

AGENDA: June 14, 2018**TO:** Regional Transportation Commission (RTC)**FROM:** Luis Pavel Mendez, Deputy Director**RE:** Operating Agreement with Progressive Rail

RECOMMENDATIONS

Staff recommends that the Santa Cruz County Regional Transportation Commission (RTC) approve the attached Administration, Coordination and License Agreement with Progressive Rail ([Attachment 1](#)) for rail operations on the Santa Cruz Branch Rail Line as negotiated over the past five months working with the RTC and its ad-hoc committee, ~~and~~ authorize the Executive Director to execute the agreement, ~~and~~ [issue a California Environmental Quality Act \(CEQA\) notice of exemption \(Attachment 4.\)](#)

BACKGROUND

In 2012, after more than a decade of active negotiations with Union Pacific (UP), substantial due diligence work, and securing funding from the California Transportation Commission (CTC) with conditions, the Regional Transportation Commission (RTC) selected Iowa Pacific Holdings (IPH) to operate on the Santa Cruz Branch Rail Line and completed purchase of the Santa Cruz Branch Rail Line from UP. Unfortunately, the financial situation for IPH changed significantly over time and IPH became unable to fulfill all the terms of the administration, coordination and license (ACL) agreement. Therefore, the RTC provided IPH with a 30-day notice of default. IPH responded with a letter committing to work with the RTC on transitioning the operation to another operator selected by the RTC.

In December 2017, the RTC released a request for proposals (RFP) for a rail service operator and received five proposals from Trail Now, California Coast Railroad, Railmark, Santa Cruz Big Trees and Pacific Railway and Progressive Rail. After review of the proposals, in January 2018, the RTC selected Progressive Rail to begin negotiations for an operating agreement with the following approved motion:

“select Progressive Rail as the preferred entity potentially to operate rail service on the Santa Cruz Branch Line for purposes of negotiating a draft operating agreement, direct staff to return to the Commission if legally required interim actions are necessary, and finally, authorize the Executive Director to negotiate a draft agreement with Progressive Rail and return to the RTC for consideration of the negotiated agreement with the understanding that the RTC will consider final adoption of the agreement after the Unified Corridor Study is completed and acted upon.”

Over the past five months the RTC has been negotiating an agreement with Progressive Rail, conducting extensive due diligence including a trip to visit several Progressive Rail operations, and receiving public comments on the consideration of Progressive Rail as the next rail service operator on the Santa Cruz Branch Rail Line.

DISCUSSION

Due Diligence

The Progressive Rail proposal demonstrated the greatest strength to take over the existing operation from Iowa Pacific Holdings, develop the freight business and implement passenger excursion operations. This will ensure that the RTC, as the owner of the rail line, meets its obligations to the California Transportation Commission, Caltrans, the Surface Transportation Board, the Federal Railroad Administration, the California Public Utilities Commission and the local businesses and members of the community who depend on rail service.

The RTC also checked a variety of references for Progressive Rail including Union Pacific, the Federal Railroad Administration (FRA) and the North Carolina Department of Transportation (NCDOT.) NCDOT owns a rail line on which Iowa Pacific Holdings (IPH) was operating. Due to difficulties with IPH, NCDOT removed IPH and installed Progressive Rail. NCDOT reported great satisfaction with the operations and service provided by Progressive Rail as well as their sensitivity to and economic investment in the local community. Union Pacific communicated a very positive relationship with Progressive Rail and the FRA said that they have no complaints or concerns regarding Progressive Rail's operations anywhere in the country. Other references also expressed positive comments regarding Progressive Rail's operations. Reference checks were conducted with individuals and organizations that were not on the reference list provided by Progressive Rail.

In addition to evaluating Progressive Rail's written proposal and checking a variety of references, Commissioner Ed Bottorff and Executive Director George Dondero traveled to the Mid-West and met with Progressive Rail's (PGR) management team, employees, customers, partners, and various members of communities where PGR currently provides service. Visits were made over three days in March 2018 to three different rail lines owned and operated by PGR in Lakeville, Minnesota; Chippewa Falls, Wisconsin; and Mason City, Iowa.

The due diligence trip confirmed in many ways that Progressive Rail has a capable team with the ability and desire to deliver what they envision for a rail line. Numerous interviews provided a consistent impression of a team of people with energy, integrity and respect for their employees and the communities where they operate. They have a track record of finding ways to serve existing local businesses, developing new ones, and providing services integrated with the rail service. One example is the trans-load facility at the PGR headquarters in Lakeville, Minnesota. Warehouse space is leased to businesses that can save money by taking delivery of materials shipped via rail (as opposed to truck), and can keep these

materials on site until needed by leasing space in the warehouse. Products as diverse as milled hardwood lumber, rolls of corrugated paper, and coils of aluminum were visible during the visit. The trans-load facility is a model that has been duplicated in two other locations, and is planned for Watsonville in 2019.

Operating Agreement

The RTC completed its negotiations on the draft operating agreement (Attachment 1) and released it for public review on May 9, 2018. The agreement is 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 prevents access to the remainder of the line until repairs are made. RTC is working with engineers, contractors and permitting agencies to make those repairs as soon as possible.

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 ten more years and will include the entire length of the 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.

California Environmental Quality Act (CEQA) Analysis

RTC legal counsel reviewed the application of the California Environmental Quality Act (CEQA) to the RTC's decision to enter into an operating agreement with a rail service operator and concluded the following:

1. Recent court decision interpreting CEQA hold that CEQA does not apply to the operation of freight service on the Santa Cruz Branch Line by a private operator under the privately-held freight easement and where the operator must also obtain authority from the Surface Transportation Board (STB) to be the exclusive common carrier operator.
2. The "Class 1" categorical exemptions from CEQA under Title 14 of the California Code of Regulations("CEQA Guidelines"), section 15301, exempts the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration" of existing rail operations and facilities. RTC's approval of the ACL agreement is also exempt pursuant to the "Class 2" categorical exemption in CEQA Guidelines section 15302, which exempts "replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced." There are no unusual circumstances that would exclude the approval of the ACL from these exemptions.
3. Public Resources Code section 21080(b)(10) also exempts from CEQA review: "A project for the institution or increase of passenger or commuter services on rail

or highway rights-of-way already in use, including modernization of existing stations and parking facilities.”

Questions and Concerns

Since the RTC began considering Progressive Rail as the potential new operator in January 2018, the RTC has received questions and comments from the public. Progressive Rail representatives have been at two RTC public meetings to address questions and comments from the RTC and the public. Progressive Rail representatives will also attend the June 14, 2018 meeting of the RTC. Some of the questions and concerns that have come up include:

1. *Does the RTC have an obligation to ensure that there is freight rail service on the rail line?*

RTC Legal Counsel Brooke Miller has provided information to the RTC regarding that question and recently communicated with a member of the public (Ryan Whitelaw) regarding that specific question from a legal perspective. The RTC Legal Counsel communication with Ryan Whitelaw is included as Attachment 2.

The rail line is a transportation facility that serves local businesses who employ members of the community and who depend on the freight rail service. Therefore, as a responsible owner of this facility, it is incumbent on the RTC to work to ensure that the local community is receiving the service that it needs and that this community asset is being adequately operated and maintained.

2. *There is no urgency to enter into an agreement with a new rail operator so the RTC should not enter into an agreement with PGR until the Unified Corridor Study is completed and the RTC acts on it.*

Unfortunately, Iowa Pacific Holdings (IPH) has become a very unreliable provider of freight rail service due to its financial situation. IPH continue to increase debt to the RTC by continuing to store cars on the rail line (close to 200 cars currently) without paying the RTC (about \$80,000 in fees is owed to the RTC) and not addressing maintenance and repair needs on the rail line. Recent communications with the Federal Railroad Administration (FRA) have revealed that a number of track defects identified by the FRA have gone unaddressed for months. The FRA communicated that while these are not defects that warrant an immediate shut down of the rail line, they need to be addressed. The FRA also communicated that penalties may be levied on IPH for other issues. An FRA representative communicated that considering the problems with IPH it is very good that the RTC is working to secure a new operator soon.

Communications with IPH have confirmed that the track has a number of defects and that the track defects over the Pajaro River bridge have prevented them from operating for a number of weeks. IPH states that they have been working to address the issues but have not been able to do so. RTC staff learned that local track contractors are currently quite busy but contractors are also unwilling to extend any credit to IPH due to unpaid invoices. In addition to the track

defects, IPH's locomotive is currently out of compliance with FRA requirements because it has not yet had the most recently required inspection. RTC staff has learned that one local business, Big Creek Lumber, is currently being affected by IPH's inability to operate. Kevin Busath, Vice President of IPH, communicated that considering the challenges that IPH is facing, it is in the best interest of everyone involved to establish a new operator for the rail line as soon as possible.

The operating agreement negotiated with Progressive Rail (PGR) includes a provision that would make it possible for PGR to leave, if the RTC decides to remove the track after the completion of the unified corridor study.

- 3. Progressive Rail has ties to the petroleum industry and will likely use those ties to transport petroleum based fuels through Santa Cruz County to the detriment of the local community and the environment.*

There are no petroleum refineries in Santa Cruz County. There are no locally produced petroleum based fuels and no distribution facilities. As long as that is the case such fuels will need to come to Santa Cruz County by truck, train or pipe. Many trucks now travel throughout the entire county and through the county on state highways and local roads to deliver such fuels. A number of studies have shown that delivering by rail is much safer than delivering by truck for both humans and the environment. In addition, Santa Cruz County has prohibited new oil development in the County and the voters have prohibited any on-shore facilities for off shore oil drilling.

- 4. RTC staff was communicating only with Progressive Rail prior to the release of the request for proposals (RFP) for a rail service operator, demonstrating a biased and unfair process.*

Members of the community who have expressed this concern and pointed to email communication between RTC staff and Progressive Rail obtained through a public records request, requested only the communication with Progressive Rail. It is quite common for any companies interested in contracting with the RTC to reach out to RTC staff prior to the issuance of any RFP's and staff meets with those companies as available.

All of the proposers for rail service had communications with RTC staff prior to the release of the RFP expressing their interest in the Santa Cruz County operations. Railmark submitted a proposal in 2012 and was not selected. Since then Railmark has regularly communicated with RTC staff expressing their continued interest. California Coast Railroad representatives also communicated with RTC staff over at least a couple of years expressing their interest in the rail operations. In March of 2017, RTC staff met with California Coast Railroad representatives, at their request, where they presented their vision for rail operations in Santa Cruz County. Trail Now representatives have also communicated via email, phone conversations and face-to-face meetings their interest in the rail operations. RTC staff also communicates regularly and periodically meets with representatives of Santa Cruz Big Trees and Pacific

Railway to discuss their operations, coordination with IPH and any interest in operations on the Santa Cruz Branch Rail Line. Other potential operators who received the RFP but did not propose also expressed interest at different times to RTC staff prior to the release of the RFP.

Other questions and concerns have also been submitted to the RTC. RTC staff is preparing a list of those questions and concerns with responses and will be posted on the RTC website prior to the June 14th RTC meeting.

Staff recommends that the RTC **approve the attached Administration, Coordination and License Agreement with Progressive Rail (Attachment 1) for rail operations on the Santa Cruz Branch Rail Line as negotiated over the past five months working with the RTC and its ad-hoc committee, ~~and~~ authorize the Executive Director to execute the agreement, ~~and issue a California Environmental Quality Act (CEQA) notice of exemption (Attachment 4).~~**

If the RTC executes the agreement, the activities listed below will follow:

- Develop and implement a transition plan with Iowa Pacific Holdings which includes transition of freight rail operations easement and rail operating agreements;
- Submit required filings to the Surface Transportation Board (STB) with new operator;
- Submittal of new letters of responsibility showing the selected rail operator as the party responsible for rail operations and railroad infrastructure maintenance and inspections; and
- Begin operations on Branch Line under new operator.

SUMMARY

When the RTC purchased the Santa Cruz Branch Rail Line in 2012, the RTC also selected Iowa Pacific Holdings (IPH) to provide rail service operations on the Branch Line. IPH is no longer meeting its obligations under the agreement with the RTC; therefore, the RTC released a request for proposal and selected Progressive Rail to negotiate a new operating agreement. The RTC completed negotiations on a draft agreement and released it for a 30-day public review period. Staff recommends that the RTC ~~adopt the attached resolution~~ approveing the negotiated an operating agreement with Progressive Rail and issue a CEQA notice of exemption.

Attachments:

1. Negotiated Administration, Coordination and License agreement
2. Communication regarding RTC obligation for freight rail service
3. Comments from the public on agreement with Progressive Rail
- ~~3-4.~~ California Environmental Quality Act (CEQA) notice of exemption

ATTACHMENT 1

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*

de minimis 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 minimis* 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

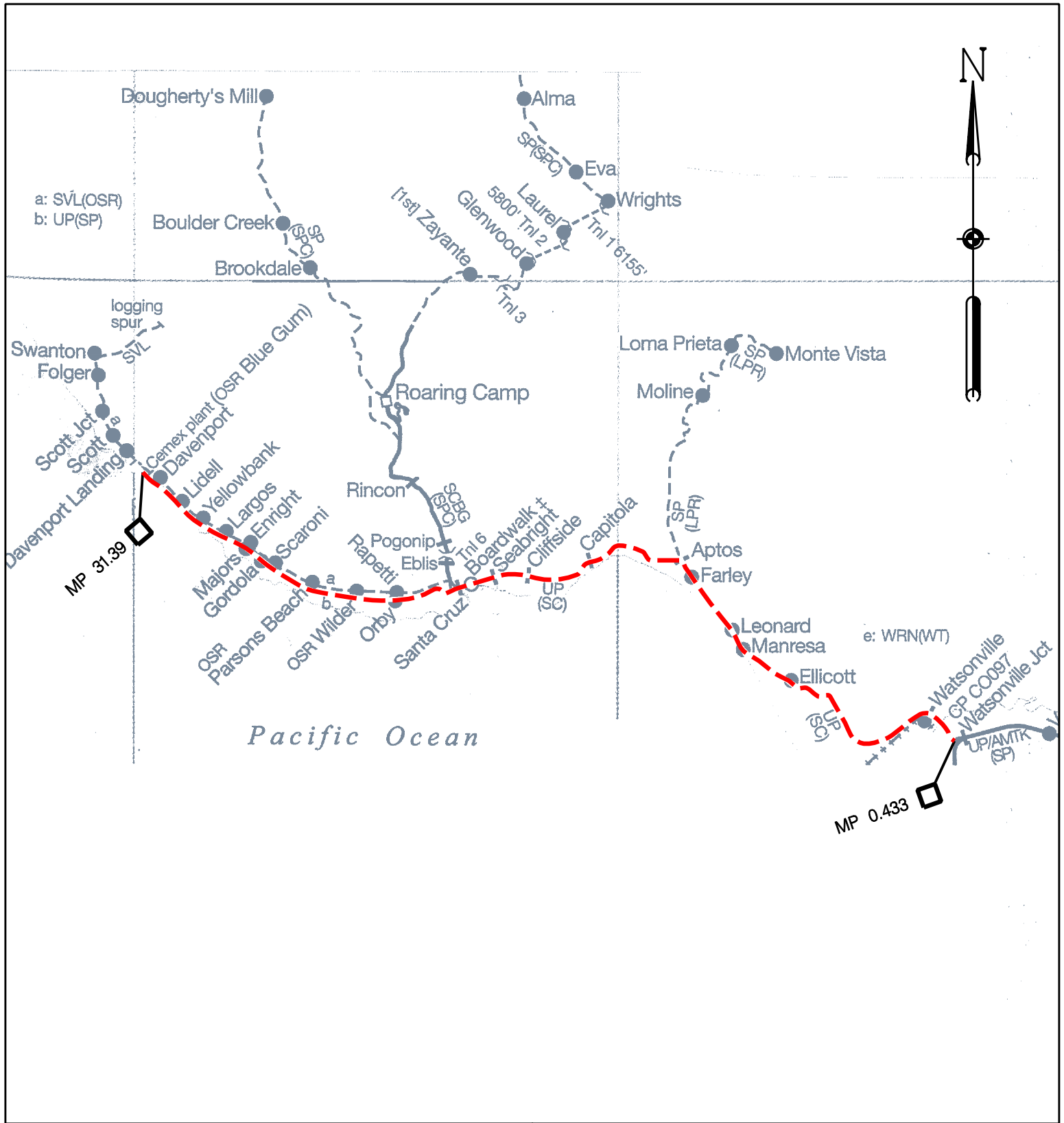
By: _____

PUBLIC REVIEW DRAFT

EXHIBIT A

Map of Railroad Facilities

PUBLIC REVIEW DRAFT



NOT TO SCALE

LEGEND

LINE TO BE LEASED SHOWN
MP 0.433 - 31.39



EXHIBIT "A"

UNION PACIFIC RAILROAD CO.

