



SUNSET SPECIAL

- Our goal is to launch a new excursion service to Davenport from Santa Cruz, using Wilder Ranch as a launch point until Quiet Zones east of Swift Street are established.
- Trainsets would be interchangeable with Suntan Special.
- Thematic excursions include:
 - Polar Express
 - Easter Egg Hunt
 - Pumpkin Patch
 - Picnic on the Beach
 - Sunset
 - Vino Veritas
 - Train Out Bike Back

Sharktooth



San Vicente

Bonny Doon



Bonny Doon

SUNSET SPECIAL

- We propose having an informal caretaker role in four beaches – San Vicente, Secret, Sharktooth, and Bonny Doon.
- We do not want to interfere with the role of government, but stand at the ready to improve the safety and experience of visitors in the Davenport area.
- Right now there are unsafe and unkept trails that are eroding. We think we can do better.
- With rail service to provide easy access, we anticipate higher levels of visitors. As such, we aim to preserve the natural beauty by providing safe passage down the cliffs, informative signage, and waste management.

From the current condition...



There is room for improvement.



San Clemente, CA examples of possible approaches.



BID PROPOSAL



5-YEAR FINANCIAL PLAN

Total Santa Cruz Scenic Railway Pro Forma Cash Flow

Variances are favorable/(unfavorable)
\$ in thousands

	Forecast 2018	Forecast 2019	Forecast 2020	Forecast 2021	Forecast 2022
FINANCIALS					
Revenues					
Switching	\$1,040	\$1,700	\$5,025	\$7,450	\$10,050
Transloading	\$18	\$46	\$68	\$91	\$137
Storage & Rental	\$105	\$174	\$508	\$752	\$1,016
Other	\$200	\$319	\$974	\$1,448	\$1,947
Total Revenues	\$1,363	\$2,238	\$6,575	\$9,741	\$13,149
Operating Expenses					
Transportation	\$232	\$380	\$1,118	\$1,656	\$2,235
Maintenance of Way	\$136	\$224	\$1,008	\$1,559	\$2,134
Maintenance of Equipment	\$27	\$45	\$412	\$663	\$918
Carload Connection	\$76	\$131	\$358	\$526	\$715
Administrative	\$204	\$336	\$986	\$1,461	\$1,972
Total Operating Expenses	\$676	\$1,116	\$3,882	\$5,865	\$7,975
EBITDA					
EBITDA Margin	50%	50%	41%	40%	39%
Capital Requirement	(\$2,595)	(\$3,767)	(\$4,767)	(\$1,017)	(\$767)
Cash Flow	(1,907)	(2,645)	(2,074)	2,860	4,407
Cumulative Cash Flow	(1,907)	(4,552)	(6,627)	(3,767)	640



5-YEAR FINANCIAL PLAN

Watsonville Freight Pro Forma Cash Flow

Variances are favorable/(unfavorable)
\$ in thousands

	Forecast 2018	Forecast 2019	Forecast 2020	Forecast 2021	Forecast 2022
FINANCIALS					
Revenues					
Switching	\$140	\$350	\$525	\$700	\$1,050
Transloading	18	46	68	91	137
Storage & Rental	15	39	58	77	116
Other	20	49	74	98	147
Total Revenues	\$193	\$483	\$725	\$966	\$1,449
Operating Expenses					
Transportation	\$33	\$82	\$123	\$164	\$246
Maintenance of Way	19	48	72	97	145
Maintenance of Equipment	4	10	14	19	29
Carload Connection	17	43	65	87	130
Administrative	29	72	109	145	217
Total Operating Expenses	\$102	\$256	\$384	\$512	\$768
EBITDA					
EBITDA Margin	47%	47%	47%	47%	47%
Capital Requirement	(595)	(267)	(267)	(267)	(267)
Cash Flow	(504)	(40)	74	187	414
Cumulative Cash Flow	(504)	(544)	(470)	(283)	132
CARLOADS					
Forecast	400	400	1,500	2,000	3,000
+/- vs Prior Year	na	na	500	500	1,000
% Change	na	na	50%	33%	50%



5-YEAR FINANCIAL PLAN

Excursion Trains toward Davenport Pro Forma Cash Flow

Variances are favorable/(unfavorable)
\$ in thousands

	Forecast 2018	Forecast 2019	Forecast 2020	Forecast 2021	Forecast 2022
FINANCIALS					
Revenues					
Switching	\$900	\$1,350	\$1,800	\$2,250	\$2,700
Transloading	-	-	-	-	-
Storage & Rental	90	135	180	225	270
Other	180	270	360	450	540
Total Revenues	\$1,170	\$1,755	\$2,340	\$2,925	\$3,510
Operating Expenses					
Transportation	\$199	\$298	\$398	\$497	\$597
Maintenance of Way	117	176	234	293	351
Maintenance of Equipment	23	35	47	59	70
Carload Connection	59	88	117	146	176
Administrative	176	263	351	439	527
Total Operating Expenses	\$573	\$860	\$1,147	\$1,433	\$1,720
EBITDA					
EBITDA Margin	51%	51%	51%	51%	51%
Capital Requirement	(1,500)	(1,000)	(1,000)	(250)	(250)
Cash Flow	(903)	(105)	193	1,242	1,540
Cumulative Cash Flow	(903)	(1,008)	(815)	427	1,967
CARLOADS					
Forecast	20,000	30,000	40,000	50,000	60,000
+/- vs Prior Year	na	10,000	10,000	10,000	10,000
% Change	na	50%	33%	25%	20%



5-YEAR FINANCIAL PLAN

Suntan Special Pro Forma Cash Flow

Variances are favorable/(unfavorable)
\$ in thousands

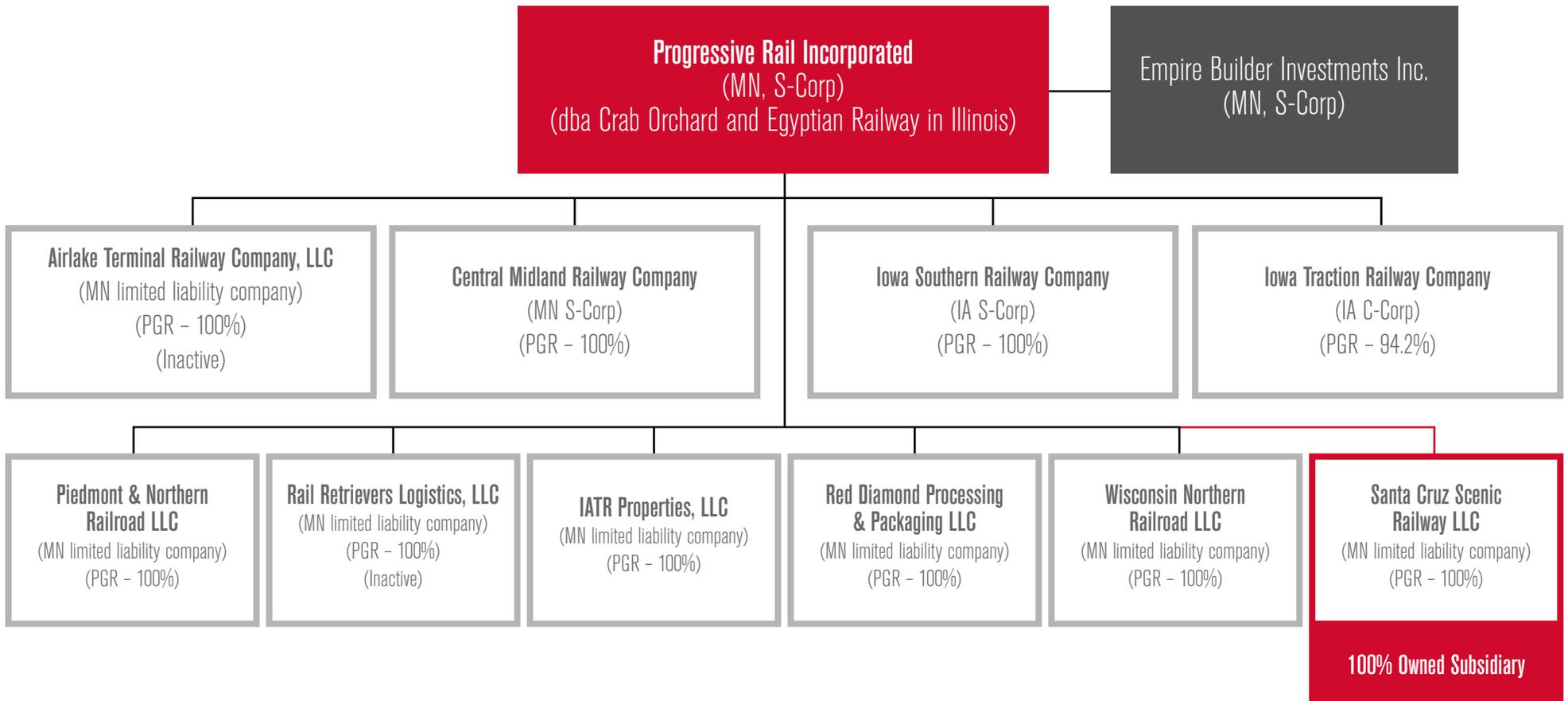
	Forecast 2018	Forecast 2019	Forecast 2020	Forecast 2021	Forecast 2022
FINANCIALS					
Revenues					
Switching	-	-	\$2,700	\$4,500	\$6,300
Transloading	-	-	-	-	-
Storage & Rental	-	-	270	450	630
Other	-	-	540	900	1,260
Total Revenues	-	-	\$3,510	\$5,850	\$8,190
Operating Expenses					
Transportation	-	-	\$597	\$995	\$1,392
Maintenance of Way	-	-	702	1,170	1,638
Maintenance of Equipment	-	-	351	585	819
Carload Connection	-	-	176	293	410
Administrative	-	-	527	878	1,229
Total Operating Expenses	-	-	\$2,352	\$3,920	\$5,487
EBITDA					
EBITDA Margin	-	-	\$1,158	\$1,931	\$2,703
Capital Requirement	(500)	(2,500)	(3,500)	(500)	(250)
Cash Flow	(500)	(2,500)	(2,342)	1,431	2,453
Cumulative Cash Flow	(500)	(3,000)	(5,342)	(3,911)	(1,459)
CARLOADS					
Forecast	-	-	60,000	100,000	140,000
+/- vs Prior Year	na	-	60,000	40,000	40,000
% Change	na	-	-	67%	40%



OPERATING CONTRACT

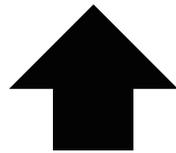
- Reviewed agreement with IPH dated September 27, 2012 and submit the following for consideration:
 - PGR is generally agreeable to the contract and its intent save the provisos discussed below.
 - Given the SCCRTC has experience with the contract, PGR is open to any proposed revisions that improve the contractual obligations, terms, and alignment between SCCRTC and PGR.
 - Regarding economics, we recommend increasing the operating term to 20 years or, conversely, a 10 year term with a 10 year renewal feature that is contingent upon PGR's being in full compliance and good standing.
 - We envisage making sizable investments to enable sustainable passenger rail service and anticipate the stakeholder alignment process taking two to three years. Peak investment levels will likely occur several years into the operating term and will require external financing. As such, investors will likely require at least a ten-year investment horizon from the time the investment is made.
 - Given the expected high-level of commitment and resources that PGR will put forth to reinstate a sustainable passenger service on the entire line, PGR will seek to protect that investment and is sensitive to any encroachment of other passenger operators that may enter onto the line.
- Reviewed agreement with Santa Cruz, Big Trees & Pacific Railway Company and understand their rights and have no concern about continued compliance.