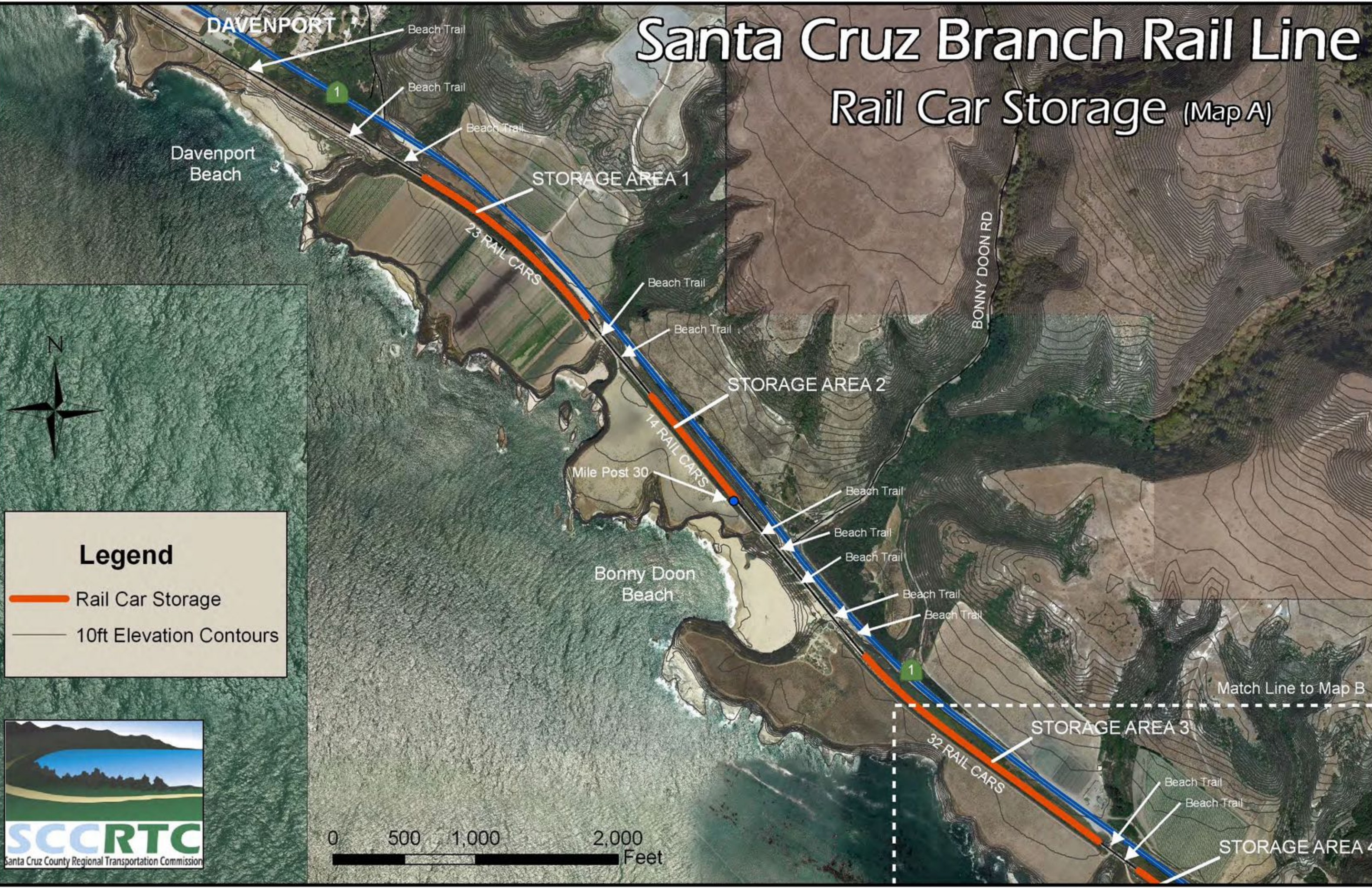
TO ACCOMPANY AGREEMENT WITH
SIERRA NORTHERN RAILWAY
WATSONVILLE JCT - DAVENPORT, CA.
M.P. 0.433 - 31.39+- SANTA CRUZ SUB.
SP CA V72 /1-6 & V89 /1-7
REAL ESTATE DEPARTMENT OMAHA NE.
FILE #1728-03 DATE: 11-2-2009 T.D.A.

EXHIBIT B

Permitted Rail Car Storage Locations

PUBLIC REVIEW DRAFT

Santa Cruz Branch Rail Line Rail Car Storage (Map A)



Santa Cruz Branch Rail Line Rail Car Storage (Map B)

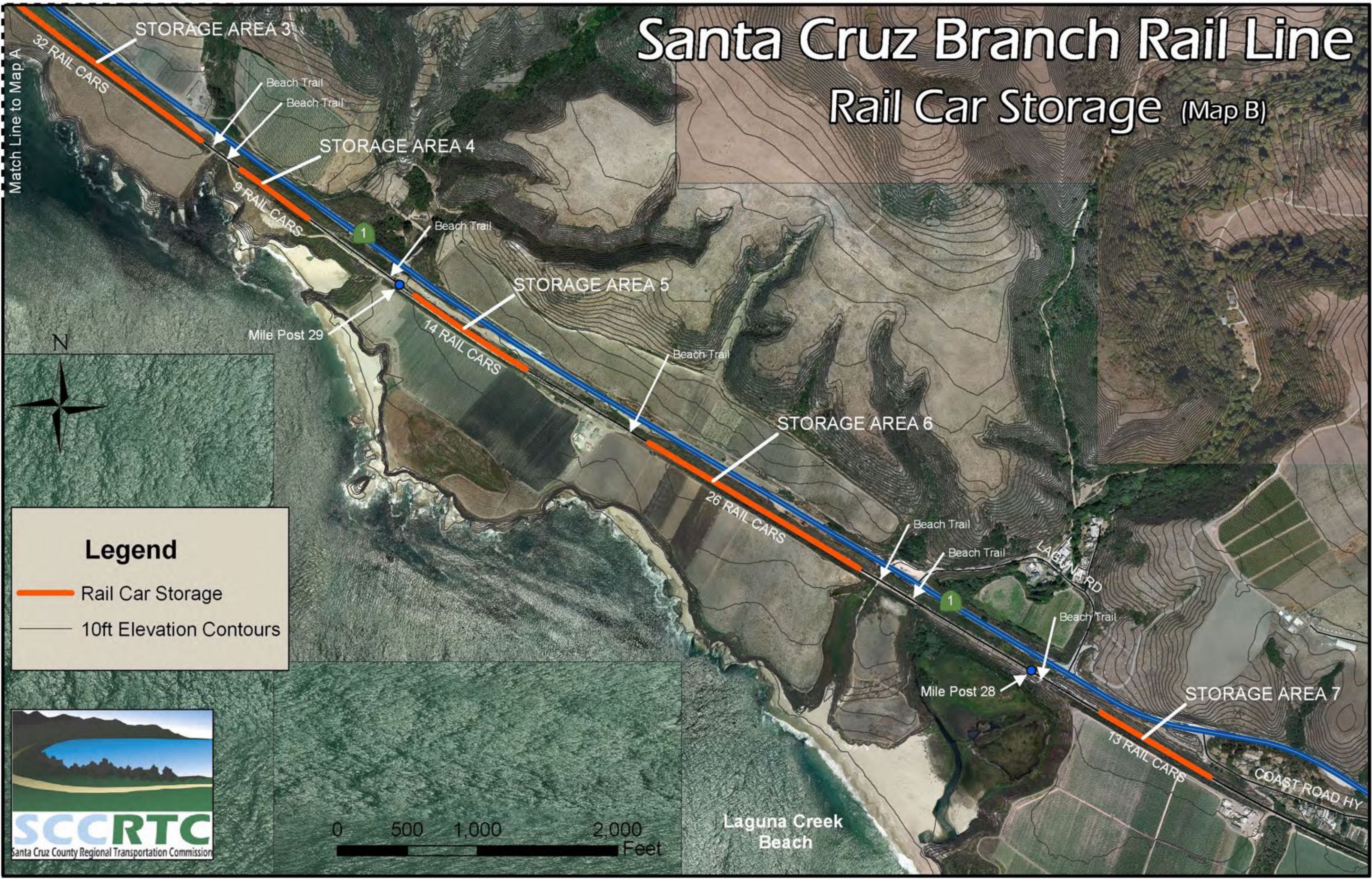


EXHIBIT C

Railway Agreements

PUBLIC REVIEW DRAFT

Exhibit C: Railway Agreements															
Assigned by U.P.R.R. REAL ESTATE DEPARTMENT															
MILE POST NO. 0.433															
FOLDER NO. 0172803															
PROJECT	AUDIT	FOLDER	# of FNET	LEG STAT	PARTY NAME	PURPOSE	MANAGER	COUNTY	CITY	ST	SUBDV	MP START	ANNUAL AMT	DISPOSITION	CONTAINED
186878	207416	158035	1	Active	CITY OF WATSONVILLE	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	WATSONVILLE	CA	Mojave	102.62	\$0	Assigned	Totally
190837	202098	161195	1	Active	SANTA CRUZ CITY OF	Warning Devices - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	SANTA CRUZ BRANCH	119.4	\$0	Assigned	Totally
200142	S155932		1	Active	APTOS SEASCAPE CORP	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	APTOS	CA	SP Route Code EC	111.04	\$0	Assigned	Totally
200154	S157723		1	Active	SANTA CLARA COUNTY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	APTOS	CA	SP Route Code EC	111	\$0	Assigned	Totally
200156	S156717		1	Active	SANTA CRUZ COUNTY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	APTOS	CA	SP Route Code EC	113.7	\$0	Assigned	Totally
200157	S157786		1	Active	SANTA CRUZ COUNTY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	APTOS	CA	SP Route Code EC	108	\$0	Assigned	Totally
203028	S158150		1	Active	SANTA CRUZ CITY OF	Crossing - Private Roadway	Paul G. Farrell	Santa Cruz	ORBY	CA	SP Route Code EL	81.4	\$0	Assigned	Totally
203789	S163007		1	Active	SANTA CRUZ PORT DISTRI	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	SEABRIGHT	CA	SP Route Code EC	119.09	\$0	Assigned	Totally
206269	S032513	250763	1	Active	COUCH DISTRIBUTING CO INC	Track: Industry Track Agreement	John Herdzina	Santa Cruz	WATSONVILLE	CA	SP Route Code EC	103.1	\$0	Assigned	Totally
210408	S189267		1	Active	SANTA CRUZ COUNTY OF	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	CLIFFSIDE	CA	SP Route Code EC	118.1	\$0	Assigned	Totally
211518	S012360		1	Active	TOBEYS RASP SERVICE INC	Track	John Herdzina	Santa Cruz	SANTA CRUZ	CA	SP Route Code EL	80.7	\$0	Assigned	Totally
231292	S194780		2	Active	RESETAR, ANTHONY P / PILO, MARY	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	WATSONVILLE	CA	SP Route Code EC	102	\$0	Assigned	Totally
235323	S191872		1	Active	TRESTLE BEACH ASSOCIATES	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	APTOS	CA	SP Route Code EC	109.6	\$0	Assigned	Totally
238757	S182045		1	Active	CALIFORNIA UNIVERSITY REGENTS	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	ORBY	CA	SP Route Code EL	81.8	\$10	Assigned	Totally
239770	S161499		1	Active	SULLIVAN, R. & A.	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	APTOS	CA	SP Route Code EC	109.07	\$10	Assigned	Totally
245617	S171658		1	Active	GARCIA, R.L.	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	CAPITOLA	CA	SP Route Code EC	115.6	\$10	Assigned	Totally
245622	S212398	206085	1	Active	HOLCOMB CORPORATION	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	APTOS	CA	SP Route Code EC	110.54	\$134.98	Assigned	Totally
252817	S157272		1	Active	LORENZI, G,B,LO & ZEIHNER, K	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	MAJORS	CA	SP Route Code EL	86.51	\$10	Assigned	Totally
253187	S184589		1	Active	SANDOVAL SALVADOR	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	ORBY	CA	SP Route Code EL	80.2	\$0	Assigned	Totally
256900	S181065		1	Active	SANTA CRUZ COUNTY CA	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	CLIFFSIDE	CA	SP Route Code EC	117.1	\$0	Assigned	Totally
256902	S192311		1	Active	SANTA CRUZ COUNTY CA	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	APTOS	CA	SP Route Code EC	112.81	\$0	Assigned	Totally
257860	S211909	181663	1	Active	SANTA CRUZ CITY OF	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	SANTA CRUZ	CA	SP Route Code EC	120.41	\$80	Assigned	Totally
260304	S708852	195115	3	Active	CASCADE REFRIGERATED NORTHERN CALIF., INC.	Track: Track Lease (Non-Haz)	John Herdzina	Santa Cruz	WATSONVILLE	CA	SP Route Code EC	102.01	\$2,160	Assigned	Totally
367101	207254	58589	1	Active	MARTINELLI & COMPANY	Crossing - Private Roadway	John S. Hertzler		SYSTEM	CA		0	\$130.48	Assigned	Totally
410634	S015548	250762	2	Active	DEL MAR FOOD PRODUCTS CORPORATION	Track: Industry Track Agreement	John Herdzina	Santa Cruz	WATSONVILLE	CA		103.1	\$0	Assigned	Totally
412823	S000771		2	Active	PISTA, B.	Track	John Herdzina	Santa Cruz	WATSONVILLE	CA			\$0	Assigned	Totally
446570	S017462		2	Active	SANTA CRUZ COUNTY OF	Crossing Public Roadway Grade Separation	Paul G. Farrell	Monterey	APTOS	CA			\$	Assigned	Totally
455863	S080717		3	Active	COUNTY OF SANTA CRUZ	Crossing - Public Roadway	Paul G. Farrell	Monterey	APTOS	CA			\$	Assigned	Totally
457023	S087624		1	Active	CAPITOLA, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	CAPITOLA	CA			\$	Assigned	Totally
457497	S091557		1	Active	CAPITOLA, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	CAPITOLA	CA			\$	Assigned	Totally
459511	S108176		1	Active	COAST DAIRIE & LAND CO.	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	DAVENPORT	CA			\$	Assigned	Totally
465104	SPA7491		1	Active	SANTA CRUZ COUNTY OF	Warning Devices - Public Roadway	Paul G. Farrell	Monterey	APTOS	CA		112.8	\$	Assigned	Totally
514595	211721	76287	1	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA			\$	Assigned	Totally
655249	227449	211468	2	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	Santa Cruz Sub.	20.78	\$	Assigned	Totally
655250	227485	211469	3	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	Santa Cruz Sub.	20.75	\$0	Assigned	Totally
655251	228377	211470	1	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	Santa Cruz Sub.	19.02	\$	Assigned	Totally
690096	242123	232126	1	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	Santa Cruz Lead	22.09	\$	Assigned	Totally
702125	253471	252215	1	Active	SILVER CREEK YUBA I, LLC	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	WATSONVILLE	CA	Santa Cruz	9.4	\$0	Assigned	Totally
702128	253472	252218	1	Active	SILVER CREEK YUBA I, LLC.	Crossing - Private Roadway	Kylan Crawford	Santa Cruz	WATSONVILLE	CA	Santa Cruz	9.57	\$0	Assigned	Totally
716300	259047	267911	5	Active	CALIFORNIA, STATE OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	DAVENPORT	CA	Santa Cruz Lead	31.28	\$0	Assigned	Totally
719596	261655	271611		Active	SANTA CRUZ, BIG TREES & PACIFIC RAILWAY	Trackage Rights & Interchange Agreement	Melissa Grosz	Santa Cruz	SANTA CRUZ	CA			\$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

ATTACHMENT 2

RTC Obligation for Freight Rail Service on Santa Cruz Branch Rail Line

From: T. Brooke Miller<>
Sent: Monday, June 04, 2018 1:42 PM
To: Ryan Whitelaw<>
Cc: George Dondero<>; Luis Mendez<>
Subject: RE: Freight Rail - Legal Obligations

Ryan,

Thank you for your points below. Your communication will be provided to the RTC Board. Although you have not requested a response, it seems some clarification is necessary.

To begin with, the RTC Board has not terminated the ACL with Iowa Pacific/ SCMB. Rather, consistent with its current adopted policies, **the Board opted to accept SCMB's offer** (included in the Board's agenda of January 18, 2018, item 20, initiating negotiations with Progressive Rail <https://sccrtc.org/wp-content/uploads/2018/01/2018-01-18-rtc-agenda-packet.pdf>) to cooperate with the RTC to transition rail operations to a new operator in lieu of termination triggering abandonment.

While the Board is certainly aware that abandonment of rail service on the line is an option (as is obviously the premise underlying consideration of a trail-only option in the UCIS), it seems disingenuous to argue that RTC staff has an obligation to recommend an option that would foreclose *all but* the trail-only option (including the continuation of freight and passenger rail service) before completion of the UCIS. ***The proposed operator agreement with Progressive has been specifically crafted to preserve all options (including abandonment of rail service on the line) considered in the UCIS until the Board has had an opportunity to consider the results of the UCIS.***

Moreover, contrary to your description below, the communications you reference with CTC staff do not actually support your interpretation of the RTC's obligations regarding the use of Prop 116 funds. Specifically, CTC staff states in its correspondence "The Commission is committed to working with SCCRTC to find any viable options **for a rail project** within your county should the currently proposed plan cease." Additionally, the examples given by CTC staff of the "very viable options" you emphasize below consist of "an alternate **operating** plan" and "an alternate project **that meets the criteria of the legislation.**" Prop 116 (at California Public Utilities Code section 99640) authorizes the allocation of funds to the RTC "for the following: (a) Intercity passenger **rail projects** connecting the City of Santa Cruz with the Watsonville Junction. (b) **Other rail projects** within Santa Cruz County which facilitate recreational, commuter, intercity and intercounty travel."

Based on all of the foregoing, it is clear that the Prop 116 funds are required to be used for rail projects. It would be irresponsible for RTC staff (and may border on a violation of my professional obligations) to recommend the RTC Board take an action that is contrary to the express requirements of State law on the basis of an oblique interpretation of correspondence from CTC staff dating from nearly 15 years ago. While the Board has the option to abandon rail service on the line *notwithstanding* the likely result that it would be required to reimburse the State for "the greater of either the amount allocated or the then present fair market value as determined by STATE", in accordance with CTC Resolution PA-10-06,

Paragraph 2.2 (quoted in my correspondence to you of Friday's date), it is my professional obligation to apprise the Board that this is, in fact, the likely result.

Finally, if indeed our interpretation of 49 CFR 213.5 as creating potential liability to the RTC as the owner of the line is an "egregious misinterpretation," ***you should be aware that it is that of the Federal Rail Administration***, which has communicated to RTC staff on numerous occasions that the RTC may be responsible for maintenance of the line pursuant to that regulation in the event the operator fails to meet its obligations, notwithstanding the attached assignment, pursuant to regulation 213.5. In general, an agency's interpretation of its own regulations is afforded deference by the courts, and we will accordingly afford the same deference. Should you have legal authority such as published case law or a formal regulatory interpretation by a federal agency demonstrating that the RTC cannot be held responsible for deficiencies in the rail line, we would be more than happy to consider it.

Again, I hope this information is helpful in understanding the recommendations of RTC staff. I would encourage you to direct your comments regarding policy considerations to the RTC Board directly.

T. Brooke Miller
Assistant County Counsel
Office of the County Counsel, County of Santa Cruz
701 Ocean Street, Room 505
Santa Cruz, CA 95060
(831)454-2040 (Phone)
(831)454-2115 (Facsimile)



September 28, 2012

Alvin Settje, Regional Administrator
Federal Railroad Administration
Region 7
801 I Street – Suite 466
Sacramento, CA 95814

Re: Notification of Assignment under 49 CFR §213.5(c) and
49 CFR §237.3

Dear Mr. Settje:

Pursuant to 49 CFR §213.5(c) and 49 CFR §237.3, Santa Cruz County Regional Transportation Commission (“SCCRTC”) and Santa Cruz and Monterey Bay Railway Company (“SCMB”) hereby give notice to the FRA of an assignment of responsibility for track and bridges that are part of the line of railroad described in item (4) below. In accordance with Section 213.5(c) and Section 237.3, the parties state as follows:

- (1) The name and address of the current owner are: Union Pacific Railroad Company (“UP”), 1400 Douglas Street, Omaha, NE 68179.

The line is currently leased by UP to Sierra Northern Railway (“Sierra”), 341 Industrial Way, Woodland, CA 95616. The responsibility for track maintenance is currently with Sierra under its lease with UP. SCMB has authority to acquire the lease by assignment from Sierra. *Santa Cruz and Monterey Bay Railway Company—Assignment of Lease Exemption—Union Pacific Railroad Company and Sierra Northern Railway*, STB Docket No. FD 35633 (served August 17, 2012).

The physical assets comprising the line are being sold by UP to SCCRTC, 1523 Pacific Avenue, Santa Cruz, CA 095060, subject to a retained freight service easement. After the acquisition, the retained freight service easement will be assigned by UP to SCMB.

- (2) The name and address of the person to whom responsibility for maintenance of the track and bridges will, upon the transfer of the line from UP to SCCRTC, be assigned are: Santa Cruz and Monterey Bay Railway Company, c/o Iowa Pacific Holdings, LLC, 118 South Clinton Street, Suite 400, Chicago, IL 60661.

- (3) The exact relationship between the track owner and the assignee will be that of (a) owner and (b) operator / holder of freight service easement, respectively. The Surface Transportation Board (“STB”) has acknowledged that its proposed acquisition of the line, subject to the retained freight easement, is not subject to STB jurisdiction. See *Santa Cruz County Regional Transportation Commission – Petition For Declaratory Order*, STB Docket No. FD 35653 (served September 7, 2012). SCMB has received authority from the STB to operate the line after it is acquired by SCCRTC. *Santa Cruz and Monterey Bay Railway Company—Acquisition and Operation Exemption—Union Pacific Railroad Company*, STB Docket No. FD 35659 (served August 17, 2012).¹

SCCRTC and SCMB have entered into an Administration, Coordination and License Agreement to govern their relationship, including maintenance of the track and bridges, after SCCRTC acquires the line. A copy of the Agreement is attached as Exhibit A hereto.

SCCRTC and SCMB want the assignment of maintenance responsibilities to be effective upon the transfer of the line from UP to SCCRTC.

- (4) The precise identification of the track and bridges are as follows:

Track:

Santa Cruz Branch between Milepost 0.433 (east boundary of Salinas Road) and the end of the line at approximately Milepost 31.39 +/-, being a point measured ten feet (10') south of the beginning point of the switch, which is approximately eight hundred sixty feet (860') north of the northeast edge line of the Highway 1 crossing at Davenport, in Santa Cruz County, California.

Bridges:

See the enclosed table titled “List of Bridges” and dated August 29, 2012.

- (5) SCMB will be a Class III carrier. SCMB is a wholly owned subsidiary of Iowa Pacific Holdings, LLC, and Permian Basin Railways (“IPH/PBR”). IHP/PBR currently controls six other Class III carriers. As such, it has substantial experience in maintaining track and bridges. SCMB will operate under the Permian Basins Railroad Bridge Management Program. This program has twice been reviewed by the FRA, first as it was initiated before the opening of the Saratoga and North Creek Railroad (SNC) and later as applied to the Mount Hood Railroad. The names and qualifications of all personnel associated with the Permian Basins Railroad Bridge Management Program are contained therein.

¹ As noted above, SCMB currently has authority to accept an assignment of the current lease between UP and Sierra. *Santa Cruz and Monterey Bay Railway Company—Assignment of Lease Exemption—Union Pacific Railroad Company and Sierra Northern Railway*, STB Docket No. FD 35633 (served August 17, 2012).

SCMB will inspect and maintain the track according to the requirements of FRA Part 213 as it has done with the other Permian Basins Railroads. Track inspectors and supervisors will be compliant under Part 213.7 of the regulations.

- (6) SCMB by its signature below acknowledges the assignment from SCCRTC of maintenance responsibility for purposes of compliance with 49 CFR Part 213, and 49 CFR Part 237.

SCCRTC and SCMB hereby request that the FRA waive the 30 day advance notice requirement set forth in 49 CFR 213.5(c) and 49 CFR 237.3, and allow the assignment to be effective immediately upon consummation of the acquisition by SCCRTC. Because SCMB (through its parent company) is an experienced carrier, and because the transfer of responsibility is agreed to by SCCRTC, a non-carrier, and SCMB, the full 30 day notice should not be required. Waiver of the 30 day advance notice period will permit SCMB to immediately become responsible for the track and bridges, and would allow the acquisition by SCCRTC to close as soon as possible.

Please let us know if you need any additional information.

Respectfully submitted,

SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION

By: 

George Dondero
Executive Director

The undersigned hereby acknowledges the assignment to it of responsibility for compliance with 49 CFR Part 213 and 49 CFR Part 237.

SANTA CRUZ AND MONTEREY BAY
RAILWAY COMPANY

By: 

Kevin W. Busath
Vice President-Strategic Planning
Iowa Pacific Holdings, LLC

From: Ryan Whitelaw <>
Sent: Monday, June 04, 2018 7:31 AM
To: T. Brooke Miller <>
Cc: George Dondero <>; Luis Mendez <>; Jake Pierce <>; Jondi Gumz <>
Subject: Re: Freight Rail - Legal Obligations

Dear Brooke,

Thank you very much for taking the time to provide such a thorough response (attached). However, for the reasons stated below, the rationale provided as to the RTC's legal obligations to retain a freight operator along the Santa Cruz Branch Line lack merit.

The response you provided included four points establishing the RTC's current position. Each of your points are addressed below:

1) SCCRTC commits, via a board resolution, to be responsible for initiating recreational passenger rail service, in accordance with PUC Section 99640.

This is a moot point. The impetus for the proposed agreement with Progressive Rail has been solely based legal obligations associated with freight service; not recreational passenger rail service. RTC staff members are on record making this point. Phase II of the proposed agreement includes provisions for possible passenger rail at a future date, but is contingent on results from the Unified Corridor Investment Study (UCIS). No passenger rail service is included in Phase I of the proposed agreement.

2) SCCRTC commits, via a board resolution, to be responsible for continuing freight rail service for as long as would be required by the Surface Transportation Board (STB), as provided in 49 USC sections 10901, 10910, and 11347.

The RTC is in compliance with the above condition as the Santa Cruz and Monterey Bay Railway (SCMB) remains the designated common carrier. As noted in the [November 2, 2017 Notice of Default](#), if SCMB can no longer fulfill their requirements, they can abandon Freight Service as outlined in Section 8.3 of the [Administration, Coordination, and License Agreement](#) (ACL). Per Section 8.3.1 of the ACL, the Railway shall provide a 90 day advance notice of its intent to abandon. At that time, the RTC may:

1. Take upon itself all Freight Service operations relating to the Property;
2. Appoint another entity to do so;
3. Railbank any portion of the Property as to which Railway intends to abandon Freight Service

It is unknown if a 90 day advance notice to abandon has been provided. Additionally, the [Commissioners and general public are only being made aware of one option](#). Specifically, that they are legally compelled to appoint another entity to provide freight service. This is simply not true, and the Commissioners must be made aware of all available options. More concerning is that selection of option 2 (appoint another entity for freight service) came at the recommendation of the existing rail operator (as noted in [SCMB response](#) to the Notice of Default).

Relative to the railbanking option (option 3), RTC staff is on record dismissing this option as "theoretical."

This is misleading and undermines the intent of the ACL along with other [RTC documents](#) referencing railbanking as a viable option. The RTC has an obligation to consult with an expert and vet all options outlined in the ACL agreement prior to signing an agreement that could potentially encumber a public asset for 10 years and burden taxpayers with millions of dollars in unwarranted expenditures.

3) The RTC has potential financial liability as the owner of the line in the event that the Federal Railroad Administration (FRA) determines the track does not comply with minimum regulatory requirements or assesses penalties for noncompliance, pursuant to 49 CFR 213.5(d).