LEGAL ENTITY AS OPERATOR



RESOURCE PLAN

	T&E	MOW	Signals & Crossings	Mechanical	Marketing	HSE & FRA Compliance	Business Development	Finance	Legal
Support Teams located in Lakeville, MN	Dustin Heichel	Leon Hoyt	Nik Shepard	Mike Sanders	Dave Fellon	Jason Welsh	TBA	Nick Dillon	Jim Thornton
Santa Cruz Scenic permanently posted locally	TBA-1 TBA-2				TBA-3				



Appointed GM is the single point of accountability

Convener for incident response



Team of Marketing professionals will support representative on the ground

On the ground team will be increased over 2018 in preparation for excursion trains. Vacation relief will be provided by the functional teams.



REFERENCES



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MOBILIZATION & START-UP PLAN

- From the contract award date, PGR will meet with SCCRTC immediately to make introductions and to agree a process to finalize and execute definitive agreements.
- A request for approval to become Operator will be submitted to the STB once the operating agreement is executed. STB approval (or non-rejection) is expected to occur in 30 days (the Closing Period).
- During the Closing Period:
 - PGR will invite SCCRTC officials to its headquarters in Lakeville, Minnesota, to showcase its operations and discuss how to best align PGR capabilities with SCCRTC priorities.
 - As permitted by SCCRTC, PGR will have introductory discussions with Santa Cruz Branch Line employees and IPH. PGR's objective is to retain Santa Cruz Branch Line employees with a working assumption that two dual-qualified engineers will be needed as the T&E team.
 - PGR will assign a "business unit leader" who will be singly accountable for conducting safe operations on the line and providing customer interface
 - PGR's marketing team will begin contacting existing and targeted new customers, and recruit a representative on the ground.
 - A transition plan will be prepared and implemented to ensure new employees to PGR are provided with a company orientation, Human Resource documents that include compensation and grade level assignments, benefits, employment contracts, and any training that is required.
 - We will mobilize a switcher locomotive and store it on a siding in Watsonville until a facility can be secured.



Letter 51

COMMENTER: Carol Long

DATE: August 10, 2018

Response 51.1

The commenter argues that Progressive Rail does not operate safely or with concern for public health and provides news articles from Wisconsin and Minnesota to support this position.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 52

From: [pall.marten](#)
To: [NCRT_Draft_EIR](#)
Subject: Streetcar to 4 mile ...
Date: Thursday, August 23, 2018 9:56:27 PM

Can't wait to hop on a rail-car to 4 mile ! What is the time-line on that one ?

52.1

Thanks for making rail travel possible again .

pall marten

Letter 52

COMMENTER: Pall Marten

DATE: August 23, 2018

Response 52.1

The commenter expresses support for passenger rail service to 4-Mile Beach and asks about the timeline for such service.

The Proposed Project does not include passenger rail service or improvements to the rail line. The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 53

From: [christy.martin](#)
To: [NCRT Draft EIR](#)
Subject: Comments on North Coast EIR
Date: Wednesday, September 05, 2018 2:53:46 PM

Hello, please include the following comments in the North Coast Rail Trail EIR public comments.

1. The Noise impact assessment determined that there would be no noise or vibration impact from Railroad Operations because the rail line is inoperable. Page 3.11-5 section "Railroad Operations" states that *"the Santa Cruz Branch Rail Line in the North Coast area has not been in regular operation since the Davenport Cement Plant closed in 2010 and thus generates no railroad operational noise."*

However, the contract that was recently executed with Progressive Rail will restore freight and passenger services over the entire line if the Unified Corridors Study recommendations include rail service. The assumption that there will be no rail operation is also inconsistent with page 2-6 which states that : *"In light of possible future use of the rail for freight or passenger service, the Proposed Project includes safety fencing described under Fencing below."*

The primary difference between the proposed plan and the alternative is the railroad tracks, and therefore the impacts from rail operation are a material fact in the evaluation. In order to perform an equitable analysis of the trail alignment options, it should be assumed that the proposed plan will include railroad service and make noise and vibration impact estimates based on the projected service levels in the Progressive Rail operating plan and/or the RTC Rail Feasibility scenarios. Estimates should include the impact on homes and businesses from the required train horn at the Highway 1 crossing.

Thank you
—Christy Martin
Santa Cruz City

53.1

Letter 53

COMMENTER: Christy Martin

DATE: September 5, 2018

Response 53.1

The commenter disagrees with the conclusion that there would be no noise or vibration impact from railroad operations, noting that the Project includes safety fencing because of potential future rail use.

The purpose of an EIR is to assess the impact of a proposed project on the environment by comparing potential changes caused by the project with existing conditions. In CEQA terminology this is referred to as the “baseline,” and typically represents the “physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published” [CEQA Guidelines §15125(a)]. Because there is no rail service in the North Coast area currently, it is appropriate to utilize a “no service” scenario as the baseline. However, the EIR also acknowledges that service could resume, with or without the project, in Sections 1.2.2 and 2.5 under *Rail Operation and Maintenance*. While the EIR project description acknowledges that fencing would be included “In light of possible future use of the rail for freight or passenger service,” this is required by the CPUC and represents sound planning, but not the baseline upon which impacts should be assessed.

Alternatives 1 and 3 would preclude future rail service in the North Coast area by removing portions of the rail line, but the Proposed Project and Alternative 2 would not. The commenter is correct that this is a fundamental difference between the Proposed Project and Alternatives 1 and 3. However, the noise and vibration associated with potential future rail service would not be appropriately characterized as an impact of the Proposed Project. Further, the cumulative noise levels including potential future rail operation are discussed in Section 4.1.12 of the Draft EIR.

No revisions to the Draft EIR are necessary.

Letter 54

From: [Ellen Martinez](#)
To: [NCRT Draft EIR](#)
Cc: ["Ellen Martinez"](#)
Subject: Proposed North Coast Rail Trail Project Draft Environmental Impact Report
Date: Sunday, August 12, 2018 5:31:53 PM

Hi Cory,

Thank you for the opportunity to review the North Coast Rail Trail Project Draft Environmental Impact Report.

I realize that the RTC has requested that comments are limited to environmental issues. I do appreciate that limitation and the purpose of the report. However, I choose to allow the very many environmentalists that reside in Santa Cruz County to provide those comments.

I believe the Project Objectives, as outlined, are logical and sound with the exception of Objective #3: "Develop the trail so future rail transportation service along the corridor is not precluded." I disagree with this objective as I believe we should not be using the trail for any future rail transportation service. Therefore, please delete this objective.

Alternative 1 (Trail Only) is the best option for Santa Cruz County. The railroad tracks and ties, which are currently in a decaying state, should be removed. The multi use trail could then be located on the rail bed.

I do believe it's important that the RTC takes a laser-focused approach to fixing our short-term priority issue (i.e., highway 1 traffic). Obviously, a long-term strategy and vision for transportation for the County is important. However, this long-term vision and plan should not over-shadow the ever-present highway 1 issue.

Please:

- Keep mass transportation on Highway 1.
- Fix the traffic issues on Highway 1 NOW so that South County residents can use the highway instead of creating congestion on secondary streets.
- Please make fixing highway 1 traffic the one and only priority for the RTC. All other initiatives should be secondary. Why?
 - o If a disaster occurred in Santa Cruz County, there would be no exit path out of the county.
 - o The traffic issue is affecting tourism, and therefore revenues for the businesses of Santa Cruz County.

Please demonstrate leadership and responsiveness by executing a fix to our highway 1 traffic issue.

Sincerely,
Ellen Martinez
ellen@ellenmartinez.com
Resident of Aptos

54.1

Letter 54

COMMENTER: Ellen Martinez

DATE: August 12, 2018

Response 54.1

The commenter disagrees with Project Objective #3, which calls for retention of the rail line, and expresses support for Alternative 1 (Trail Only). The commenter requests that RTC prioritize improvements on Highway 1.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 55

From: [joe.martinez](#)
To: [NCRT Draft EIR](#)
Cc: ["Joe Martinez"](#)
Subject: Proposed North Coast Rail Trail Project Draft Environmental Impact Report
Date: Monday, August 20, 2018 8:44:19 AM

Hi Cory,

Thank you for the opportunity to review the North Coast Rail Trail Project Draft Environmental Impact Report.

I believe Project Objectives #3 " Develop the trail so future rail transportation service along the corridor is not precluded." Needs to be removed from the list of objectives. I disagree with this objective as I believe we should not be using the trail for any future rail transportation service.

Alternative 1 (Trail Only) and Alternative 3 (Farmer's Alternative) are the best options for Santa Cruz County. The railroad tracks and ties, which are currently in a decaying state, should be removed.

Alternative 2 and 4 should not be considered and need to be eliminated.

Regards,

Joe Martinez
Aptos, Ca.