This appears to be an egregious misinterpretation of [49 CFR 213.5](#) that could cost taxpayers millions of dollars. As noted in your response, the RTC itself is not a common carrier. As such, within the context of 49 CFR 213.5, the RTC is not recognized as the owner of the line. Specifically, 49 CFR 213.5(e) reads:

"A common carrier by railroad which is directed by the Surface Transportation Board to provide service over the track of another railroad under 49 U.S.C. 11123 is considered the owner of that track for the purposes of the application of this part during the period the directed service order remains in effect."

Per 49 CFR 213.5(e), the only entity needing to comply with the minimum regulatory requirements would be the designated common carrier; SCMB. In essence, the existing position as stated in your response places an unnecessary financial burden on the RTC (i.e. taxpayers) to make repairs for which they are not legally obligated to make. This is particularly relevant to the proposed agreement with Progressive Rail, which will entail millions of taxpayer dollars to be spent on repairs for which the RTC is not currently obligated.

4) The RTC may be responsible to reimburse the State for Prop 116 funding if the Branch Line ceases to be used for the purposes approved by the California Transportation Commission (CTC).

Relative to this point, I refer you to the October 24, 2003 CTC letter addressing possible failure of planned rail service. You can find a copy of that letter [here](#). In the letter, Kathie Jacobs, Assistant Deputy Director with the CTC states:

"The Commission recognizes the fact that the planned rail service could fail; however, I'd like to point out that there are a couple of very viable options available to the SCCRTC that could preclude the repayment of funds."

The CTC goes on to indicate they are committed to working with the SCCRTC to find any alternative plans should the existing plan cease. This willingness to work with the RTC has been reiterated in subsequent correspondences. Nevertheless, Commissioners and the general public are being led to believe the CTC has taken a hard line position whereby Prop 116 funds would need to be immediately returned should planned rail service fail.

In summary, the RTC has created a manufactured sense of urgency with documented bias to sign the proposed agreement with Progressive Rail, and none of the points provided in your response indicate a near-term necessity to approve such a contract prior to completion of the UCIS--a study meant to determine the best use of the corridor.

Furthermore, there is a clear process outlined in the ACL if the the designated common carrier can no longer fulfill its requirements. If the common carrier chooses to abandon freight service, there are three possible options. To date, the general public and Commissioners know of only one option: appoint

another entity to provide freight service. Given the situation at hand, all options must be thoroughly vetted and presented to the Commissioners so they can make an informed decision.

As you are well aware, the rail corridor is a very contentious topic in our community. Moving forward in a methodical, open, and transparent manner is in the best interest for all. There is no need to respond to my email any further. Be it known, I have included local journalists in our correspondence. Thank you again for your time.

Regards,

Ryan J. Whitelaw, MAI
Pacific Appraisers
Commercial | Residential | Consulting
o: 831.607.3800 | c: 831.704.6204 | f: 408.516.5500
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Slobhan Kelley
Ruby Márquez

June 1, 2018

Ryan J. Whitelaw, MAI
Pacific Appraisers
Via electronic mail only to: ryan@pacificappraisers.com

Re: Your email correspondence of May 31, 2018

Dear Mr. Whitelaw:

This responds on behalf of the Santa Cruz Regional Transportation Commission ("RTC") to your email of yesterday's date in which you state:

Several RTC staff members and Commissioners are on record indicating freight service is required per Surface Transportation Board (STB) guidelines and that state transportation requirements demand freight service. However, this is not consistent with documentation provided below.

The following is a petition filed with the STB prior to the purchase of the corridor. The filing explicitly states the RTC is not legally obligated to provide freight service. Please reference the Digest included in Docket No. FD 35653.

Additionally, the California Transportation Commission (CTC) is on record indicating freight service does not comply with Proposition 116 requirements. Please reference highlighted area in the CTC letter here.

At this point, the only entity legally compelled to provide freight service would appear to be the designated common carrier; Santa Cruz and Monterey Bay Railway Company (i.e. Iowa Pacific Holdings Inc.).¹

As is publicly available on the RTC's website and was communicated publicly in response to questions by the Commission at its April 19, 2018, Transportation Policy Workshop (and subsequently published in the Santa Cruz Sentinel), the conditions of approval by the California

¹ For purposes of this communication and California Rules of Professional Conduct, Rule 2-100, you have confirmed by email of today's date that "I was previously a board member with Greenway, but resigned from that position in January of this year and am no longer affiliated with the organization. Additionally, I do not represent, nor have I ever represented Greenway in any professional capacity. As such, I do not believe I qualify as a party pursuant to California Rules of Professional Conduct Rule 2.100."

Transportation Commission (“CTC”) of the use of \$10,200,000 of Proposition 116 funds for purchase of the Santa Cruz Branch Rail Line require that the RTC commit to be responsible to continue freight rail service and to initiate recreational passenger rail service.

Specifically, CTC Resolution PA-10-06, which was adopted by the CTC Board at its meeting of June 30-July 1, 2010, upon the express prerequisite that the RTC meet the five conditions set forth therein², at Paragraph 2.1, subdivisions (3) and (4), requires that:

1. “SCCRTC commits, via a board resolution, to be responsible for *initiating recreational passenger rail service*, in accordance with PUC Section 99640”; and
2. “SCCRTC commits, via a board resolution, *to be responsible for continuing freight rail service* for as long as would be required by the Surface Transportation Board, as provided in 49 USC sections 10901, 10910 and 11347.”

CTC Resolution PA-10-06, Paragraph 2.2, further states: “in the case where SCCRTC ceases to utilize the Branch Line for the original purpose as approved by the Commission, SCCRTC commits, via a board resolution, to reimburse the State, the greater of either the amount allocated or the then present fair market value as determined by STATE.”

In light of these requirements (in addition to the subsequent commitments made by the RTC Board in accordance therewith) it cannot be reasonably argued that the RTC has not undertaken a legal commitment to continue freight service on the line, or that a decision to abandon rail service on the line would not result in potential financial liability to the RTC.

Below, please find links to the information publicly available on the RTC’s website:

- <https://sccrtc.org/projects/rail/rail-line-purchase/> (under “Funding and Conditions”)
- <https://sccrtc.org/projects/rail/rail-line-purchase/rail-line-due-diligence/> (under “CTC Communications and Approvals”)
- <https://www.sccrtc.org/wp-content/uploads/2011/04/2010Prop116ApplApprConds.pdf> (CTC Resolution PA-10-06, which states “SCCRTC commits, via a board resolution, to be responsible for initiating recreational passenger rail service, in accordance with PUC Section 99640” and “SCCRTC commits, via a board resolution, to be responsible for continuing freight rail service for as long as would be required by the Surface Transportation Board, as provided in 49 USC sections 10901, 10910 and 11347”)

While in 2000, CTC staff, in the letter linked to your email, did in fact state that “Neither freight service, nor bicycle and pedestrian facility nor ‘a range of possible future transportation uses’ expressly or inherently complies with Proposition 116’s required establishment of passenger

² See CTC Minutes of June 30-July 1, 2010 at http://www.catc.ca.gov/meetings/2010/2010-08/May_June_Minutes.pdf; see also, CTC Minutes of January 19-20, 2011, at http://dot.ca.gov/hq/transprog/ctcbooks/2011/0311/006_1.2.pdf, finding the RTC met the conditions of approval (“approval of application to program this project for Proposition 116 funds as the applicant has met all conditions”).

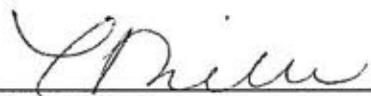
rail service in any of its various forms” (expressly noting that, at that time, “the Santa Cruz board debated and opted not to include an operable passenger rail service in its current 20-year plan”), The decision of the CTC Board ten years later to approve the commitment of Proposition 116 funding for acquisition of the line upon the condition that RTC commit to *both* continue freight rail service and initiate recreational passenger rail service, both supersedes the opinion of staff and moots the question of eligibility of the purchase of the line for Proposition 116 funding.

Finally, although pursuant to the declaratory order issued by the Surface Transportation Board under Docket No. FD 35653, referenced in your email, the RTC is not *itself* a common carrier with direct obligations to provide service to freight customers under federal law (notwithstanding its obligations to continue freight service on the line under the CTC funding resolution), the RTC does have potential financial liability as the owner of the line in the event that the Federal Railroad Administration determines the track does not comply with minimum regulatory requirements or assesses penalties for noncompliance, pursuant to 49 CFR 213.5(d).³

We hope this provides useful information to supplement your understanding of the RTC’s position.

Very truly yours

DANA McRAE, COUNTY COUNSEL

By 
T. Brooke Miller
Assistant County Counsel

cc: Honorable Chair and Commissioners, Santa Cruz Regional Transportation Commission
George Dondero, Executive Director

From: Ryan Whitelaw <>
Sent: Thursday, May 31, 2018 10:15 AM
To: T. Brooke Miller <>
Cc: George Dondero <>; Luis Mendez <>; Jake Pierce <>; Jondi Gumz <>
Subject: Freight Rail - Legal Obligations

Greetings Brooke,

As legal counsel to the Regional Transportation Commission (RTC), I would like you to provide insight as to the legal obligations the RTC has in retaining a freight operator along the Santa Cruz Branch Line. Several RTC staff members and Commissioners are on record indicating freight service is required per Surface Transportation Board (STB) guidelines and that state transportation requirements demand freight service. However, this is not consistent with documentation provided below.

The following is a petition filed with the STB prior to the purchase of the corridor. The filing explicitly states the RTC is not legally obligated to provide freight service. Please reference the Digest included in [Docket No. FD 35653](#).

Additionally, the California Transportation Commission (CTC) is on record indicating freight service does not comply with Proposition 116 requirements. Please reference highlighted area in the CTC letter [here](#).

At this point, the only entity legally compelled to provide freight service would appear to be the designated common carrier; Santa Cruz and Monterey Bay Railway Company (i.e. Iowa Pacific Holdings Inc.).

To date, only vague references have been made as to the RTC's legal obligations relative to freight service with no specifics provided. Clarification on this matter is paramount as a decision to sign a long-term agreement with a freight operator is forthcoming, and the Commissioners (along with the public) are being led to believe the RTC is compelled to have a freight operator into perpetuity. Thank you in advance for your time. I look forward to your response.

Regards,

Ryan J. Whitelaw, MAI
Pacific Appraisers
Commercial | Residential | Consulting
o: 831.465.6518 | c: 831.704.6204 | f: 408.516.5500
www.pacificappraisers.com

ATTACHMENT 3

Correspondence for Santa Cruz Branch Rail Line Short Line Operator Agreement (Deputy Director Luis Mendez)

From: Catherine Marino [REDACTED]
Sent: Saturday, May 05, 2018 9:37 AM
To: info@sccrtc.org
Subject: Iowa Pacific Tax Lien, Tanker Storage

Dear SCCRTC Commissioners,

I'm writing to express my extreme concern regarding the recent IRS Tax Lien against Iowa Pacific Holding's Saratoga & North Creek Railway for the amount of 1.3 million dollars for tax years 2013-2015, further implicating Iowa Pacific as unable to meet any responsibility as a rail operator.

At this point, I fear that Iowa Pacific might abandon the 200 rail cars that it has stored in Watsonville, effectively shut down service to the remaining 4 rail customers in Watsonville, and jeopardize the ability of these 4 businesses to continue to operate and keep their employees working.

Is there any way to speed up voting to agree to a contract with Progressive Rail? Can we find a way to force Iowa Pacific to move the stored rail cars to another storage facilitator? If we cannot force Iowa Pacific to remove these 200 rail cars, is there a way that we might be able to force the owners of the stored cars to arrange removal of the stored cars from Watsonville and send them to another storage facilitator?

I feel that we must remove Iowa Pacific immediately, as it is clear that they are unable and unwilling to protect the financial and environmental interests of our county and our citizens. I urge you to convene an emergency session to vote on an agreement with Progressive Rail, and demand that Iowa Pacific remove the stored rail cars so that Progressive can take over as the new Rail Operator and keep our rail customers solvent.

Thank you,

Cathy Marino
[REDACTED]

From: Becky Bach [REDACTED]
Sent: Saturday, May 05, 2018 3:35 PM
To: info@sccrtc.org
Subject: letter to the commission

Hello,

I am a Santa Cruz resident and haven't been following the rail-trail issue very closely, so I don't know if suicide prevention for the train has come up. If not, I'd like to urge you to please take steps to effectively block off the tracks and include hotline signs and take other measures. The Peninsula has fortified its tracks, but only after so many lives have been lost.

Thank you,

Becky Bach
[REDACTED]

From: Contact Request Form [REDACTED]
Sent: Monday, May 07, 2018 1:10 PM
To: info@sccrtc.org
Subject: New submission from Contact Form

This Contact Request Form has been submitted by a member of the public to <http://sccrtc.org/contact-us/>.

Name

Anne Carr

Email

[REDACTED]

Subject

Progressive Rail Incorporated

Your Message

I cannot believe that you would ever even consider giving over our rights to the rail line to Progressive Rail Inc. Please do not do this!!!! Why would you do it? It is against all the common sense for environment or safety of the citizens of Watsonville or Santa Cruz County. What we need is a safe corridor for bikes and pedestrians in Watsonville and all of Santa Cruz County. These LPG tank cars moving through our county is not right. No! Don't do it please.

Anne Carr
Watsonville, CA

From: Logan Cartwright e. [REDACTED]
Sent: Wednesday, May 09, 2018 6:16 PM
To: General Info
Subject: Re: Draft Rail Service Operator Agreement is Now Available

NO train Trail only.

From: John Paulsen [mailto:[REDACTED]]
Sent: Wednesday, May 09, 2018 7:17 PM
To: info@sccrtc.org
Subject: Re: Draft Rail Service Operator Agreement is Now Available

There is no logical, sustainable, useful reason to put trains on the rails at all. If it's a tourist train, the tourism benefits will be minuscule versus the loss of the opportunity to create a world-class walking and biking trail all along the coast, as Monterey has. If it's a commuter train, the ridership will be laughably tiny and the cost can never be justified by this ridership. If it's freight, there is insufficient need for train cars as a shipping mechanism. The combined negatives — wasted money, blight in the neighborhoods up and down the corridor, and the lost opportunity for world-class trail adding to local quality of life and attractiveness to tourists — obviously outweigh any discrete "benefit" that any train operator says they can offer.

There is no reason discernible to me, and I've ever seen a reason given by RTC, that anyone would even propose adding trains to this corridor, if it weren't for some past deals involving existing railroad tracks from another era. Repeat: I've never seen or heard any reason given that adding trains here is a benefit.

Can you explain how any expenditure in upgrading or maintaining the ability to put trains on the tracks can be justified on the basis of need/demand, or on the basis of investment-vs-benefit?

Please be aware I am a proponent of increased investment in public transit. If a train could actually serve the working class in this county, I would support it 100%. It cannot, because the rail corridor has no infrastructure or space to support stations and parking, and we have no single, centralized job center where most people work, and we have no large or dense central bedroom communities along the rail corridor; anyone wishing to travel to work would need to drive or take transit to the train, wait for the train, ride the train to a location not directly adjacent to their workplace, and from there find transit to their various workplaces. It would be expensive and take too long. It

makes far more sense to increase bus routes as buses can take people directly from their neighborhood, directly to their workplaces.

Also be aware, in 20 years all-electric self-driving vehicles will begin to dominate, making trains even more obsolete than they already are.

Signed, a very concerned, and very disappointed citizen of Santa Cruz County.
John Paulsen

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

From: Ronnie Record [REDACTED]
Sent: Wednesday, May 09, 2018 7:24 PM
To: info@sccrtc.org
Subject: Progressive Rail

Hi,

I'm a longtime Santa Cruz resident and home owner. I saw where you have released a draft agreement for a new rail service operator along the Santa Cruz Branch Rail Line. The operator, Progressive Rail, has a history of malicious legal maneuvers to convert agreements made with municipalities in order to expand their operation into the freight transport of natural gas and other hazardous materials. I cannot believe that we are in negotiation with Progressive Rail. Was there no background study before entering into negotiations? Why was Progressive Rail selected? Are you unaware of their previous activities?

Please reconsider and withdraw this draft. Do not enter into an agreement with Progressive Rail.

Thanks,
Dr. Ronald Joe Record

From: Jim Blain [REDACTED]
Sent: Wednesday, May 09, 2018 8:43 PM
To: info@sccrtc.org
Subject: Draft RTC Report

Thanks for the opportunity to reviews the draft report on the railroad operation. Looks reasonable.

My comment is that there should be a future plan to connect the SC 32 mile line with the branch line to Monterey.

Jim Blain

From: Kristin Tosello [REDACTED]
Sent: Thursday, May 10, 2018 6:53 AM
To: info@sccrtc.org
Subject: No deal

Hi,

I live in Aptos Village and I am against the new proposal for a train. We have a traffic nightmare in Aptos which will get worse as the construction completes and new residents move in (not to mention the new businesses). The last thing we need is a train coming through and stopping all car, pedestrian, and bike access. This is a horrible idea. Anyone with a conscience and who has ever gone through the village would know that.

It's time you represent the residents and not the tourists!

Kristin Tosello

From: David Date [REDACTED]
Sent: Thursday, May 10, 2018 6:54 AM
To: General Info
Subject: Are we attempting to save face with Progressive deal?

Hello RTC staff and members.

It has been over a year since we all rallied to pass measure D funding, and I remember a real sense of optimism that our traffic woes in South County were going to be resolved. I am regretfully reporting that the congestion and pot hole situation has never been worse.

Since the withdrawal of Iowa Pacific, I have begun to realize that there are no meaningful solutions to the crisis that we are in, at least not in the short term. Now we are negotiating a long term contract with a petroleum freight company, only to save face?

Brian Peoples told me this would happen, that there would never be a commuter train and that Measure D funds would eventually get squandered into the collapsing Pension fund, and I see no reason to doubt it.

From: Brian Peoples [REDACTED]
Sent: Thursday, May 10, 2018 6:02 AM
To: Zach Friend
Cc: 'Patrick Mulhearn'; rlj12@comcast.net; John Leopold; greg.caput@co.santa-cruz.ca.us; bruce.mcpherson@co.santa-cruz.ca.us; ryan.coonerty@santacruzcounty.us; Sandy Brown (sbrown@cityofsantacruz.com); trina.coffman@cityofwatsonville.org; openup@cats.ucsc.edu; rlcdesign@comcast.net; cchase@cityofsantacruz.com; jbertrand@ci.capitola.ca.us; info@sccrtc.org
Subject: Train impact on Aptos Village - No Progressive Rail agreement

Zach,

We will come forward with a more official response to the proposed agreement with Progressive Rail, but want to point out a specific issue that will impact Aptos Village if RTC continues with the train plans.

We have spoken to CPUC and property owners / leasers about Aptos Village and plans for Parade Ave. Currently, CPUC is requiring that two railroad crossings (Bay View access road, Cement Plant Road) be closed prior to opening Parade Ave to Soquel Drive. According to all parties involved, neither of these railroad crossings will be closed. Cement Plant Road can not be closed because it is the only access to the Adeline neighborhood in Davenport. The access road to Bay View Hotel will not be closed because the property owner does not want to close it and there is no legal requirement.

In addition to the restrictions to closing the existing railroad crossings, according to CPUC when a train passes through Aptos Village, all railroad crossings would go down at once, essentially shutting down all roads in the village while a train passes. Having this occur multiple times a day for a recreational train, movement of rail cars for storage or a passenger train would be a significant impact to our community.

Therefore, it is in the best interest of our local community and Aptos Village that an agreement with Progressive Rail does not include any railroad operations north of Lee Road. As our Aptos representative, you should not approve Progressive Rail agreement that would result in Parade Ave never being opened to Soquel Drive and create a major traffic burden to our community.

Best regards,

Brian Peoples

From: Josh Stephens [REDACTED]
Sent: Thursday, May 10, 2018 11:25 AM
To: info
Subject: Re: Draft Rail Service Operator Agreement is Now Available

Nice. I noticed a typo. See the last page, signature line has "county" with two C's.

I like the agreement and the fact that there are clauses that ensure timely payments to the commission from PGR. I wish I had a copy of Iowa Pacific's original agreement to compare how stringent this agreement is versus the old one.

I also am a fan of the fact that the agreement covers up to MP7, although I wish it were extended further, such as to Aptos Village. With all that development happening in the village, how will we be able to handle the extra freight needed to service new businesses?

Thank you for publishing this. Please vote on this contract at the next RTC meeting. It is crucial we get Iowa Pacific out before the STB has to intervene.

Happy Rails With Trails,

Josh Stephens

From: Barrey@BJ.com [REDACTED]
Sent: Thursday, May 10, 2018 11:26 PM
To: Info@scrtc.org
Subject: Vote yes for an agreement with Progressive Rail

Attn: RTC commissioners

Please vote yes for an agreement with Progressive Rail.

Keeping and utilizing the existing rail infrastructure will provide the best value.

Thanks,
Barrey Jewell

From: Paul Nolan [REDACTED]
Sent: Friday, May 11, 2018 12:09 AM
To: info@scrtc.org
Subject: We want Progressive Rail!

Hi,

I am a high school student and I deeply care about the future of our transportation corridor.

Please vote "yes" and let Progressive Rail operate the branch line.

Thanks,
Paul

To: info@scrtc.org
Subject: New submission from Contact Form

This Contact Request Form has been submitted by a member of the public to <http://sccrtc.org/contact-us/>.

Name

George Pepper

Email

[REDACTED]

Subject

Contract with Progressive Rail

Your Message

I am very happy to see a good offer from a legitimate and well-run company. I believe this will work well for both Progressive and our local interests. Please sign the contract.

From: Dan Carrion [REDACTED]
Sent: Friday, May 11, 2018 9:30 AM
To: Info@sccrtc.org
Subject: Santa Cruz trains

Good Morning,

I would like to ask that you vote yes on the agreement with Progressive Rail to keep the trains running in the Santa Cruz area. specifically Watsonville to Davenport. A trail is nice thing, but a train hauling people and goods is much better. California, and the entire country, has already removed too much rail transport.

There is no more efficient alternative than rail for transporting large amounts of goods and people. Highways fill to capacity very quickly, and require huge amounts of maintenance. They chew up land at alarming rates. Railroads have a much smaller footprint, are not ecologically friendly, and can create many opportunities that go beyond just hauling freight. Just from a tourism standpoint alone, you could see a huge benefit to the community, should the train offer the option to run from Watsonville through Santa Cruz, (connecting with Roaring Camp), and continue onward to Davenport. A passenger rail trip like this along the coast would rival anything that currently exists anywhere in the United States, and abroad. You could have people coming from around the world to take a leisurely trip in beautiful scenery, enjoying the countryside, and then spending the night in area hotels, eating in area restaurants, shopping in area shops, and providing the community with tax dollars. If there was to exist an option of riding behind steam train, even more people would come.

I live in the Fresno area, and I know that all my friends would be excited to go to Santa Cruz and ride a passenger train up the coast, or down the coast, or both. I doubt any of them would go to walk on a trail. We have plenty of trails here. But, there are very few opportunities to ride a train in such a beautiful setting.

This seems like a no brainer to me. A trail alone will never provide this kind of excitement. But, you could always build a trail to the side of the rail right of way, and have the best of both worlds.

Please vote to support the train.
Dan Carrion
Professor,
Fresno State

From: Michael Parisi [REDACTED]
Sent: Friday, May 11, 2018 4:37 PM
To: info@sccrtc.org
Subject: Rail Study completion, please, before any contracts signed.

Hello,

We all want the highest good for everyone, but there are many hands in play looking to influence how the trail will ultimately be used. The only reasonable position anyone can take is facilitating professional and politically neutral parties to evaluate and report, so the public is as informed as possible. I hope you agree, making deals prior to these conclusions is unprofessional and undermines the public's trust in the process.

Thank you,

Michael Parisi
[REDACTED]

From: LakevilleMN Residents [REDACTED]
Sent: Friday, May 11, 2018 7:41 PM
To: citycouncil@cityofsantacruz.com; info@sccrtc.org
Subject: Progressive Rail

Dear City of Santa Cruz,

Think long and hard about signing any contract with Progressive Rail.
Just trying to help.

<https://www.leagle.com/decision/infdc020180321f08>



GRUBER v. GILBERTSON | No. 16cv9727 | 15 U.S. | 20180321f08 | Leagle.com www.leagle.com
OPINION amp ORDER WILLIAM H. PAULEY III District Judge. Defendants Ryan R. Gilbertson et al. move to dismiss Lead Plaintiff...20180321f08

From: Nadene Thorne [REDACTED]
Sent: Friday, May 11, 2018 8:52 PM
To: john.leopold@co.santa-cruz.ca.us; bruce.mcpherson@co.santa-cruz.ca.us;
cchase@cityofsantacruz.com; greg.caput@co.santa-cruz.ca.us; ebottorff167@yahoo.com;
jbertrand@ci.capitola.ca.us; rlj12@comcast.net; Ryan Coonerty; sbrown@cityofsantacruz.com;
zach.friend@co.santa-cruz.ca.us; openup@cats.ucsc.edu; trina.coffman@cityofwatsonville.org
Cc: Sccrtc Info
Subject: Progressive Draft Contract

Commissioners:

I was shocked and horrified to read the draft proposal for a contract with Progressive Rail. Those of us who are following the disposition of the rail corridor in particular and transportation planning in general in the county cannot but have cause to wonder how you can possibly put forward such a contract as any way benefiting Santa Cruz County or furthering your mandate to promote "transportation choices" that "move people."

- 1) What freight - specifically - is proposed for the corridor from Watsonville to Davenport?
- 2) If freight service is posited to get trucks off Highway 1 and local Streets, have you evaluated the dollar-benefit of this (in addition to the environmental, traffic, and quality of life evaluations) vs. the cost to the community of repairing nearly 30 miles of track?
- 3) Where's the track repair money coming from?

- 4) Are you seriously proposing a contract that would have diesel freight trains running along the corridor through residential neighborhoods, shopping villages, and the beach and boardwalk? And for 10 years?!
5. I am aghast that you would consider allowing the parking of rail cars along the coast between Highway 1 and the shoreline, some of the most scenic property on the coast of California. (Or, for that matter, that you have not been able to resolve the rail car parking situation across the sloughs in Watsonville.)
6. A tourist train? We have the Big Trees Railroad – do we really need more entertainment to draw tourists to Santa Cruz? Most importantly, what does this have to do with promoting transportation solutions?

I appreciate that Progressive will not set up operations in Santa Cruz County for only Watsonville's small freight operation. So maybe that tells us that we should take a step back and think a bit more broadly about the big picture for the county's transportation needs, rather than signing over the whole farm to Progressive! This draft proposal is a horror, and should make the thoughtful people of Santa Cruz County wonder about your grasp on what transportation services would genuinely serve us.

Nadene Thorne
Santa Cruz 95060

From: kathy [REDACTED]
Sent: Saturday, May 12, 2018 7:09 PM
To: info@sccrtc.org
Subject: Do not sign the current contract with Progressive Rail

Dear Mr. Medez,

I am writing to respectfully ask that the SCCRTC not sign the current contract with Progressive Rail. This isn't about rail vs. no-rail. I believe this contract is *bad* - whether you want passenger rail service or you don't. Please don't get distracted in the debates around pros and cons of rail!!! This contract could potentially irreversibly damage neighborhoods, the north coast, and it could disable our local community's ability to do anything about it. As a homeowner in the Westside, I have keen interest into the management of this area. There are significant issues that put our community at risk, such as:

1. Deceptively provides false assurances that the RTC can still do projects on the corridor like the rail trail

§3.1 This section describes all of the power that the RTC has to do projects like the rail trail. It sounds very good, and it's not till the end that the cause reminds that these projects must not materially interfere with Railway's rights and operations or freight service rights and obligations. The onerous way that this final text is written could block any of the described projects.

§6.1.1 This section deceptively implies that the RTC can adjust the railroad as needed for a project such as the rail trail. But the phrase "subject to Railway's rights under this agreement" and §6.1.2 apparently removes that flexibility.

- 2) Significant impacts on neighborhoods

§5.2.2 This section absolves the railway of any obligation to correct graffiti. Why? This is an almost certain problem that will occur, and it should be their responsibility to prevent and correct this on rail property.

§6.3 indicates that facilities will be built on the west side of Santa Cruz for train maintenance (just west of Swift by Kelly's Bakery). This removes any ambiguity that the Railway intends to run freight through the west side of Santa Cruz, and furthermore intends to add significant industrial facilities on the west side of Santa Cruz (that would not likely be subject to city planning laws) for maintenance operations. This could have significant noise, visual, odor and other impacts.

§6.3 This section also implies additional facilities will be built, with no commission oversight if Railway claims the absence of the facility would materially interfere with freight service.

§7.1.2 This gives the Railway the option to create "lay down" areas which they can use to temporarily store shipped materials that are being transferred to/from train. The storage areas would be adjacent to the tracks and could be located in neighborhoods, or anywhere else convenient for the shipper and Railway. It also provides a financial incentive to the RTC to lease additional space for this purpose.

3) Potential significant impact to North Coast

§2.5.1 As written, Railway maintains the right to store 100 rail cars on the North Coast between Davenport and Laguna Rd within the Coast Dairies State Park, alongside the proposed rail trail. Although there is a 2-month time limit for specific cars, there is no overall limit, meaning that rail cars could be present at all times.

Click on these images to see full-size maps of where rail cars would be stored:

[Click here to read about this issue in another community.](#)

4) Makes providing passenger rail by a 3rd party nearly impossible

§2.4.1.4 This deceptive section states that even when Railway interests don't take priority over another third-party with a contract to use the corridor, that third-party must still not materially interfere with Railway interests

§2.4.1.3 This section ambiguously defined level of service

§2.4.1.6 The car-mile calculation of proportionate share does not take into consideration frequency of operation. A third party operator with once per week service could be compelled to pay the same fee as an operator with multiple daily trips.