Virus-free. www.avast.com

55.1

Letter 55

COMMENTER: Joe Martinez

DATE: August 20, 2018

Response 55.1

The commenter expresses support for Alternative 1 (Trail Only) and Alternative 3 (Farmer's Alternative) and requests the elimination of Objective #3 from the Project Description.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Comments to the
 Santa Cruz County Regional Transportation Commission
 c/o Cory Caletti
 Senior Transportation Planner/Rail Trail Program Manager
NCRTDraftEIR@scrtc.org

Brian McElroy
 13 First Avenue
 Davenport, CA 95017

I am submitting the following comments to the North Coast Rail Trail Environmental Impact Report. I support the project, but do feel that significant improvements need to be made to maintenance of the trail and parking access.

PARKING:

Page 3.1-24 “The existing **unpaved parking area at Davenport Beach** would be **paved ... with access path to the proposed trail.**” I appreciate that the project planners incorporated previous suggestions regarding the parking area at the Davenport terminus. If the “daily peak use is estimated at 951 trail users” and the assumption is that half “average trail users would start at the northern section, traveling 3.75 miles and back”, then we believe the 54 spaces as shown in the diagram to be completely inadequate. We currently have the need for at least 100 parking spaces on busy weekends and this is before there are proposed new trail users. This discrepancy needs to be addressed. Lateral parking along the highway is not safe or acceptable. This parking area should have a gate which can be locked at night to deter late night beach party-goers consistent with State Park beach parking lots. In addition, the parking area west of the highway should include a designated and restricted space outside the gate for bus parking.

56.1

TRASH:

Page 3.1-26 The inclusion of trash/recycling containers and plans for routine maintenance for removing graffiti are all good, but it is imperative that an ongoing source funding and hiring for maintenance personnel be included in the EIR. Currently the dumpsters are often overflowing, so they need to be picked up more than once a week. It would be helpful if the project planners would identify the responsible agency for such maintenance, the expected frequency of service, and the staffing and budget available for these operations over time. If County Parks is subcontracted with an MOU, the level of service, and source of sustainable funding should be identified.

56.2

TOILETS:

Page 3.1-24 “**restroom facility in a prefabricated structure on a 12-foot by 18-foot pad.**” I appreciate that the project planners incorporated our previous suggestion that the parking area at the Davenport terminus include toilet facilities. Currently, Davenport businesses bear a disproportionate amount of the burden of meeting the needs of the general public for toilet facilities. A public restroom at this site will also reduce the amount of urination and defecation within the right of way and on the bluff lands and beaches. The EIR should provide more detail on the toilets - number of stalls, flush versus pit, etc.

56.3

The toilet facilities will only be used if they are maintained and regularly serviced and locked at night, consistent with State Park beach facilities. It would be helpful if the project planners, in

the response to comments, identify the responsible agency for such maintenance, the expected frequency of service, and the staffing and budget available for these operations over time.

56.3
cont.

3.6-Geology and Soils

Section 3.6 of the EIR analyzes the trail's impact on geological stability of the project corridor and the exposure to seismic and geological hazards. It does not address the effects of trail users on soil erosion and potential drainage issues. Trail users, including mountain bikers, will be veering off the trail, based on both Monterey and San Mateo coast trails usage. What is the expected impact of trail users on soil erosion and drainage rerouting? Are EV bikes and motorized skate boards permitted on the trail? If so, what will be the potential for increased soil erosion and drainage problems? These questions should be addressed and answered in the EIR.

56.4

3.12-Public Safety and Services

It is my understanding that the path is to be built to support emergency vehicles including fire trucks which will access the path to deal with injuries and medical emergencies. It is also my understanding that emergency vehicles require a surface 12 feet wide.

Thus, the first comment regarding Public Safety & Services ties back to Section 2(Description) where Figure 2-3b shows the Project path only 8 feet wide. This is inadequate with regard to a 12-foot width requirement for emergency vehicles. The Alternate 1 trail width descriptions on page 2-7 lists a typical path cross section as 10 feet—this would also be inadequate for emergency vehicles. The trail width description elsewhere in Section 2 lists 20 feet width a 12-foot wide path which is sufficient. Unless the emergency vehicles are going to travel partly on the path and partly on the shoulder on certain narrower sections of the path, the multiplicity of descriptions and figures needs to be corrected to the proper 12 feet throughout.

56.5

For the balance of Public Safety & Service topics the analysis seems to be the same—the EIR considers the only environmental impact to be new buildings/facilities. Apparently, head counts, vehicles and vehicle trips may be increased to serve the increase in injuries, medical emergencies and law enforcement without environmental impact. No forecast of head counts or call out data are provided in Section 3.12. to support a conclusion of no impact on emergency and law enforcement vehicles and personnel.

3.4-Biological Resources

The project description does not document how the project, by maintaining (presumably) the status quo with regards to lack of connectivity between watersheds transected by the project and the ocean, will affect the long-term recovery of threatened salmonids and coastal estuarine habitats. Watershed alteration due to diversions, culverts, channeling (all of which were done to originally create the rail line) is considered an important impediment to salmon recovery and small coastal estuarine integrity. Increasingly, CalTrans is considering how to mitigate these pocket estuary impacts in their redesign/repair of Highway 1 roadway where most estuaries in the Northern Santa Cruz County roadway were seriously damaged by infill, culverts, and diversion. The rail line likewise was created with little regard to the importance of these estuary habitats.

56.6

There is no evidence of consideration of improving ecological conditions across the watershed/ocean connections transected by this project (especially the San Vicente Creek, Liddell Creek, Laguna Creek and Majors Creek). How will the project improve/enhance

connectivity, particularly with regards to restoring estuarine habitats (e.g. San Vicente Creek watershed)? This should be addressed under the corridor and connectivity sections. How is connectivity currently impeded? How could connectivity be improved? Indeed, the rail corridor is considered a spatial LINK between features as opposed to a barrier, but for salmonids this is clearly not the case.

56.6
cont.

3.2-Agricultural Resources

Pesticide Use. The main pesticide used on north coast non-organic fields is a fumigant which is labelled as a carcinogen and can cause acute respiratory inhalation toxicity. Public exposure to the spraying of this and other chemicals must be addressed to minimize exposure to hikers and bikers on the trail. Adherence to spraying instructions on the label does not insure that areas sprayed may not keep people off the trail and away from chemical drift. Other options should be considered as Regulatory Settings permit spraying to simply be stopped as people walk or ride by the pesticide applicator.

56.7

5.13.23 200 foot buffer between agricultural and non-ag lands. It sounds like it is addressed but confusing due to federal vs local ordinances.

Food Safety: Indicates that farmers responsible for monitoring farmlands for human/animal wastes and must stop farming certain fields if contaminated. Burden is on the farmer which needs to be mitigated somehow.

The distance between bathroom facilities must be close enough for hikers and even small children to access, decreasing risk of contamination on the trail or farmlands. Presently there is a 5-mile stretch without restrooms.

3.8 Hazards and Hazardous Materials

Mitigation measures in the Hazardous Materials section refer to mitigation measures in the agriculture section. I have the following comments.

Mitigation Measure AG-3(c)

The mitigation measure refers to the "Trail Manager" as the responsible party to collect litter and manage solid waste. The Trail Manager is funded by the RTC. The project description does not clearly define any parameters for the funding of the trail or the Trail Manager. In addition, this mitigation measure does not adequately define what "... as needed" or "reasonable time frame" means in relation to the emptying of trash and the collection of trash along the trail. Trash and human waste along the trail is likely to be a significant issue with normal use of the trail and the additional impact of homeless people that will camp along the trail. Homeless people have hauled thousands of pounds of trash out along Highway 1 that has been cleaned up by CalTrans on a number of occasions. Large trucks were required to remove mattresses, shopping carts, tarps, tents, and all manner of waste and trash. Homeless people will see the bike trail as an opportunity to access areas away from town and move large amounts of material out to camps.

56.8

Current parking lots with waste disposal at Bonny Doon Beach, Davenport, and Davenport Landing are often covered with litter and the dumpsters are overflowing. The dumpsters are only emptied once per week and this is not adequate. The Trail Master will need resources to clean and haul solid waste more than once a week.

The funding for the trail manager must be better defined and secured and there must be adequate funding for regular trail clean up (example: twice weekly). The RTC cannot be allowed to underfund the maintenance of the trail and the removal of solid waste from the trail and parking areas.

AG-5. I do not see where the EIR addresses the possible impacts of pesticide application on trail users. AG-5 appears to argue that the EIR does not need to address the impact of pesticide use on trail users and I feel this assumption is wrong. There needs to be a system put in place where trail users are notified of pesticide applications while they are in progress. In addition, drift of pesticides is known to occur with wind born fog. Trail users will be subject to pesticide drift and this should be monitored. Interpretive signs should directly address how trail users can avoid pesticide exposure.

56.8
cont.

Letter 56

COMMENTER: Brian McElroy

DATE: September 21, 2018

Response 56.1

The commenter expresses an opinion that the proposed number of parking spaces would not meet demand, and that parking on the shoulder of Highway 1 is not safe or acceptable.

As described under Impact T-4 in Section 3.14, *Transportation/Circulation*, although the new trail users arriving by vehicles would increase demand in parking lots, sufficient overflow parking space would remain in informal parking lots on the shoulder of Highway 1 to accommodate the additional demand. Additional detail is provided in Appendix K. Proposed improvements to a pedestrian crossing of Highway 1 at Ocean Street also would improve traffic safety for pedestrians relative to existing conditions.

No revisions to the Draft EIR are necessary.

Response 56.2

The commenter requests that funding be identified for maintenance activities, including solid waste and graffiti removal.

Refer to **Master Response F** for a discussion of trail maintenance and funding. Regarding the frequency of solid waste removal, Mitigation Measure AG-3(c) in Section 3.2, *Agricultural Resources*, requires that solid waste be collected twice-weekly, or more often as needed to ensure that the trash and recycling receptacles do not overflow. The frequency shall be determined by the Trail Manager and may vary seasonally, with more frequent collection in the summer months when the trail is busy.

No revisions to the Draft EIR are necessary.

Response 56.3

The commenter requests more details regarding the number and type of toilet that would be installed in the restroom facilities and who would be responsible for maintenance of those facilities.

As stated in Section 2.4 under *Parking Lots* and Section 2.5, *Project Operation and Maintenance*, there would be up to two ADA-accessible toilets at the Davenport Beach Lot: North and Panther/Yellowbank Beach Lot. No restrooms would be provided at Bonny Doon Beach Lot. Trail and parking lot areas would be maintained and operated by RTC, likely through a contract with a private firm, State Parks, County Parks and Recreation, or some combination thereof through formal agreements. Specific agreements and funding methods have not been finalized. Also refer to **Master Response F**.

No revisions to the Draft EIR are necessary.

Response 56.4

The commenter expresses concern about the effects of trail users on soil erosion and asks whether EV bikes will be allowed on the trail.

Please refer to **Response to Comment 12.8** for a detailed discussion of these issues.

No revisions to the Draft EIR are necessary.

Response 56.5

The commenter states that the Project path shown in Figure 2-3b is 8 feet wide and the Alternative 1 path is 10 feet wide, which are inadequate for emergency vehicles. The commenter also states that there is no forecast of headcounts to support the conclusion of no impact on emergency and law enforcement.

Refer to **Response to Comment 12.13** regarding the required width for emergency vehicle access.

As described in Section 3.12.4, *Project Impact Analysis* (Public Safety and Services), the impact on emergency and law enforcement was determined “less than significant”, not “no impact”.

Section 3.12.3, *Methodology and Significance Thresholds*, in the Draft EIR provides an explanation of the methodology used for the impact analysis. As explained under *Significance Thresholds*:

“Notably, CEQA does not treat impacts on service ratios or responses times to be adverse effects on “the environment.” (*City of Hayward v. Board of Trustees of the California State University* (2015) 242 Cal.App.4th 833, 843.) Rather, what matters under CEQA is whether, in order to maintain adequate service ratios or response times, a city, county, or other service provider would have to build new or expanded physical facilities, which themselves could result in environmental effects. (*Id.* at pp. 843-844; see also *Goleta Union School Dist. v. Regents of University of California* (1995) 37 Cal.App.4th 1025, 1032-1033 [CEQA is not concerned with school overcrowding, which is a socio-economic effect, but is concerned with the impacts of school construction needed to alleviate overcrowding].) Thus, under CEQA, the environmental analysis relating to the provision of the above-mentioned services should be limited to possible construction-related impacts, if any, associated with the services.”

No revisions to the Draft EIR are necessary.

Response 56.6

The commenter’s question is about improving ecological conditions within the watersheds and coastal estuarine habitats of the Study Area, with particular concern given to habitat connectivity, to promote listed salmonid species recovery.

Refer to **Response to Comment 12.14**.

Response 56.7

The commenter states that the farms around the project site use a fumigant that is a carcinogen and can cause acute respiratory inhalation toxicity. The commenter states that the EIR should address public exposure of this and other chemicals to trail users. The commenter additionally expresses confusion over federal versus local ordinances as it relates to a 200-foot buffer requirement between agricultural and non-agricultural lands, and suggests mitigation for food safety to remove

the burden from the agricultural operators. Lastly, the commenter states that bathroom facilities must be close enough for hikers and small children to access, noting a five-mile stretch without restrooms.

The fumigant used in the North Coast area is Telone II. The active ingredient in Telone II is 1,3-Dichloropropane (1,3-D). In response to comment 16.5, text has been added to the end of the *Agricultural Pesticides* discussion in Section 3.8.1 to describe the potential health effects associated with 1,3-D. In addition, text has been added to the discussion under Impact HAZ-1 to reiterate these health impacts and to assess the potential for exposure of trail users to this material based on established MOE targets for short-term or acute ambient exposure. This additional analysis reiterates the conclusion for Impact HAZ-1, which is that exposure of trail users and maintenance personnel to pesticides and other agricultural chemicals would be less than significant with mitigation. As noted in **Response to Comment 12.9**, additional protection of the health of trail users would be provided by Mitigation Measure HAZ-1, as added to this Final EIR. The new recommended mitigation reads as follows:

Acting as responsible agency, the California Department of Parks and Recreation, in consultation with the Department of Pesticide Regulation (DPR), at the time of next renewal or extension of agricultural leases with North Coast farmers along the North Coast Rail Trail corridor, shall revise the current leases to include the following:

- Prohibition of pesticide application within 50 feet of a distance from the North Coast Rail Trail corridor sufficient to protect trail users
- Prohibition of pesticide application during public hours, which would be determined through coordination with State Parks, the Coastal Commission, and property owners
Consistent with DPR regulations, a requirement that pesticide use occur only at times of the day when public health and safety can be protected
- Requirement that, when spraying in areas within 100 feet of along the trail corridor, agricultural operations place temporary warning signs at reasonable points along the potentially affected portion of the corridor, to the extent consistent with state pesticide regulations.

The 200-foot buffer is a County of Santa Cruz requirement that does not apply to the Project due to federal preemption. For additional discussion of this 200-foot buffer, refer to **Response to Comment 16.6**.

Food safety impacts are discussed under Impact AG-3 in Section 3.2, *Agricultural Resources*. Mitigation includes the installation of “No Trespassing” signs; regular removal of solid waste and litter; and posting notices with information pertaining to food safety, including a reminder that dogs and horses are prohibited, and a notice that trail users are required to use restroom facilities, with the locations identified.

The distance between bathroom facilities is addressed in **Response to Comment 16.11g**. The Project includes two proposed restrooms – one at the Davenport Beach lot and the Panther/Yellowbank Beach lot – and there is an existing restroom at the Wilder Ranch Parking lot at the southern end of the trail. Although labor laws governing agricultural operators require a restroom within a walking distance of no less than five minutes, such regulations do not apply to the Project and would not be warranted given the transient nature of users. Given the presence of fencing, trespassing and associated direct impacts to farmland would be a relatively infrequent occurrence.

No revisions to the Draft EIR have been made in response to this comment. However, this response references revisions to the Draft EIR pertaining to 1,3-D and the addition of Mitigation Measure HAZ-1, added in **Response to Comments 12.9, 16.5 and 16.6**, respectively.

Response 56.8

The commenter is concerned about trash and waste on the trail and parking lots, and states that the project description does not clearly define funding parameters for trail maintenance, and Mitigation Measure AG-3(c) does not adequately define “as needed” or “reasonable time frame”.

Refer to **Master Response F** for a discussion of trail maintenance and funding. Regarding the frequency of solid waste removal, Mitigation Measure AG-3(c) in Section 3.2, *Agricultural Resources*, requires that solid waste be collected twice-weekly, or more often as needed to ensure that the trash and recycling receptacles do not overflow. The frequency shall be determined by the Trail Manager and may vary seasonally, with more frequent collection in the summer months when the trail is busy.

No revisions to the Draft EIR are necessary.

Letter 57

From: [Jack Nelson](#)
To: [NCRT Draft EIR](#)
Subject: Comments, NCRT Draft EIR
Date: Monday, September 24, 2018 4:59:36 PM

Dear Cory Caletti:

Here are my comments on the North Coast Rail Trail Draft EIR.

1. Coastal Access:

The Appendix A site plan sheets show some proposed closures of existing popular pedestrian crossings of the rail corridor. This needs further evaluation to avoid eliminating practical access to historically established and well-used beach access trails.

Possibly the most striking beach access trail to be closed off at its rail corridor crossing is shown on the lower half of Sheet 4. This is the principal access trail to Laguna Creek Beach, consisting of an old ranch road, much of it on a road surface of Santa Cruz mudstone. Users of this beach access trail currently park in the parking lot along Highway 1 at its intersection with Laguna Rd. (at the north end of the old Laguna Rd. loop, a very old version of Hwy. 1 that dips down into the faded out hamlet of Laguna). From the parking lot, beach trail users walk straight across Hwy. 1 and follow the trail that begins directly across from the north end of the parking lot, down to the wild beach. The highway crossing has adequate sight distance to observe oncoming vehicles and having a trail access directly across from the parking lot means visitors are not moved to go walking along the highway shoulder to any other point of access. This beach access is recognized by CA State Parks, which has its standard informational signage including “Laguna Creek Beach” at the crossing of the railroad tracks.

57.1

Yet, the plan on Sheet 4 shows this as “Existing informal pedestrian RR crossing to be closed.” Closing off this access to Laguna Creek Beach from Highway 1 is probably a planning oversight and would just tend to push beach visitors to concentrate at fewer sites elsewhere.

2. Mitigation of Highway 1 traffic:

The project plan of operation could consider adding some ongoing public outreach in MBSST informational materials (including online and in onsite signage) promoting why, how, and where to begin bicycling or walking from the MBSST sections within the City of Santa Cruz, thereby avoiding North Coast Highway 1 car travel. This promotional outreach aspect could be included as a required mitigation to reduce traffic impact from trail visitors accessing the trail along Highway 1.

57.2

Sincerely,
Jack Nelson
Santa Cruz CA
(831) 429-6149

Letter 57

COMMENTER: Jack Nelson

DATE: September 24, 2018

Response 57.1

The commenter expresses concern that closing access to Laguna Creek Beach from Highway 1 would push beach visitors to concentrate at fewer sites.

Refer to **Response to Comment 34.3a**.

No revisions to the Draft EIR are necessary.

Response 57.2

To reduce traffic impacts, the commenter suggests a mitigation measure for ongoing public outreach to promote bicycling and walking from MBSST sections in the city of Santa Cruz.

As indicated in Section 3.14, *Transportation/Circulation*, the Project would result in less than significant traffic impacts to Highway 1 under the existing plus Project scenario, and would be consistent with policies promoting multi-modal transportation. However, the suggested public outreach would incrementally reduce this already less-than-significant traffic impact by encouraging people to walk and bicycle to and from the proposed trail, instead of traveling by motor vehicle. This feasible mitigation measure would build on existing RTC efforts to incentivize active transportation, which include, but are not limited to: producing a Countywide Bike Map that shows all bike paths, bike lanes, and bike routes; funding Ecology Action's Bike to Work program which promotes bicycling throughout the County; and funding the County Health Services' Community Traffic Safety Coalition and Ride 'n Stride Program to improve traffic safety and education for active transportation users. In response to this comment, and to augment existing RTC efforts and further reduce the identified impact, a new Mitigation Measure T-1 has been added to Section 3.14, *Transportation/Circulation*, of the Final EIR. This measure requires the RTC to conduct ongoing public outreach to promote bicycling and walking from MBSST sections in the city of Santa Cruz. In addition, the RTC will add the proposed trail, when completed, to the Countywide Bike Map, showing its connectivity to the MBSST and other bicycle facilities. Cumulative traffic impacts to Highway 1 would be significant, however, as detailed in Section 4.1.15. This impact is primarily the result of deficient levels of service (LOS F) projected for study area intersections of Highway 1 in both 2035 and 2040. Because any worsening of existing traffic conditions would exceed the applicable Caltrans threshold, and mitigation to avoid an increase in vehicle trips on Highway 1 would not be feasible, the Project's contribution to a significant traffic impact was found to be cumulatively considerable. Mitigation Measure T-1 would not eliminate trips associated with the Project but could potentially eliminate some. Therefore, it has been added to Section 4.1.15 in Section 4.0, *Other CEQA Required Discussions*, to mitigate this cumulative traffic impact.