§2.4.1.6 allowing the Railway to determine actual costs is inappropriate as it grants them a biased power to charge a licensee additional amounts

There are numerous other points in this flawed contract that erode influence and control over how this land is used and impact the community. I do hope the contract is NOT signed and that a better solution is found. Our community deserves something much better.

Best Regards,

Kathleen Nix

From: FF [REDACTED]
Sent: Saturday, May 12, 2018 8:03 PM
To: info@sccrtc.org
Subject: Deputy Director Luis Mendez

At this time I am very concerned about the "Railway." At the moment I am renting a home off of 7th Avenue where there is a railway close to my home. I am considering a home to purchase but the possibilities of this railway would hinder my purchase. Where I live now is very close to the railway. My husband and I both work locally and start very early in the morning. The thought of the sound of the railway throughout the evening and early morning and the delays of crossing the railway will create hardship! We do not want this to happen in our neighborhood! It will create a lot of stress!! I work as a Leasing Consultant at a property just yards away from the railway.

When my future prospects ask about the railway, I am happy to inform them it does not operate. They are relieved which enables us to rent our units. If the railway passes close by to our community we will not be able to rent our apartments. I could lose my job when our rentals decrease!

I am very concerned both for my personally and for my livelihood/work well being!

Please don't let this happen!

Faith Feldman

From: Derek R. Whaley [REDACTED]
Sent: Saturday, May 12, 2018 8:05 PM
To: General Info
Subject: Say Yes to Progressive Rail

Greetings Commissioners,

I am very pleased that an agreement has been negotiated with Progressive Rail. Iowa Pacific needs to go and Progressive Rail appears to be a great option to help return our county to active rail service. I am very happy that RTC members took time to carefully consider all aspects of this agreement and even visited the company's headquarters in Minnesota. This shows a determined resolve to ensure the truth of all facts. But please do not let delay this decision any further. I urge you to vote yes to the Progressive Rail agreement and help bring our county into the future.

Sincerely,
Derek R. Whaley

From: Gary Garcia [REDACTED]
Sent: Saturday, May 12, 2018 9:34 PM
To: info@scrtc.org
Subject: Problem with Progressive Rail C

Dear Mr. Mendez,

I am writing to respectfully ask that the SCCRTC not sign the current contract with Progressive Rail. There are significant issues that put our community at risk, such as:

(whichever issues you feel are important).

These issues should concern us regardless of whether or not we support the idea of passenger rail. Please correct these issues before entering into an agreement with Progressive Rail or any other operator.

Sincerely,
Gary Garcia

From: Della Davis [REDACTED]
Sent: Sunday, May 13, 2018 6:39 AM
To: info@scrtc.org
Subject: Progressive contract

Dear committee,

As a long term resident of Capitola and Soquel, I am opposed to entering into a contract with a freight train operator. The proposal from Progressive indicates they would be shipping chemicals and natural gas. Our communities do not need to be exposed to the possibility of train accidents and potential hazardous spills or fires. Imagine what a disaster it would be if this occurred on a trestle or the new Aptos crossing.

Once we enter into a contract cities lose all rights to control what trains are carrying.

The proposal also gives Progressive the right to cancel the tourist train at any time.

Entering into a contract also takes away the option of using this wonderful corridor for modern transportation options such as electric commuter trains. The focus should be on using the corridor for transportation, whether active transportation or new technology options.

This is a terrible idea and should be vetoed unanimously.

Thank you
Della Davis

From: Contact Request Form [mailto:admin@sccrtc.org]
Sent: Sunday, May 13, 2018 7:39 AM
To: info@sccrtc.org
Subject: New submission from Contact Form

This Contact Request Form has been submitted by a member of the public to <http://sccrtc.org/contact-us/>.

Name

Craig Wilson

Email

[REDACTED]

Subject

Rail Trail

Your Message

I urge the RTC to reconsider its support of the Rail Trail.

Years ago, just after purchase by the RTC, I was excited at the prospect of the Rail Trail, but now that I know more I think it folly.

Much has changed since the RTC acquired the rail. It is now clear the rail will actually be dominated by freight service under the terms of the proposed Progressive contract, which alone merits reconsideration. It has also become apparent that the existing rail and trestle infrastructure is in much worse condition than originally thought, requiring millions of dollars of public money and subsidies for repairs.

The RTC not have to stick by a decision to support a project that no longer resembles the original proposal. Biking and walking is transportation - storing rail cars is not.

Thank you for consideration.

From: Contact Request Form [mailto:admin@sccrtc.org]
Sent: Monday, May 14, 2018 8:14 AM
To: info@sccrtc.org
Subject: New submission from Contact Form

This Contact Request Form has been submitted by a member of the public to <http://sccrtc.org/contact-us/>.

Name

Eva Sherman

Email

[REDACTED]

Subject

Rail Trail input

Your Message

Greetings - I'm a city of Santa Cruz resident and home owner and avid cyclist and walker/hiker. A pedestrian and bicycle path, I believe, would be the best use of public funds. I do not support a rail line , only a bicycle/pedestrian trail.

Thank You,
eva
Santa Cruz, CA 95062

From: deborah geesey [REDACTED]
Sent: Monday, May 14, 2018 9:33 AM
To: info@sccrtc.org
Cc: Gordon
Subject: No to progressive railway contract!!

To whom it may concern,

We, as property owners and citizens living near the rail line,
Are greatly disturbed to hear of the proposal of a contract with
Progressive Railway to store and move toxic agricultural chemicals and natural gas
Train cars along the tracks in our county.

Please please know this contract would invalidate all efforts and plans to create
A more tourist and community friendly community with bike and hike trails.

Our quality of life depends on your actions and votes.

You as a team are directing the direction of our futures, and that of your
Own children's futures.

Please vote against this toxic and costly contract with Progressive Rail, Inc.

Sincerely,

Gordon and Deborah Geesey

From: Glenda Luening [REDACTED]
Sent: Monday, May 14, 2018 10:09 AM
To: info@sccrtc.org
Subject: Say No to Freight Trains

Vote no on the Progressive Rail Contract! Freight has priority over people, so the pipe dream of
commuter rail is shit-canned with this contract. Get rid of the rails and build a trail!

In the mean time, what is being done to alleviate University traffic? Where is our Eastern Access?

Glenda Luening

From: Ellen Martinez [REDACTED]
Sent: Monday, May 14, 2018 6:11 PM
To: info@sccrtc.org
Cc: 'Ellen Martinez'
Subject: Possible Contract with Progressive Rail

Dear Members of the SCCRTC,

I read with dismay the recent article that appeared in the Santa Cruz Sentinel about your possibly
awarding a 10-year contract to Progressive Rail of Lakeville, Minnesota to operate the 32-mile
Santa Cruz branch line.

There are significant issues associated with the contract that put our community and neighborhoods at great risk, such as:

- The contract provides Progressive Rail the right to store 100 rail cars on the North Coast between Davenport and Laguna Rd within the Coast Dairies State Park, alongside the proposed rail trail. Although there is a 2-month time limit for specific cars, there is no overall limit, meaning that rail cars could be present at all times.
- The contract severely limits local control of the corridor for at least a decade. The contract deceptively provides false assurances that the RTC can still do projects on the corridor, as the contract states that any projects must not interfere with Progressive Rail's right and operation of freight service and bypasses any outcomes from the United Corridor Investment Study. How can the RTC agree to this contract before the unified corridor study has been completed?
- The contract restricts access to the rail corridor by the community. Since the agreement restricts how the RTC can develop the corridor, current trails would likely become off-limits and lead to long-term loss of access since freight operations would limit the commission's ability to construct a trail. The heavily used recreational sections of coastal trail north of Wilder Ranch that are on the right-of-way would not be accessible.
- The contract states that excursion trains may come later—carrying 5,000 passengers the first year, 10,000 the second year, and 15,000 the third year. The volume of possible passengers on these excursion trains would severely affect the sanctity of our county and its neighborhoods.

This contract and Progressive Rail is not the answer to Santa Cruz County's traffic and transportation issues. You have an obligation to listen to our reaction to this contract and represent us. As a taxpayer, registered voter and resident of Santa Cruz County, *I ask the RTC to NOT SIGN this contract* and move away from any negotiations or discussions with Progressive Rail.

Thank you.

Ellen Martinez

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

From: Rosalie Bruning [REDACTED]
Sent: Monday, May 14, 2018 8:07 PM
To: info@scrtc.org
Subject: Proposed Contract

I am urging you to wait until the EIR and UCS are completed before signing the contract with Progressive Rail. Negotiating behind closed doors and then rushing this ill-conceived project through to profit a few at the expense of the community without going through the EIR process is unconscionable.

From: Woutje Swets [REDACTED]
Sent: Monday, May 14, 2018 8:21 PM
To: info@scrtc.org
Subject: Please, please don't sign the contract with Progressive Rail!

Dear RTC,

Please, please wait for the EIR and UCS to be completed before signing a contract with Progressive Rail. There are too many unknowns, and you do not have enough information to make such a huge commitment!

There is NO the harm in waiting till the EIR and UCS reports come out, but there is HUGE harm if you sign now and it turns out that the EIR and UCS reports determine that a train is not feasible. What then??

We have not heard from you what would be the consequences if the EIR and UCS find that the train is not possible, but meanwhile you would tie to a contract! YOU NEED TO BE UP FRONT ABOUT THE CONSEQUENCES!!!

What is the rush? These are our tax dollars at stake, and we do not earn enough money to cover your "Oops"es.

Please come to your senses. You are scaring me.

Thank you,
Woutje Swets

From: David D Criswell [REDACTED]
Sent: Monday, May 14, 2018 8:40 PM
To: info@sccrtc.org
Subject: Rail Contract

First, I am against any rail on the Coastal Corridor.
Today however, I'm asking you to wait for the EIR and UCS to be completed before signing a contract with Progressive Rail.

Thank you,
David D Criswell

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

From: Dan Benvenuti [REDACTED]
Sent: Monday, May 14, 2018 9:11 PM
To: info@sccrtc.org
Subject: Contract

No No No

It is beyond rational thinking that any business concern would enter into a total money losing proposition like this. There is no freight business and the small amount of tourist business would not even cover the fuel cost. This is no way in the best interest of the citizens the people you are suppose to represent. These same ideas did not work with last contractor what makes you believe it will work now? Get your heads out of LaLa land forget about rail and get real with a trail.

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

From: Kelley Filbin [REDACTED]
Sent: Tuesday, May 15, 2018 5:35 AM
To: info@sccrtc.org
Subject: Please wait!

Dear RTC members,

Please wait until the EIR and Unified Corridor Study are complete before signing a contract with any potential rail operator, including Progressive Rail.

Best and thanks,

Kelley

From: Susan Reddington [REDACTED]
Sent: Tuesday, May 15, 2018 5:49 AM

To: info@scrtc.org

Subject: Signing the rail contract

Please do not sign the Rail contract until the EIR for the North Coast Rail Trail and the Unified Corridor Study are complete. You will discover then that the proposed Rail contract, if signed, will prove a disaster for the Santa Cruz/Watsonville area.

Susan Reddington

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

From: Steve Homan [REDACTED]

Sent: Tuesday, May 15, 2018 11:36 AM

To: info@scrtc.org

CC: Ryan Coonerty; Rachel Dann; Allison Endert; john.leopold; greg.caput@santacruzcounty.us; Zach Friend; bruce mcpherson

Subject: North Coast Railroad Issues

Dear RTC Deputy Director Luis Mendez,

I am writing about two issues of concern regarding providing rail service to the North Coast of Santa Cruz County on existing tracks.

1) With regard to the proposed storage of rail cars on the tracks north of Santa Cruz, why does Santa Cruz County have to endure this continuing visual blight along Highway 1, in a scenic corridor, adjacent to state parks and agricultural fields. The North Coast tracks should not be considered as a linear industrial site for rail car storage.

2) In addition, I am concerned about the often talked about proposal to provide passenger rail service up the North Coast to the town of Davenport.

My concern relates to how the fills over the creeks of the North Coast were initially constructed, well over 100+ years ago. These fills support the tracks, and some are quite tall. They were NOT built to modern geotechnical safety standards.

This is how the fills were created: First, wooden trestles were built over the creeks. Then, ties and rails were installed at the top. That was not the end of the construction. After that, rail cars full of rocks and earth were rolled over the trestles, and the material was dumped down over and through the wooden trestle supports. Eventually, the trestles were buried under the fill, all the way up to the tracks and ties. The creek discharges to the ocean were routed through culverts or tunnels through the filled-over trestle, or through the rock adjacent to the trestle.

Therefore, it seems very likely that (1) the wooden trestle supports rotted out long ago, and (2) the rock and earth fill from the surface to the level of the rails at the top of the trestles was not placed in accordance with any modern geotechnical engineering principles. Adequate compaction is a question, and so is the nature of the rock and earth fill. Non-engineered fills lasted these many years for use in shipping cement and bringing in fuel, for the cement plant. The level of safety was adequate for that use only. Still, many repairs have been required over the years to keep the tracks usable. Now, they have not been used regularly for about a decade.

The level of safety required for modern passenger train service, with the proposed rail passenger cars perhaps carrying 25 to 150 adults and children or more per train, requires much more information about the amount of compaction and the nature of the fill, in order to make decisions about adequate passenger safety. I believe that the need to shore up or replace these fills could be a major financial stumbling block and expense that might affect the desires for a passenger rail line between Santa Cruz and Davenport. Even just geotechnical testing of these old fills could be very expensive.

Thank you for letting me share my concerns.

Steve Homan

From: Scott Rowe [REDACTED]
Sent: Tuesday, May 15, 2018 12:50 PM
To: info@sccrtc.org
Subject: We do not need or want this Progressive Rail contract!

Dear Commissioners and Staff,

Why would we invite Progressive Rail to profit from our county while risking all other options for our branch line which the RTC wisely purchased to create a third North/South commuting route?

Few, if any county residents would relish the idea of new freight train delays on surface streets, more diesel fumes in our air, or increased truck traffic should Progressive succeed at bringing new transloading customers to our county.

Please protect Measure D's promise to "Get Everyone Moving" by keeping our options open and not signing with Progressive Rail.

Sincerely,

Scott Rowe

From: Deborah Secrest [REDACTED]
Sent: Tuesday, May 15, 2018 1:53 PM
To: info@sccrtc.org
Subject: We do NOT want this progressive rail contract Please vote Trail only!

Dear Commissioners and Staff,

We live right in back of the RR tracks at Jade Street in Capitola. Our manufactured home is barely 8 feet from the tracks. (We live at the Tradewinds Mobile Home Park). Although we realize that trains have been here before us, for many years now there has been no activity on these tracks, except for Christmas 2016 when they briefly ran as the "Polar Express". We would watch the train swaying from side to side as it went by, we were very worried that the tracks were unsafe and that the whole thing could fall over!

We and our neighbors in our Mobile home park, and all over Capitola and Santa Cruz County are very much in favor of the trail only option. We look forward to that day when we can utilize such a fantastic recreational option as a bike/pedestrian trail that would afford so many local people great enjoyment!