In response to this comment, Mitigation Measure T-1 has been added to Sections 3.14 and 4.1.15 of the EIR.

Letter 58

From: [NCRT Draft EIR](#)
To: [NANCY NICHOLS](#); [NCRT Draft EIR](#)
Subject: RE: response to Cory Caletti, Senior Trans Planner
Date: Tuesday, September 11, 2018 3:39:31 PM

Hello Nancy Nichols:

Thank you for your interest in the north coast rail trail project. I'm not sure how a 93-letter link is a deterrent from reading the DEIR but we certainly do apologize for the inconvenience.

We printed a limited number of hard copies in the interest of saving costs and since most people rely on electronic resources. Having said that, we do have a few copies left and I'd be happy to have a copy sent to the Scotts Valley library. Expect that to happen within the next few days. Best,

~ *Cory*

.....
[Cory Caletti](#), Sr. Transportation Planner/Rail Trail Program Manager
[Regional Transportation Commission](#)
831.460.3201

From: NANCY NICHOLS [mailto:nance130@comcast.net]
Sent: Sunday, September 09, 2018 12:20 PM
To: NCRT Draft EIR
Cc: Nancy Nichols
Subject: response to Cory Caletti, Senior Trans Planner

Dear Planner Caletti,

In reading the newspaper article about "Rail Trail" news... the link to get the Draft EIR is 93 letters long !!!

Whose idea was that? A simple link could have been supplied, I know. Why.. 93 letters, really ??? I am feeling

you don't want it read?

There are hard copies of the EIR are available in Watsonville, Davenport, Aptos, and Santa Cruz.

However - Felton, Scotts Valley, and Boulder Creek, no hard copies for review???? Why is that ?

58.1

September time line is right around the corner for input. Please send hard copies to Scotts Valley asap.

Thank you and do review with whom ever OK'd the 93 letter link ! Save us all some time.

Nancy Nichols

Ben Lomond

Letter 58

COMMENTER: Nancy Nichols

DATE: September 9, 2018

Response 58.1

The commenter objects to the length of the link to the EIR and the lack of available copies of the document in Felton, Scotts Valley and Boulder Creek. This comment was previously addressed by RTC staff on September 9, 2018.

The comment does not relate to the adequacy of the EIR or CEQA process, as CEQA says nothing about how many letters are permissible in a link to a website. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 59

From: [Ronnie Record](#)
To: [NCRT Draft EIR](#)
Subject: Comments on Draft Environmental Impact Report for proposed North Coast Rail Trail Project
Date: Thursday, August 16, 2018 10:14:24 AM

Greetings,

The draft EIR on the proposed North Coast Rail Trail Project arrives at some dubious conclusions and ignores some important factors.

The conclusion that "the Proposed Project would be environmentally superior overall" is dubious. Leaving rusting unused rails to further deteriorate is not environmentally superior to removing these hazards. Alternatively, repair/replacement of the rusting rails is costly and would serve to enhance the possibility of renewed rail freight service along this branch of the line - not environmentally superior to any of the trail only alternatives.

59.1

The draft report is flawed and obviously biased toward the "Proposed Project" - rail plus trail (even though that rail is in horrible condition) would be costly to replace, has little to no value as either a freight or passenger line, and is not desired by a majority of residents.

Please re-write this report using common sense - preserving those hazardous rails is definitely NOT the environmentally superior option.

Build a trail-only system between Santa Cruz and Davenport.

Thanks,
Ron Record
trailonly@ronrecord.com
522 Laurent Street
Santa Cruz, CA 95060

Letter 59

COMMENTER: Ron Record

DATE: August 16, 2018

Response 59.1

The commenter contends that the Proposed Project may not be environmentally superior to alternatives because leaving rusting rails in place on the train tracks would pose a hazard.

The commenter does not provide specific evidence that the existing metal rails, if retained, would cause hazardous conditions for people, even if the tracks become rusty. Please refer to Draft EIR Section 3.8.1, *Existing Conditions*, for a comprehensive discussion of hazards associated with historic rail use along the Project corridor. These hazards include residual chemicals and potentially asbestos and lead.

No revisions to the Draft EIR are necessary.

Letter 60

From: [joanne reiter](#)
To: [NCRT Draft EIR](#)
Subject: I write in support of Rail/Trail
Date: Thursday, August 09, 2018 10:39:46 PM

I write in support of the Rail/Trail project. It will benefit the people who live here and want a mode of transport other than an automobile. It might lessen traffic by getting travelers off the main roads. It will be a great recreational asset and tourist attraction.
Joanne Reiter Le Boeuf

60.1

Letter 60

COMMENTER: Joanne Reiter

DATE: August 9, 2018

Response 60.1

The commenter expresses support for the Proposed Project.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 61

From: [Linda Rosewood](#)
To: [NCRT Draft EIR](#)
Subject: Proposed project looks great!
Date: Friday, August 24, 2018 3:33:21 AM

Thanks for all the work and detail to explore "Alternative 1". Clearly it doesn't meet the project objectives. Let's keep the rails where they are until we know what to do with them. We need this trail ASAP.

Linda Rosewood

61.1

Letter 61

COMMENTER: Linda Rosewood

DATE: August 24, 2018

Response 61.1

The commenter states the opinion that Alternative 1 does not meet project objectives and suggests keeping the rails where they are.

The commenter's opinions are noted and forwarded to decision makers for consideration. It should be clarified, however, that Alternative 1 (Trail Only) would meet most of the Project objectives and reduce impacts to agricultural resources, as stated under *Trail Only* in Section 5.1, *Development of Alternatives*.

No revisions to the Draft EIR are necessary.

Letter 62

From: [Eric Sanford](#)
To: [NCRT Draft EIR](#)
Subject: Public comment segment 5 trail
Date: Thursday, August 09, 2018 6:54:07 PM

This should have been done 10 years ago!
Further delays will be responsible for more bicycle vs car fatalities.

Eric Sanford MD

62.1

Letter 62

COMMENTER: Eric Sanford

DATE: August 9, 2018

Response 62.1

The commenter expresses support for the Proposed Project and states that further delays would lead to more bicycle fatalities.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

North Coast Rail Trail EIR

Comments on Public Draft EIR

This includes written comments from the person below on the Public Draft Environmental Impact Report (EIR) for the North Coast Rail Trail project. Comments should be focused on the sufficiency of the EIR in identifying and analyzing the possible environment impacts of the project and ways to avoid or mitigate the significant impacts (CEQA Guidelines sec. 15201).

First and Last Name: BARRY SCOTT

Mailing Address: 260 RIO DEL MAR BLVD #23 Aptos 95003

Email Address: barry@coastalrail.org

Comments must be submitted in writing at the August 22 or 23, 2018, public meetings; emailed to NCRTDraftEIR@sccrtc.org; or sent to the address below by 5:00 PM on Monday, September 24, 2018.

**Cory Caletti, Sr. Transportation Planner
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, California 95060
NCRTDraftEIR@sccrtc.org**

Comments:

The rail line is active, permitted and recognized by the state and federal governments. This rail line offers great potential to take cars and trucks off the highway, reducing vehicle miles traveled and lowering greenhouse gas production. Please eliminate Alternatives one and three from consideration, keep the ~~the~~ rail line intact and protect our transportation options for the future. Rail and trail will serve more people.

63.1

Continued on back

Letter 63

COMMENTER: Barry Scott

DATE: August 22, 2018

Response 63.1

The commenter expresses support for future rail service, citing reduced vehicle miles traveled and GHG emissions, and requests Alternatives 1 and 3 be eliminated from consideration.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

From: [Barry Scott](#)
To: [NCRT Draft EIR](#)
Subject: NCRT Draft Public Comment
Date: Tuesday, September 25, 2018 4:16:39 PM

The proposed plan is superior for the following reasons:
Provides greater access to coastal features;
Features a wider trail with higher level of service;
Involves less disturbance of rail related sequestered chemical agents;
Prevents dangerous routing of trail to highway shoulders;
Preserves a 130+ year old historic railway route;
Prevent removal of an important working rail line with potential for clean rail transit in a the future.

64.1

Keep the rail line, build the trail in the coastal side of the tracks as in the original proposed plan.

Warm regards,

Barry Scott

--

Barry Scott
State Program Director
The NEED Project
Mobile: 209.482.5663
www.need.org

NEED is a new organization accepted to the Combined Federal Campaign.
Help support us! CFC# 69030
Not part of the CFC? Donate directly to us [here!](#)

Letter 64

COMMENTER: Barry Scott

DATE: September 25, 2018

Response 64.1

The commenter expresses support for the Proposed Project, citing coastal access, a wider trail, less disturbance of hazardous materials, safer routing, historic preservation, and retention of a rail line.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 65

From: [Pauline Seales](#)
To: [NCRT Draft EIR](#)
Subject: North Coast Trail
Date: Wednesday, September 12, 2018 7:13:35 PM

Please proceed with plans for the trail as soon as possible.

65.1

Letter 65

COMMENTER: Pauline Seales

DATE: September 12, 2018

Response 65.1

The commenter requests that RTC proceed with the Proposed Project as soon as possible.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Letter 66

From: [Contact Request Form](#)
To: [Regional Transportation Commission](#)
Subject: New submission from Contact Form
Date: Monday, September 24, 2018 3:36:07 PM

This Contact Request Form has been submitted by a member of the public to <http://sccrtc.org/contact-us/>.