The following was a sample e-mail sent to us by Greenway, we concur with their statements, and strongly urge a NO VOTE for any future train activity on these old tracks.

Why would we invite Progressive Rail to profit from our county while risking all other options for our branch line which the RTC wisely purchased to create a third North/South commuting route?

Few, if any county residents would relish the idea of new freight train delays on surface streets, more diesel fumes in our air, or increased truck traffic should Progressive succeed at bringing new transloading customers to our county.

Please protect Measure D's promise to "Get Everyone Moving" by keeping our options open and not signing with Progressive Rail.

Sincerely,

Deborah Secret & Dean Price

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

From: Anne Carr [REDACTED]
Sent: Tuesday, May 15, 2018 3:14 PM
To: info@sccrtc.org
Subject: Progressive Rail

Dear RTC,

As a long time resident of Aptos I am against a contract with Progressive Rail. We stand nothing to gain from this contract and much to lose. We do not want an industrial freight service on our branch line. We want and need a bike and pedestrian corridor along the existing rail.

thank you,

Anne Carr

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

From: Bobbi Burns [REDACTED]
Sent: Tuesday, May 15, 2018 3:13 PM
To: info@sccrtc.org
Subject: We do not need or want this Progressive Rail contract!

Dear Commissioners and Staff,

I have been following the Greenway vs Rail with Trail situation for well over a year. I find it very difficult to understand why the RTC continues to support rail activity on the corridor which was purchased on behalf of the residents of Santa Cruz County. It is painfully obvious a passenger train is NOT a viable option for a county of our population size and therefore it makes much more sense to use the rail corridor for new active modes of transportation which are becoming more and more common and economically viable - just look at the electric scooter adoption in San Francisco, San Jose and Los Angeles in the last few months. Our county is filled with individuals who are active as well as those who are disabled or elderly. All of these individuals could use the Greenway to move throughout the county in a healthy, environmentally friendly and economical fashion. Can you please explain to me why the RTC is about to sign a contract with Progressive Rail which will cost the taxpayers hundreds of millions of dollars if we need to get out of it after the UCIS is complete, will cost taxpayers millions to get the tracks fixed to allow for freight transportation, will do nothing to reduce the commuting challenges on Hwy 1, will cause a tremendous amount of additional traffic congestion in the county at rail crossings, and will greatly limit our options for the corridor?

Sincerely,

Bobbi Burns

From: Alex M [REDACTED]
Sent: Tuesday, May 15, 2018 3:21 PM
To: info@sccrtc.org
Subject: NO Progressive Rail contract

Dear Commissioners and Staff,

A vote for Progressive Rail is a vote against the health and safety of Santa Cruz citizens. They have a poor record and we cannot afford their mistakes.

Sincerely,

Alex Miller

From: Sandra Baron [REDACTED]
Sent: Tuesday, May 15, 2018 5:16 PM
To: info@scrtc.org; Zach Friend
Subject: Comment on Progressive Rail Proposal

To Luis Mendez and Supervisor Zack Friend,

I am writing to you as a biking and driving member of the Santa Cruz County Community. I am reluctantly starting to agree that we can't ignore the possibility of passenger rail and that an electric commuter train could be compatible with a biking and walking trail. Traffic is a problem but recreational opportunities are also very important.

When I look over Progressive Rail's proposal and the agreement with SCCRTC, I am concerned that there is so much emphasis on freight. There is no mention of an electric passenger train, and the examples that they show of their passenger train experience were not commuter trains, but novelty holiday trains.

Freight can be an option, between Watsonville and Salinas perhaps, but only light electric freight should be a component of our coastal trail. Their proposal shows some very industrial developments that they were involved with. Is this what we want for our county? The economics of this will likely depend on tourism and transportation funding, not heavy industry.

Our coastal right-a-way is a stunning world class beauty. It's future is in your hands, please proceed carefully.

Sincerely,

Sandra Baron

From: Ross Foti [REDACTED]
Sent: Tuesday, May 15, 2018 5:44 PM
To: info@scrtc.org
Subject: Progressive Rail

Dear Board of Supervisors, I am writing you in response to reading about the possibility of *Progressive Rail* optioning the Santa Cruz County Branch Line and turning it into an active freight line. I understand you will be voting on this issue this coming Thursday morning at 9 am. I cannot be physically present at that time and so am tendering this request that as my representatives, you vote against granting *Progressive Rail* access to our future and control of the Branch Rail.

Granting a fossil-fuel friendly business such as *Progressive Rail* access to our community's future is unconscionable and out of sync with our community's desire to see more sustainable and positive options for this vital community corridor. Few, if any of your constituents would relish the idea of new freight train delays on surface streets, new diesel in our air, or increased truck traffic should *Progressive* succeed at bringing new freight rail customers to our county.

As a daily traveler through the Trout Gulch/Soquel intersection, I can attest that the intersection would fare poorly with freight traveling through it, endangering drivers and pedestrians alike. Please protect Measure D's promise to "Get Everyone Moving" in our county by keeping our options open and not signing with *Progressive Rail*. Sincerely,
Ross Foti
Aptos

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

From: terry tiedeman [REDACTED]
Sent: Tuesday, May 15, 2018 6:23 PM
To: info@sccrtc.org
Subject: No Progressive Rail contract!

Dear Commissioners and Staff,
I don't want a train on the rail line. I want the Greenway plan which would be amazing for our city and county. Please make sure we get this right! Thanks.
Sincerely,

Terry Tiedeman

From: David and Nancy Demorest [REDACTED]
Sent: Tuesday, May 15, 2018 8:53 PM
To: info@sccrtc.org
Subject: We do not want the Progressive Rail contract

Dear Commissioners and Staff of RTC,

Please do not entered into a agreement with Progressive Rail that will bring noisy and desiel fuming trains to our beautiful coastal routes and towns ! We have lived here for 20 yrs and do not want this in our neighborhoods. This contract would be a bad deal for our community. Progressive wouldn't even be required to maintain a commuter or tourist track if it is not profitable (which it probably won't be). The only real "progressive" plan for our community is to restore land for pedestrian and low impact, low polluting vehicular traffic. Measure D was not voted for to bring more freight trains into our town.

Sincerely,
David and Nancy Demorest

From: Foley Weems [REDACTED]
Sent: Tuesday, May 15, 2018 9:33 PM
To: info@sccrtc.org
Subject: RE: We do not need or want this Progressive Rail contract!

As an alternative to rail ...

Build the bike path wide in a segment and once a year place a trolley powered by fuel cell or lithium powered or whatever the clean technology of the future ... Then go back to bikes the rest of 364.

From: joe martinez [REDACTED]
Sent: Wednesday, May 16, 2018 9:11 AM
To: 'Zach Friend'
Cc: info@sccrtc.org
Subject: Say NO to Progressive Rail

The proposed contract with Progressive Rail is Bad!

There are significant issues associated with the contract that put our community and neighborhoods at great risk, such as:

- The contract provides Progressive Rail the right to store 100 rail cars on the North Coast between Davenport and Laguna Rd within the Coast Dairies State Park, alongside the

proposed rail trail. Although there is a 2-month time limit for specific cars, there is no overall limit, meaning that rail cars could be present at all times.

- The contract severely limits local control of the corridor for at least a decade. The contract deceptively provides false assurances that the RTC can still do projects on the corridor, as the contract states that any projects must not interfere with Progressive Rail's right and operation of freight service and bypasses any outcomes from the United Corridor Investment Study. How can the RTC agree to this contract before the unified corridor study has been completed?
- The contract restricts access to the rail corridor by the community. Since the agreement restricts how the RTC can develop the corridor, current trails would likely become off-limits and lead to long-term loss of access since freight operations would limit the commission's ability to construct a trail. The heavily used recreational sections of coastal trail north of Wilder Ranch that are on the right-of-way would not be accessible.
- The contract states that excursion trains may come later—carrying 5,000 passengers the first year, 10,000 the second year, and 15,000 the third year. The volume of possible passengers on these excursion trains would severely affect the sanctity of our county and its neighborhoods.

This contract and Progressive Rail is not the answer to Santa Cruz County's traffic and transportation issues. You have an obligation to listen to our reaction to this contract and represent us. As a taxpayer, registered voter and resident of Santa Cruz County, *I ask the RTC to NOT SIGN this contract* and move away from any negotiations or discussions with Progressive Rail.

Regards,

Joe Martinez

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

From: William Rubel [REDACTED]
Sent: Wednesday, May 16, 2018 9:39 AM
To: info@sccrtc.org
Subject: We do not need or want this Progressive Rail contract!

Dear Commissioners and Staff —

I strongly oppose the Progressive Rail contract.

I equally strongly support developing the rail line for biking and walking. I have seen that kind of development in Europe and in the East Coast, for example, at Cape Cod. Optimizing for a bike trail will directly benefit us locals who would use such a convenient bikeway for recreational purposes and it will attract tourists who will benefit the community in the more general way that tourists do.

Freight is not the future of our County.

Thank you,

William Rubel

From: Mike Caroselli [REDACTED]
Sent: Wednesday, May 16, 2018 10:44 AM
To: john.leopold@co.santa-cruz.ca.us; info@sccrtc.org
Subject: Progressive Rail, trail

Hello Mr. Leopold and RTC,

As a voting homeowner in Pleasure Point, and a father of two young children, I urge you not to sign a deal with Progressive Rail or any rail operators. I support removing the tracks and creating a dedicated bike/running/walking trail from Davenport to Watsonville. You have a once-in-a-lifetime opportunity to dramatically improve the lives of all Santa Cruz County residents.

A trail (no rail) would:

- Increase opportunity for healthy activities
- Increase safety for bikers and runners
- Increase property values
- Increase tourism revenue (bikers, runners, vacation rentals with bikes would promote the path)
- Increase bike rental revenue
- Increase opportunity to bike to school
- Increase opportunity to bike to work
- Decrease car traffic by creating easy bike option
- Decrease vandalism and crime along train tracks

A rail contract would:

- Increase traffic for residents waiting for train crossings
- Increase noise/air pollution around tracks

I'm sure the rail contract would create substantial revenue for the County, but I would hope the benefit to the community and increased bike travel revenue for local businesses would far outweigh it. After not running freight trains for so many years, the contract with Progressive (or any rail company) is a step backwards.

Santa Cruz is not going to get less crowded. Santa Cruz is not going to get any cheaper to live here. The good weather, beautiful mountains, clean ocean, friendly businesses, and diverse community will continue to bring people here who want to lead a positive, active, and vibrant life. In the future, I believe a transportation solution lies in a BART-like train running on Highway 1. I also think a full scale redo of Highway 17 should happen in our lifetime, hopefully with the BART-like train connection. Silicon Valley will continue to be the economic hub (jobs) and Santa Cruz will continue to be where everyone wants to live (home).

Santa Cruz has east/west traffic. The geologic nature of Santa Cruz - rivers, valleys, and gulchs going north/south, the ocean to the south and the mountains to the north - means that there are only a few possible east/west roads. Highway 1, Soquel, Water, Brommer, East Cliff, Murray, Portola, Laurel/Broadway, Capitola Rd. All of these streets have dramatic traffic during commute times (and Friday afternoon influx of tourists). As locals we learn to work around it. A dedicated bike/walk/running path would make travel within Santa Cruz so much easier. From Pleasure Point I could bike to the Boardwalk in 15min. I could bike to Santa Cruz Mountain Brewery in 25min. I could bike to Capitola Beach in 10min. My kids could bike to New Brighton in 10min. We could bike to Aptos in 30min. We already bike around Pleasure Point - this was one of the reasons we wanted to live and raise our children in this neighborhood - but a bike path would open up and bridge together the rest of Santa Cruz.

I grew up in Manhattan Beach, down in the South Bay of Los Angeles. When the Red Line railroad went away, they took out the tracks and made a 3.5mile running/walking path from Manhattan Beach, through Hermosa Beach and ending in Redondo Beach. The Greenbelt is a beautiful part of the beach cities, and promotes running/walking for residents. In addition to the Greenbelt, there is the Strand on the beach. You can run or bike from Torrance Beach to Venice Beach without crossing streets. I know through personal experience that this promotes the active lifestyle of the South Bay, and creates community. When I lived down there I would run and bike on the Strand all the time. I would see friends and family along the Strand, running, walking dogs, biking, etc. Being active and socially connected are two of the most important attributes of a happy life. That's what makes me so excited for a similar community corridor in Santa Cruz County.

I appreciate your consideration on this matter, as I view this as one of the most important issues in Santa Cruz County, and an opportunity for the wholesale betterment of our community.

Best regards,

Mike Caroselli

From: William Martin [REDACTED]
Sent: Wednesday, May 16, 2018 11:20 AM
To: info@sccrtc.org
Subject: CONTRACT

PLEASE WAIT FOR THE STUDY BEFORE SIGNING A CONTRACT WITH PROGRESSIVE!

From: Susan Kincaid [REDACTED]
Sent: Wednesday, May 16, 2018 11:25 AM
To: info@sccrtc.org
Subject: Rail/Trail

Please wait for the EIR and UCS to be completed before signing a contract with Progressive Rail. There are still many unanswered questions about Progressive's ability to follow through on its proposal.

Susan Kincaid

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

From: Natasha Loudermilk [REDACTED]
Sent: Wednesday, May 16, 2018 12:00 PM
To: info@sccrtc.org
Subject: I vote bike trail

I am in favor of converting the rails into a nature trail. Let's keep Santa Cruz County Beautiful! I vote against progressive rails.

Thanks
Natasha Loudermilk

From: Listed below
Sent: Tuesday, May 15, 2018 12:50 PM
To: info@sccrtc.org
Subject: We do not need or want this Progressive Rail contract!

Dear Commissioners and Staff,

Why would we invite Progressive Rail to profit from our county while risking all other options for our branch line which the RTC wisely purchased to create a third North/South commuting route?

Few, if any county residents would relish the idea of new freight train delays on surface streets, more diesel fumes in our air, or increased truck traffic should Progressive succeed at bringing new transloading customers to our county.

Please protect Measure D's promise to "Get Everyone Moving" by keeping our options open and not signing with Progressive Rail.

Sincerely,

Scott Rowe
Jim Cumming
Jean Mahoney
Amy Anderson
Larry Goodman
Leslie Chow
Tricia Proctor
Panagos D. Pateras
Deborah & Dean Price
Joe Morici
Bill Gray
Foley Weems

Edda Tusinac
Rosemarie Peoples
Suzanne Helfman
Greg Cross
Tiffany Theden
Marina Ramon
Akemi Chee
Greg Heath
Christine Bowman
Ann Whitlock
Lara Bezich

From: Barbara Roettger [REDACTED]
Sent: Wednesday, May 16, 2018 3:15 PM
To: info@sccrtc.org
Subject: We do not need or want this Progressive Rail contract!