Name
Janie Soito
Email
soitoj@yahoo.com
Subject
Support the North Coast EIR
Your Message
<p>I support the North Coast Project EIR as presented. I do not support removal of the tracks for several reasons:</p> <ol style="list-style-type: none">1. Removal decreases transportation options.2. Union Pacific still owns trackage in Davenport; they aren't going to allow track removal that would restrict rail access to the property.3. The Davenport Cement Plant Coastal Restoration and Reuse Plan will at some point require remediation of the 103-acre Cemex site. That remediation will require removal of thousands of truckloads of contaminated soil and scrap material. Removal by rail will be more economical and safe than removal by truck. Trucking all that material down Highway 1 on Mission Street and out onto the freeway will further increase the bottle neck that already exists.4. Leaving the tracks in place will ensure that someday, when rail service is extended beyond Santa Cruz, people will be able to extend their trip lengths by combining rail and bicycle/hiking trips. For example, I wouldn't be able to walk from Wilder to Davenport but I could take a train and then hike at San Vicente Redwoods. <p>I appreciate all the commitment and work that is displayed in this document.</p> <p>Sincerely, Janie Soito</p>

66.1

Letter 66

COMMENTER: Jane Soito

DATE: September 24, 2018

Response 66.1

The commenter expresses support for the Proposed Project and retention of the rail line, citing transportation options, future remediation of the Davenport Cement Plant, and longer trips from Santa Cruz.

The comment does not relate to the adequacy of the EIR or CEQA process. However, the comment is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

North Coast Rail Trail EIR

Comments on Public Draft EIR

This includes written comments from the person below on the Public Draft Environmental Impact Report (EIR) for the North Coast Rail Trail project. Comments should be focused on the sufficiency of the EIR in identifying and analyzing the possible environment impacts of the project and ways to avoid or mitigate the significant impacts (CEQA Guidelines sec. 15201).

First and Last Name: Whitney Perry

Mailing Address: PO 125, Davenport 95017

Email Address: _____

Comments must be submitted in writing at the August 22 or 23, 2018, public meetings; emailed to NCRTDraftEIR@sccrtc.org; or sent to the address below by 5:00 PM on Monday, September 24, 2018.

**Cory Caletti, Sr. Transportation Planner
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, California 95060
NCRTDraftEIR@sccrtc.org**

Comments:

I am concerned about homeless
encampments along the trail.

67.1

I prefer Alt. 2 to remove the rail tracks and
minimize impact on our wonderful farmers.
They're doing the real work.

67.2

I wish that dogs on leash was the rule.
"No-dogs" will undoubtedly be broken, and it would

67.3a

Continued on back



North Coast Rail Trail EIR



be better to provide doggie bags and
embrace that it will happen so lets
do it in a controlled way.

67.3b

Letter 67

COMMENTER: Whitney Perry

DATE: August 22, 2018

Response 67.1

The commenter expresses concern regarding possible homeless camps along the project corridor.

Illegal camping is addressed under Impact PUB-2 in Section 3.12, *Public Safety and Services*, and summarized in **Response to Comment 12.18**.

No revisions to the Draft EIR are necessary.

Response 67.2

The commenter expresses support for Alternative 1, citing reduced agricultural impacts.

As shown in Table 5-5 in Section 5.0, *Project Alternatives*, Alternative 1 (Trail Only) would be environmentally superior for agricultural resources. The commenter's preference for this alternative is noted and forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 67.3

The commenter expresses a preference for allowing dogs on leash, stating the opinion that the no-dogs policy would not be obeyed.

As stated in Section 2.5, *Project Operation and Maintenance*, dogs would be prohibited on the trail for consistency with current California State Parks Rules and Regulations (State Parks 2018). The potential for this rule to be disobeyed is addressed in the *Food Safety* discussion under Impact AG-3 in Section 3.2, Agricultural Resources. As stated therein, some users would be expected to bring dogs on the trail, either knowingly or unwittingly. If prohibited dogs depart the trail alignment and enter the adjacent agricultural areas, direct impacts to crops could occur through soil compaction, crop consumption, or bodily waste deposits. Mitigation Measure AG-3(D) requires that notices along the trail remind users that dogs are prohibited, consistent with State Parks regulations.

No revisions to the Draft EIR are necessary.

NORTH COAST RAIL TRAIL
DRAFT EIR PUBLIC MEETING

SANTA CRUZ COUNTY
REGIONAL TRANSPORTATION COMMISSION

SANTA CRUZ POLICE STATION
155 CENTER STREET, SANTA CRUZ, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

AUGUST 22, 2018; 5:45 P.M.

Court Reporter: Cary Blue LaTurno, CSR #9681, CRR, RMR

1 BRIAN PEOPLES: You want me to try first?

2 MS. CALETTI: -- if there is a specific comment
3 that underlies that question, we can -- it seems like we
4 want to go into the receiving-public-comments portion.

5 So I think what we will do is Shannon will have a
6 timer. We would like to ask folks to come up here and
7 make your comment. Line up there.

8 I believe Brian wanted to --

9 You, sir. You indicated your urgency.

10 BRIAN PEOPLES: I am not going to make it on that
11 timing.

12 I will give you the -- real quick. On your 68.1
13 analysis of property, agricultural to nonagricultural, you
14 said you used a satellite visual. We don't believe that
15 that really truly shows the loss of agriculture because a
16 lot of the access roads to the ags are going to be
17 blocked. So you can't do that with a satellite.

18 In your analysis, you didn't interview any of the
19 farmers or the operations. You didn't ask them. None of 68.2
20 our farmers were asked how were they impacted.

21 Did you ask them about your proposed solutions, if
22 that would -- if they felt those would work?

23 Did any of the -- the railroad, deeming it a
24 historical resource, what -- does that mean that we can 68.3
25 never replace those old railroad tracks?

1 Those old railroad tracks are not in the original
2 location. We all know that there were multiple occasions.

68.3
(cont'd)

3 So how did you come up with historical? How did
4 you deem that as a historical resource?

5 Do they have to remain forever?

6 Does that mean the entire branchline is a
7 historical record?

8 And I am going as fast as I can.

9 Tractors over trails. Did you look at how the
10 impact will be with a multi-ton tractor driving over those
11 trails with mud? The cranks are gone on 'em.

68.4

12 I am going as fast as I can.

13 Did you look at access to the trail?

14 If the trail is in the middle of the farmland
15 versus by the road, not on Caltrans property -- not on
16 Caltrans property. Our proposal was not on Caltrans
17 property but next to the road. It's easier access.

68.5

18 Did you look at the difference between accessing it
19 from the road versus in the middle of the trail?

20 And that trail now has fences on both sides.

21 And I'll end it because my time is up.

22 CORY CALETTI: Thank you.

23 Could you state your name.

24 BARRY SCOTT: My name is Barry Scott. I live in
25 Aptos.

1 I just want to say the rail line, while dis-used,
2 is active, permitted, recognized by the state and federal
3 governments. This rail line offers great potentials to
4 take cars and trucks off the highway, reducing vehicle
5 miles traveled, and lowering greenhouse gas production.

68.6

6 Please eliminate Alternatives 1 and 3 from
7 consideration, keep the rail line intact, and protect our
8 transportation options for the future. Rail and trail
9 will serve more people.

10 CORY CALETTI: Do we have anyone else who would
11 like to make a comment?

12 DAVID VAN BRINK: Sure. On the X?

13 Hi. I am David Van Brink.

14 Given that all the alternatives are essentially
15 tied to the environmental impact and the proposed solution
16 can begin sooner and preserves the rail resource, please
17 support the proposed plan.

68.7

18 CORY CALETTI: Could I get you to spell your last
19 name.

20 DAVID VAN BRINK: Sure.

21 CORY CALETTI: Thank you.

22 Do we have any other comments?

23 You do have the forms that were handed out. So you
24 are welcome to take those, fill them out now or send them
25 into the Commission or, like we indicated there, submit

Letter 68

COMMENTER: Court Reporter Transcripts, Santa Cruz

DATE: August 22, 2018

Response 68.1

The commenter expresses the opinion that conversion of agricultural property to nonagricultural use cannot accurately be made using satellite imagery because such imagery does not show agricultural access roads that would be blocked by the Project.

The conversion of agriculture to non-agricultural use was not determined by satellite imagery alone. As indicated in the *Methodology* discussion in Section 3.2.3 of the EIR, both Geographic information systems (GIS) and ArcGIS software were used to evaluate project impacts. Spatial data, including the DOC FMMP, were used by GIS analysts to identify Important Farmland (i.e., Prime Farmland, Farmland of Statewide Importance, and Unique Farmland) within the North Coast area. To calculate the direct permanent conversion of Important Farmlands to non-agricultural use, the acreage in the Project footprint was quantified and identified as being permanently converted to recreational use. Based on this data, impacts related to the direct conversion of Important Farmland to non-agricultural use were determined to be less than significant. Refer to Impact AG-1 in Section 4.2, *Agricultural Resources*, for additional information.

Impacts to farm access roads are discussed under Impact AG-4. As stated therein, the Project would eliminate some existing farm access roads, thereby necessitating the creation of a new farm road adjacent to the trail to provide continued access to farming. Mitigation Measure AG-4(a) requires that the RTC be responsible for the actual and reasonable costs to disconnect, dismantle, remove, reassemble, and reinstall agricultural utilities and infrastructure, including farm access roads. Additionally, Mitigation Measure AG-3(a) requires that construction staging areas not be placed in or directly adjacent to active agricultural areas and that access to staging areas shall not block or inhibit access to existing farmland or farm access roads.

No revisions to the Draft EIR are necessary.

Response 68.2

The commenter notes that North Coast Farmers were not consulted about agricultural impacts or mitigation measures.

The commenter is correct that the EIR preparers did not meet with North Coast Farmers to discuss agricultural impacts or mitigation measures. However, the North Coast Farmers received the EIR Notice of Preparation (NOP) and submitted a comment letter in response. EIR preparers utilized this letter, including the detailed appendix discussing potential farm and trail conflicts, to frame the analysis and included a detailed consideration of all issues listed therein.

Issues outlined in the North Coast Farmers' NOP letter that are analyzed in the EIR (primarily in Impacts AG-3 and AG-4) include: conflicts at crossings between agricultural roads and the proposed trail; conflicts at shared agricultural roads and trail segments, pesticide restrictions, unauthorized access to farm fields and associated public health concerns and impacts to farm utilities. Additionally, the North Coast Farmers' NOP letter is referenced as an information source for the number of farm vehicle trips at existing rail crossings (see reference to North Coast Farmers 2017 in

Section 3.2.1, just above *Pesticide Use*, in Impact AG-3 under *Food Safety*, and under Impact AG-4). The concerns of the North Coast Farmers, as presented in their NOP letter, are addressed in the EIR. Notably, the commenter did not point to any legal requirement under CEQA that EIR authors must interview all individuals who might have relevant information to offer about a project. The RTC knows of no such legal requirement.

It should also be noted that the State Parks Department, from whom the North Coast Farmers' lease their properties, was consulted throughout preparation of the EIR. In particular as it pertains to agriculture, Sheila Branon, Senior Park and Recreation Specialist, was consulted regarding peak harvest periods in the North Coast area. In addition, agricultural impacts and potential mitigation measures were discussed with the Agricultural Commissioner during an in-person meeting on February 14, 2018 and via email on February 22, 2018. Refer to Letter 8 to see the Agricultural Commissioner's comments on the Draft EIR, and Responses 8.2 and 8.3 to see how Mitigation Measures AG-5 and AG-3(e) were revised as a result.

No revisions to the Draft EIR are necessary.

Response 68.3

The commenter requests more information regarding the historical resource designation of the railroad tracks. The commenter states that the tracks are not in their original location, and asks why they are considered to be historical.

The approximately 7.5-mile Davenport Branch Line in the Project corridor was evaluated following best professional practices and guidance from the California Office of Historic Preservation, including Instructions for Recording Historical Resources (California Office of Historic Preservation 1995) and National Register Bulletin How to Apply the National Register Criteria for Evaluation (National Park Service 1997). Archival research conducted in support of the historical resources evaluation of this resource failed to identify any information that indicates that the rail line was relocated during its operation.

Under CEQA, impacts to historical resources occur when a resource is materially impaired, or its physical features are altered such that it can no longer convey the reasons for its historic significance. As indicated under Impact CR-1 in Section 3.5, *Cultural Resources* the Proposed Project would not visually obscure or directly demolish or remove the physical elements of the Davenport Branch Line. The introduction of new features, such as a fence and trail, would introduce a modern intervention to a rural and largely undeveloped landscape. This would result in a limited level of impairment of the resource, but result in a less than significant impact as Mitigation Measure CR-1(a) would require the provision of interpretive displays to convey the historical significance of the resources. Alternative 1 however would remove the railroad tracks and ties, materially impairing the historical resource and resulting in a significant and unavoidable impacts even with the incorporation of Mitigation Measures CR-1(a) and (b).

No revisions to the Draft EIR are necessary.

Response 68.4

The commenter asks whether the EIR considered the impact of tractors crossing the trails.

Yes. Impact AG-4 in Section 3.2, *Agricultural Resources*, discusses the impacts associated with relocating some farm-related infrastructure, including farm access roads and rail crossings. Mitigation Measure AG-4(b) requires that all trail crossings be designed to accommodate farm

equipment, including 19-foot wide ring rollers, and be paved with a surface that can withstand tractor grousers. This measure further requires the Trail Manager to clear excessive soil, mud, and other debris carried onto the trail by farm vehicles, as needed to ensure safe crossing by pedestrians and bicyclists.

No revisions to the Draft EIR are necessary.

Response 68.5

The commenter asks if access to the trail was considered, and notes that their proposal (Alternative 3) is easier access.

Yes, access to the trail was considered during development of the preliminary trail design, parking lot improvements and trail crossings, as described in Section 2.4, *Project Characteristics*, and shown in Appendix A. It is noted that the southern portion of Alternative 3 is closer to Highway 1 and thus may be easier access from Highway 1.

No revisions to the Draft EIR are required.

Response 68.6

The commenter states the opinion that the rail line offers the potential for removing vehicles from the highway, reducing VMT, and lowering GHG emissions. The commenter additionally states a preference for rejecting Alternatives 1 and 3.

The comment does not pertain to the adequacy of the EIR or CEQA process. The comment is noted and will be forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 68.7

The commenter expresses support for the Proposed Project.

The comment does not pertain to the adequacy of the EIR or CEQA process. The comment is noted and will be forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

NORTH COAST RAIL TRAIL
DRAFT EIR PUBLIC MEETING

SANTA CRUZ COUNTY
REGIONAL TRANSPORTATION COMMISSION

PACIFIC ELEMENTARY SCHOOL
BLUE MULTIPURPOSE BUILDING
50 OCEAN STREET, DAVENPORT, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

AUGUST 23, 2018; 5:45 P.M.

Court Reporter: Cary Blue LaTurno, CSR #9681, CRR, RMR

1 CORY CALETTI: So I am conscious about time and
2 receiving public comment. And, again, these are comments
3 that folks are encouraged to make on the --

4 KATE GIBERSON: On the record.

5 CORY CALETTI: -- on the record.

6 GRACE BLAKESLEE: I had two questions here about
7 parking, if you want to --

8 CORY CALETTI: Yeah. So -- let's see. Shannon has
9 our timer. Maybe somebody wants to turn a light on so we
10 can see a little bit better. But maybe folks that want to
11 make comments can line up right here, and Shannon will
12 hold our timer, and our court reporter will report for the
13 public record.

14 BRIAN PEOPLES: Brian Peoples with Trail Now. I am
15 part of the farmers' proposed alternative plan.

16 We want to point out that Table 5-2 --

17 Can I start over?

18 THE SPEAKER: Yes, please.

19 BRIAN PEOPLES: Thank you. I had a little
20 interruption. It was distracting me a little bit.

21 Anyways, 5.2, No. 1, continuous trail. You mark
22 this as no. No. We are continuous trail. The farmers is
23 an alternative, has all continuous trail.

24 No. 3, develop for future rail. That actually
25 shouldn't be a requirement here because a decision hasn't

69.1

69.2

1 been made on a train, and actually likelihood of a train
2 coming up the Davenport is very unlikely, as has been
3 indicated.

69.2
(cont'd)

4 Ocean views. You have this as no. Actually, ours
5 is up on -- our plan goes up, and you can actually see it.
6 We are not in the cul-de-sac. So that should be yes for
7 No. 4.

69.3

8 No. 5, maximum safety from roadways. That -- we
9 aren't on the highway. We are off the highway. There's
10 no possibility of vehicle. So it shouldn't be a no.

69.4

11 No. 11, you have all of them as no, which is it
12 will be completed by 2020.

69.5

13 The only one you have as yes is the proposed plan.
14 That's not true because the proposed plan will not -- you
15 will have a lot of legal challenges.

16 And actually the farmers' plan, you can begin
17 sooner because you don't have to deal with the railroad.
18 It's actually diverted.

19 Now, we want to offer a twelfth one -- a twelfth
20 one -- which is continuous access to the trail. The
21 problem right now when you have the trail going through
22 the middle of the farmland, how are the people going to
23 get from the road to the trail? They can only get to the
24 trail at certain spots. You want to enable them to access
25 it. Right? You don't want to have them walk across

69.6

1 farmland, slushing through. Trust me. I just -- my truck
2 just got stuck in Billy's farm. I was out there driving
3 around, and he is giving me -- so when we get back, I've
4 got to pull it out with a tractor. Or Billy does. But
5 it's crazy out there. So you can't have people walking
6 across the farm to get to the trail. So let's bring it
7 up, keep it on the farmland along the coast.

8 Thank you.

9 BOB GOODE: My name is Bob Goode. My family are
10 stewards of a ranch that's just outside of this property.
11 So it's just south of here. But we are next on the list.

12 I have not been contacted for comment about it, and
13 I've been following it a lot. I read Brian Peoples. The
14 other farmers that are on the coast here are a part of a
15 group, and I am connected to that group.

16 But we have a lot of concerns about the closeness
17 of a rail trail, a walk trail. We've had a rail there
18 forever and ever. It's worked very well. The farmer and
19 the rail works together.

20 But being owners of -- stewards of farmland, we
21 have to be aware of the public also. And because we are
22 the closest farm to housing and other things in the city
23 of Santa Cruz -- we are a part of the Marine Lab, and we
24 are a part of Shaffer Road Apartments, and through that
25 process, there's hold harmless and indemnifications that

69.6
(cont'd)

69.7

1 are recognized by the people that are close to there. So
2 something that wasn't addressed in the EIR are the rules
3 pertaining to construction or new construction in farmland
4 areas and the hold harmless and indemnifications. I think
5 you know what those are. But I think those are very
6 important points to be addressed.

7 There's a lot of other things that I think can be
8 thoroughly explored more as to farming. Farming is the
9 one -- is where this trail is now, this new pathway. I
10 will say that farmers are not against this in any way. We
11 want -- we need protection. When I say "we," the owners
12 of the land. If there is no farmer there, then the owners
13 of the land, they have to find something else to do with
14 it.

15 But I would ask that you would look at the trail
16 and the bike path along the highway. There's already one
17 there that runs right by our property. It works very
18 well. It's beautiful. And that is definitely an
19 alternative. It's one of the alternatives. It's not to
20 use maybe the rail path, but to explore the highway. And
21 maybe it zigzags in and out.

22 The impacts to the farmers is possibly a better
23 path because -- I will finish up -- there's less cost
24 involved potentially. There's no issue with the farmland
25 and such, and it's safer at times for the public not

69.7
(cont'd)

69.8

1 having to deal with windward -- you know, when there are
2 pesticides and things. We all have concerns about that.

69.8
(cont'd)

3 Thank you very much.

4 GAIL MCNULTY: Hi. My name is Gail McNulty. I am
5 a North Coast resident. I live up in Bonny Doon. And
6 I am also the executive director for Santa Cruz County
7 Greenways. So we are one of the organizations advocating
8 for using the actual rail corridor, to build the trail
9 rather than leaving the tracks there and putting the
10 trail next to it.

69.9

11 And many of the people in this room are some of the
12 few people that actually will use this part of the trail
13 for transportation, if it ever gets built.

14 My daughter just started school. This will be her
15 second year at middle school on the West Side. So she
16 would potentially ride this to and from school.

17 I just got an E-bike, which I would love to ride.
18 And I am actually one of those people that's pretty afraid
19 to ride anywhere in this county right now because it is
20 incredibly dangerous.

21 Also I'd like to bring up the fact that when this
22 EIR process was begun, the majority of these tracks were
23 out of service. I mean, not much had run down here since
24 the cement plant closed, and very little had run in the
25 entire county since the holiday train got shut down

69.10

1 because the trestle in Capitola was unsafe in 2016.

2 That's not the case anymore. There's now a
3 ten-year contract with Progressive Rail, as Mr. Mendez
4 mentioned. If you go to the Santa Cruz County Regional
5 Transportation Commission website, one of the top things
6 listed on there is that as of August 16, Progressive Rail
7 is officially operating on the tracks in Watsonville.

8 If you read that statement and get to the very
9 bottom of it, the very last sentence is incredibly
10 concerning to me. It says something to the effect of if
11 the unified corridor study comes out and says that we
12 would like to use these tracks for a purpose other than
13 rail, Progressive Rail can opt out of the contract. It
14 doesn't say that the RTC can cancel the contact. It says
15 Progressive Rail can opt out. I find that very
16 concerning.

17 I also find some of this EIR to be incredibly
18 ironic and very problematic when we think about the
19 unified corridor study that's currently going on and
20 supposedly looking at various uses of this rail corridor,
21 Soquel, Freedom, and Highway 1, because of some of the
22 ironic things that are being used in their logic.

23 First of all, they talk about the tracks over here
24 is a historic resource. I find that ironic because --

25 CORY CALETTI: We need to ask you to wrap up.

69.10
(cont'd)

69.11

1 THE SPEAKER: I am about to wrap up. I'll do it
2 really quickly.

69.11
(cont'd)

3 I find that ironic because the Capitola trestle
4 actually is listed in the National Register of Historic
5 Places since 1987, and they are openly talking about
6 taking that down as part of the construction to
7 accommodate freight trains.

8 One other thing, up here, the biological
9 resources --

69.12

10 CORY CALETTI: We need to treat everybody fairly.

11 THE SPEAKER: The tracks that are full of riparian
12 wetland and might have frogs, it would be nice to consider
13 the freight trains that could be running and how that
14 could affect those frogs.

15 CORY CALETTI: Thank you.

16 And who else do we have that would like to make
17 comment for the record?

18 BILLY RODONI: Sure. I'll make a comment. So I am
19 Billy Rodoni. I am a North Coast farmer.

69.13

20 And I wanted to let everybody know that the RTC
21 keeps talking about how they've had all of these meetings
22 with us, but they really have only had two meetings. And
23 we feel like a lot of the problems that we've addressed
24 with them, they haven't really given us good answers to
25 how they are going to fix the problems.

1 And, like, for instance, the mitigation for the
2 spraying, they talk about putting signage out, which is
3 not really realistic because for six months out of the
4 year, we are spraying out here every night or morning
5 maybe not on my ranch, but on somebody's ranch. So
6 signage is not going to work.

69.14

7 And I don't remember what you guys said on the
8 facilities, the bathrooms. I think you said that there
9 was two of them proposed on the whole stretch.

69.15

10 CORY CALETTI: I don't remember.

11 KATE GIBERSON: Two locations.

12 BILLY RODONI: Two locations. I want to know why
13 you guys are held to different standards than we are. We
14 have to have bathrooms within a quarter mile or a
15 five-minute walk for people on the farm. So why do you
16 guys get away with having two bathroom facilities on the
17 whole stretch? It doesn't make any sense.

18 So those are my comments.

19 CORY CALETTI: Thank you.

20 Anyone else?

21 So if nobody else has a public comment for the
22 record, then we'll just resume with some of the Q and A's.
23 Again, we are going to close the public comment period.
24 If you have additional comments, please jot them down.

25 All right. So we have a question regarding the

Letter 69

COMMENTER: Court Reporter Transcripts, Davenport

DATE: August 23, 2018

Response 69.1

The comment states that in Table 5-2, Alternative 3 was found not to meet project objective 1 (continuous trail), but it is a continuous trail.

As stated in Table 5-2, Project Objective 1 is “Provide a continuous public trail along the Santa Cruz Branch Line railroad corridor and connecting spur trails in Santa Cruz County (Master Plan objective 1.1)”. Alternative 3 was found not to meet this objective because the southern portion of the trail alignment is not within the Santa Cruz Branch Line rail road corridor.

No revisions to the Draft EIR are necessary.

Response 69.2

The commenter states that project objective 3 (develop for future rail) should not be a requirement because a decision hasn’t been made on the train.

Refer to **Response to Comment 21.15**. Also refer to **Response to Comment 21.13** regarding the extent of the RTC’s discretion in formulating and interpreting project objectives.

No revisions to the Draft EIR are necessary.

Response 69.3

The commenter states that their plan (Alternative 3) should be a yes for meeting project objective 4 (ocean views).

Refer to **Response to Comment 21.14**. Also refer to **Response to Comment 21.13** regarding the extent of the RTC’s discretion in formulating and interpreting project objectives.

No changes to the Draft EIR are necessary.

Response 69.4

The commenter states that their plan (Alternative 3) is not on the highway and should not be a no for meeting project objective 5 (maximum safety from roadways).

Refer to **Response to Comment 21.16**. Also refer to **Response to Comment 21.13** regarding the extent of the RTC’s discretion in formulating and interpreting project objectives.

No changes to the Draft EIR are necessary.

Response 69.5

The commenter states that only the proposed project and none of the alternatives meets project objective 11 (complete by 2020), but this is not true because the proposed plan will have legal challenges and the farmers’ plan can begin sooner.

Refer to **Master Response D**.

Response 69.6

The commenter suggests a twelfth project objective which is continuous access to the trail and asks how people are going to get from the road to the trail.

Refer to **Response to Comment 21.22**. Also refer to **Response to Comment 21.13** regarding the extent of the RTC's discretion in formulating and interpreting project objectives.

Response 69.7

The commenter states the EIR should address the rules pertaining to construction in farmland areas, including how those rules relate to indemnification agreements that already apply to these areas.

Hold harmless and indemnification agreements are discussed in **Response to Comment 16.9**.

No revisions to the Draft EIR are necessary.

Response 69.8

The commenter states that farmers need protection and requests consideration of an alternative that would place the trail along the highway (the Farmers' Alternative). The commenter expresses preference for this alternative, citing lower costs, fewer agricultural impacts, and less potential exposure to pesticides.

Impacts to agriculture are discussed in Section 3.2, *Agricultural Resources*, and impacts from pesticide exposure are addressed in Section 3.8, *Hazards and Hazardous Materials*. Costs of implementing each alternative are outside the scope of CEQA.

The comment does not pertain to the adequacy of the Draft EIR or CEQA process. However, the commenter's preference for the Farmers' Alternative is noted and will be forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 69.9

The commenter introduces themselves as a North Coast resident and notes that meeting attendees and her daughter may use the trail. The commenter also notes they are associated with Santa Cruz County Greenways, and advocates for Alternative 1 (Trail Only).

The comment does not pertain to the adequacy of the Draft EIR or CEQA process. The comment is noted and will be forwarded to decision makers for consideration.

No revisions to the Draft EIR are necessary.

Response 69.10

The commenter states that the majority of these tracks were out of service when the EIR process began, and there's now a 10-year contract with Progressive Rail that states they can opt out of the contract (but it doesn't state RTC can opt out) if the unified corridor study says the tracks would be used for another purpose.

Refer to **Master Response E**.

Response 69.11

The commenter questions the historical resource classification of the North Coast tracks.

As discussed in Section 3.5, *Cultural Resources*, the approximate 7.5-mile segment of the Davenport Branch Line in the Project corridor is historically significant for its direct association with the Santa Cruz Portland Cement Company in Davenport and its embodiment of a unique construction method relating to its earthen trestle embankments. As such, it is eligible for listing in the NRHP, CRHR, and as a Santa Cruz County Landmark under Criteria A/1/2 and C/3/3, and is considered a historical resource under CEQA. The reasons for this classification are further described in Section 3.5, *Cultural Resources*.

No revisions to the Draft EIR are necessary.

Response 69.12

The commenter inquires as to the impact of freight trains on wetlands and frogs along the tracks.

This EIR is not assessing the potential impacts of utilizing the existing tracks for freight trains, but rather those associated with the Proposed and Alternative trail alignments. Both ditch wetlands and CRLF are present along the tracks and these resources would be impacted by the development of the tracks and immediate surroundings. Also refer to **Master Response E** regarding rail use.

No revisions to the EIR are required.

Response 69.13

The commenter states that the RTC claims to have had a lot of meetings with the farmers but there have only had two.

RTC and CFL met with the north coast farmers at Wilder Ranch State Park on February 25, 2016, and May 23, 2016, as part of an environmental scoping process. During this time, CLF staff met individual farmers in the field along the railroad tracks to discuss issues, concerns, and elements of the proposed project. The farming community has also had opportunity to attend public workshops held during development of the Monterey Bay Sanctuary Scenic Trail Network Master Plan, as well as the environmental compliance process for the North Coast Rail Trail EIR.

No revisions to the Draft EIR are necessary. Also refer to **Response to Comment 68.2**.

Response 69.14

The commenter states that signage is not a sufficient mitigation for chemical exposure, because chemicals are sprayed on the farms consistently throughout much of the year.

Mitigation Measure AG-5 first requires that the Trail Manager develop a list of “pesticides of primary concern” in consultation with the Agricultural Commissioner. The notification and signage requirements would only apply to those pesticides, and thus would not be required for every pesticide or chemical applied to North Coast crops. The Agricultural Commissioner was consulted when preparing this measure and provided comments on the Draft EIR (refer to Letter 8). In that letter, the Agricultural Commissioner agreed Mitigation Measure AG-5 would help mitigate identified impacts but suggested removing the Agricultural Commissioner from the notifications so

that the communication would occur directly between the farmers and the Trail Manager. This edit has been made to Mitigation Measure AG-5 in Section 3.2, *Agricultural Resources*, so one of the notification steps has been removed.

It should also be noted that a new recommended Mitigation Measure HAZ-1, added in response to comment 16.6, would prohibit pesticide application within a distance from 50 feet of the North Coast Rail Trail corridor sufficient to protect trail users, and require that pesticide use occur only at times of the day when public health and safety can be protected as well as during public hours of the trail, which would be determined through coordination with State Parks, the Coastal Commission, and property owners.

Response 69.15

The commenter questioned why fewer bathrooms are proposed for the project than the number of bathrooms required of farmers for workers.

Transient transportation facilities are not required to provide bathrooms as employment locations are required to provide for workers. The two proposed bathrooms, in addition to an existing one at the Wilder Ranch parking lot, will provide a total of 3 bathrooms over a 7.5-mile trail length.

No change to the EIR is needed.