Dear Commissioners and Staff,
Dear Supervisor Coonerty,

I am hoping you will vote NO to a 10 year contract allowing Progressive Rail to move freight cars and storing rail cars on the corridor of our pristine north coast near Bonny Doon Beach. I have done my best to educate myself on this matter. Originally, I was for the Rail and Trail until I started crunching numbers (we would need to raise taxes) and looking at the actual width and physical limitations of the rail corridor- especially how people who use the trail will be diverted away from most trellises and on to busy streets if a freight train has right of way. I have even missed work a few times to go the the SCCRTC meetings, and when I can't make them. I make sure to read about them. So what is the rush?

Our METRO bus system has to beg for funding, when we need to incentivize, modernize and prioritize our bus system- like Seattle and Boulder have successfully done. Doing this will give us much more bang for our buck and efficiency in actually moving people than a freight train will ever do.

Measure D included the option to use funds allocated for rail maintenance for other uses. The most progressive thing that the SCCRTC to do would be to rail bank and use Measure D funds to build a world-class safe CONTINUOUS trail that accommodates for people that want to commute fast and people who want to stroll. Rail banking is a relatively 'new' Federal law that is specifically there to maintain the Right of Way for future generations to do what they can afford to do with the corridor. There are \$40M in the pot. Paying back the \$11 million is a perfect use of funds.

At this time in history, we are in a major transportation disruption. Innovation is happening faster that most can imagine and for the people of Santa Cruz County be able to use people power or electric power to move on a bike or a pod or skateboard or a wheel chair will never fall out of step with being environmentally sound, efficient and healthy way to move.

Please protect Measure D's promise to "Get Everyone Moving" in our county by keeping our options open and NOT signing with Progressive Rail.

Sincerely,

Barbara Roettger
Santa Cruz

From: Sandy Skezas [REDACTED]
Sent: Thursday, May 17, 2018 10:34 AM
To: info@sccrtc.org
Subject: Progressive Rail?

Dear RTC members—

I have been reading with rapt attention the articles in the Good Times and most recently the Sentinel. I am concerned that the RTC is on a path towards signing with Progressive Rail to the detriment of the Santa Cruz Community. I am particularly concerned that you appear to be moving forward without regard for the Environmental Impact report and the United Corridor studies to be completed.

What is the motivation for moving forward without what appears to be all the facts?

Who is benefiting besides an out of state company with no caring ties to our community?

The deal does not seem to provide much benefit to the community except to postpone the hard choices about rail and trail.

Thank you for helping me understand your thinking.

Sandy Skezas

From: Kathy Ransom [REDACTED]
Sent: Thursday, May 17, 2018 12:08 PM
To: info@sccrtc.org
Subject: RTC

Please wait for the EIR and UCS to be completed before signing a contract with Progressive Rail.
Kathy Ransom
Aptos

From: Jerry V Finney [REDACTED]
Sent: Thursday, May 17, 2018 5:26 PM
To: Zach Friend
Cc: Santa Cruz County Greenway; Sccrtc Info; Trail Now
Subject: Re: Proposed contract rail service

Dear Supervisor Friend,

In the past, we have written to you regarding the value of a bike trail along the Coastal Corridor. Having visited many similar ones throughout the country, we know that it would be a great tourist attraction, as well as a benefit for the citizens of this county. After reading in the Sentinel and the Trail Now Newsletter of the proposed contract with Progressive Rail, we are very concerned. We do not understand why RTC is not waiting for the EIR and Unified Corridor Study before signing a contract with any business - especially one for ten years.

From what we have read, it appears that the primary purpose of this contract will be to allow freight service and the storage of tanker cars along the Corridor. The contract would require that the tax payers of Santa Cruz County initially pay for 2.5 million dollars worth of upgrades to the tracks. Thereafter, the tax payers would have to pay for continued maintenance of the Corridor.

The amount of money that Progressive would be paying to RTC is undetermined, as they do not know how much business they will have hauling freight or how many tanker cars would be stored.

In any case, it will not be enough to offset the cost to the taxpayers.

The contract states that excursion trains may be run. However, there is no basis given for the estimated number of passenger for these trains. There is no reason to believe that excursion trains would ever be profitable for any company. Everything we have read, states that passenger train service is not economically feasible for this area at this time. Nevertheless, under this contract, freight trains would have precedence over passenger trains.

One wonders if all along, the goal of RTC was not a passenger train service to "relieve" Highway 1 traffic, but rather a plan to accommodate interests in freight and petroleum businesses.

If the voting members of the RTC Board approve this contract, they will cause the Santa Cruz County tax payers to spend an inordinate amount of money to subsidize Progressive Rail and any freight or petroleum business that would use their service. Shame on them if they vote to sign this contract.

Jerry & Jan Finney

From: Whitney Perry [REDACTED]
Sent: Thursday, May 17, 2018 6:00 PM
To: info@sccrtc.org
Subject: Suntan rail line

Hello,

My name is Whitney Perry and I live on Davenport Ave in Davenport. I just read through PGRs proposal for their freight and passenger lines. I am horrified at the proposal for tourist lines to Davenport. What can I do to vote No on this project? I can't believe it's even on the table.

Whitney

From: kathy [REDACTED]
Sent: Monday, May 21, 2018 7:26 AM
To: info@sccrtc.org
Subject: Re: Do not sign the current contract with Progressive Rail

Dear Mr Mendez,

Upon reading more about how we/Santa Cruz got into this mess, I believe the RTC is not legally bound to make a contract-signing decision about rail service at this moment, and I would HIGHLY ENCOURAGE/SUPPORT not engaging on this flawed contract. We do not have the funds for this, and with freight service taking priority, all would be lost on improving any corridor that would alleviate traffic.

Best Regards,

Kathleen Nix

On Sat, May 12, 2018 at 7:09 PM, kathy [REDACTED] wrote:

Dear Mr. Medez,

I am writing to respectfully ask that the SCCRTC not sign the current contract with Progressive Rail. This isn't about rail vs. no-rail. I believe this contract is *bad* - whether you want passenger rail service or you don't. Please don't get distracted in the debates around pros and cons of rail!!! This contract could potentially irreversibly damage neighborhoods, the north coast, and it could disable our local community's ability to do anything about it. As a homeowner in the Westside, I have keen interest into the management of this area. There are significant issues that put our community at risk, such as:

1. Deceptively provides false assurances that the RTC can still do projects on the corridor like the rail trail

§3.1 This section describes all of the power that the RTC has to do projects like the rail trail. It sounds very good, and it's not till the end that the cause reminds that these projects must not materially interfere with Railway's rights and operations or freight service rights and obligations. The onerous way that this final text is written could block any of the described projects.

§6.1.1 This section deceptively implies that the RTC can adjust the railroad as needed for a project such as the rail trail. But the phrase "subject to Railway's rights under this agreement" and §6.1.2 apparently removes that flexibility.

2) Significant impacts on neighborhoods

§5.2.2 This section absolves the railway of any obligation to correct graffiti. Why? This is an almost certain problem that will occur, and it should be their responsibility to prevent and correct this on rail property.

§6.3 indicates that facilities will be built on the west side of Santa Cruz for train maintenance (just west of Swift by Kelly's Bakery). This removes any ambiguity that the Railway intends to run freight through the west side of Santa Cruz, and furthermore intends to add significant industrial facilities on the west side of Santa Cruz (that would not likely be subject to city planning laws) for maintenance operations. This could have significant noise, visual, odor and other impacts.

§6.3 This section also implies additional facilities will be built, with no commission oversight if Railway claims the absence of the facility would materially interfere with freight service.

§7.1.2 This gives the Railway the option to create "lay down" areas which they can use to temporarily store shipped materials that are being transferred to/from train. The storage areas would be adjacent to the tracks and could be located in neighborhoods, or anywhere else convenient for the shipper and Railway. It also provides a financial incentive to the RTC to lease additional space for this purpose.

3) Potential significant impact to North Coast

§2.5.1 As written, Railway maintains the right to store 100 rail cars on the North Coast between Davenport and Laguna Rd within the Coast Dairies State Park, alongside the proposed rail trail. Although there is a 2-month time limit for specific cars, there is no overall limit, meaning that rail cars could be present at all times.

Click on these images to see full-size maps of where rail cars would be stored:

Click here to read about this issue in another community.

4) Makes providing passenger rail by a 3rd party nearly impossible

§2.4.1.4 This deceptive section states that even when Railway interests don't take priority over another third-party with a contract to use the corridor, that third-party must still not materially interfere with Railway interests

§2.4.1.3 This section ambiguously defined level of service

§2.4.1.6 The car-mile calculation of proportionate share does not take into consideration frequency of operation. A third party operator with once per week service could be compelled to pay the same fee as an operator with multiple daily trips.

§2.4.1.6 allowing the Railway to determine actual costs is inappropriate as it grants them a biased power to charge a licensee additional amounts

There are numerous other points in this flawed contract that erode influence and control over how this land is used and impact the community. I do hope the contract is NOT signed and that a better solution is found. Our community deserves something much better.

Best Regards,

Kathleen Nix

From: Larry [REDACTED]
Sent: Monday, May 21, 2018 8:14 AM
To: info@sccrtc.org
Subject: Progress Rail Contract.....

Dear Sirs: Please wait for the EIR and UCS to be completed before signing a contract with Progressive Rail.

Thank you.
Larry Grant

From: David Steinbruner [REDACTED]
Sent: Tuesday, May 22, 2018 10:34 AM
To: info@sccrtc.org
Subject: Progressive Rail.

Please sign up Progressive Rail as our operator as soon as possible.

Then, as soon as practicable thereafter, please start running demo "streetcar" service through downtown Santa Cruz, Intercity trips between Santa Cruz and Aptos (Watsonville) and excursions up to Davenport.

Sincerely,
D. A. Steinbruner,
[REDACTED]

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

From: Anne Carr [REDACTED]
Sent: Wednesday, May 23, 2018 9:22 AM
To: info@sccrtc.org
Subject: Rail-Trail

To Whom it may concern,

As a Santa Cruz County resident I ask you to vote NO to Progressive Rail. I am in favor of a Greenway trail,
Thank you,
Anne Carr
[REDACTED]

From: Monica McGuire [REDACTED]
Sent: Thursday, May 24, 2018 9:12 PM
To: General Info
Subject: Feeling alarm throughout SCC about the Progressive Rail contract possibilities

Dear RTC Board,

I continue to meet dozens of fellow SCC neighbors who feel shocked and horrified that the RTC is not only strongly considering giving a contract to Progressive Rail, still, but also that the RTC has been barreling ahead to do so despite the huge public resistance.

In my understanding, giving any rail contract is a huge commitment that changes dramatically the chances for getting a rail and trail OR a trail only FIRST, as the vast majority of Santa Cruz County neighbors desire.

We want a Greenway Trail ASAP

And we do not want to wait 8-10 years MORE for a bike and pedestrian trail by pushing for simultaneous rail creation

We want OPTIONS for future mass transit as a Greenway trail conversions give us

And we do not want to be tied to RAIL as our major thrust for future mass transit

We want the inexpensive, quick choice of a bike trail, after 15+ years waiting

And we do not want to pay hundreds of millions of dollars more

We want our concerns, voices, and our great work to be listened to!

And we do not want elected officials or appointees who continue to ignore us, their constituents, and neighbors

What does it take to be listened to and responded to? Over 10,000 of us are doing all we can do in the democratic methods we were raised to believe were important, and yet we continue to feel marginalized by the lack of respect for these majority wishes expressed.

Do NOT sign any contract with Progressive Rail without full knowledge that we will ensure you are all held accountable for the extreme damages to our county that you are exposing us to unnecessarily.

Please read this Sentinel article for more of the mounting evidence telling you to slow down and use the PRECAUTIONARY PRINCIPLE by choosing to do what your constituents are democratically asking you to do:

<http://www.santacruzsentinel.com/opinion/20180506/the-future-of-rail-remote-control>

Thank You,
~Monica McGuire

From: MICHAEL WEATHERFORD [REDACTED]
Sent: Friday, May 25, 2018 7:56 PM
To: info@sccrtc.org
Subject: Support of Greenway Santa Cruz

Support of Greenway Santa Cruz

Supervisor Friend - I am a 20 year resident of Rio del Mar. I have served on the board of the Aptos La Selva Fire District for over 16 years, so I feel I have a pulse on the community, as you do.

I do not think continuing train traffic on the rail corridor is a good use of the county's time, resources or interest. I have seen the studies that show how much a one-way ticket might be if a train was to operate between Watsonville and Santa Cruz, and it simply doesn't make sense. Please do not extend a lease to Progressive Rail. The county leaders need to focus on relieving road congestion, and a train is not going to solve it.

I think the RTC should focus efforts on increasing bus ridership. You and I both see busses going through the area, and in some cases they are well utilized, and others (like in Rio flats) they run nearly empty. I think we can do better by having bus lanes on the freeway, controlled stoplights on Soquel, and more express busses at major exits.

The railway should be used as proposed by SCCGreenway as a trail for bikes and walking.

By the way, thanks for opposing the Nissan dealership in Soquel. Even though it passed, I think you see the vision that the existing residents and businesses do not want a project like that. It is too bad that the Nissan dealer is not paying 100% for the stop light @ Robertson. Please do not hesitate to call me if you have questions.

Mike Weatherford

From: Julie Montgomery [REDACTED]
Sent: Sunday, May 27, 2018 9:52 AM
To: info@sccrtc.org
Subject: Progressive Rail contract

Dear RTC,

I would like to voice my support of entering into a contract with Progressive in order to preserve the Santa Cruz Branch Line right of way for future passenger rail service. I strongly encourage the RTC to be completely transparent on how this contract is different than the previous contract and to dispel the notion that adopting this contract eliminates any future passenger rail. Please clearly explain the reason we need to allow freight service in the short term to get passenger service in the long term. Please also explain the risk to the right of way for both rail and trail if this contract is rejected.

Regards,
Julie Montgomery

From: Karin Grobe [mailto: [REDACTED]]
Sent: Sunday, May 27, 2018 12:12 PM
To: info@sccrtc.org
Subject: Progressive Rail

Don't sign a contract with Progressive Rail. It's a bad deal for the region. I prefer the Greenway solution.

Karin Grobe

From: Tim Brattan [mailto: [REDACTED]]
Sent: Wednesday, May 30, 2018 2:15 PM
To: info@sccrtc.org
Subject: Contract with Progressive a BIG mistake

Dear Mr. Mendez,

I am writing to urge the SCCRTC to NOT sign the current contract with Progressive Rail. Entering into this contract would result in numerous and significant issues that put our community at risk, including:

- a) Locking us into a 10-year contract with an aggressive industrial freight operator with a track record of shipping hazardous materials and zero experience in passenger rail;
- b) Is irresponsible in that it holds this invaluable county property hostage for 10 years while doing nothing to alleviate traffic congestion, putting real transportation solutions for the corridor at serious risk;
- c) Continues to ignore the STB's original recommendation to rail-bank the corridor due to well documented problems with the rail line width, environmentally sensitive location, and condition; and
- e) Flies in the face of empirical data from hundreds of other communities across the country and world that investing in active transportation solutions - e.g. a dedicated, safe, wide, multi-modal and continuous trail through our county - gets residents of all ages and tourists out of their cars and off our roads and Highway 1 - all while improving their health and the health of our community.

These issues should concern all of us - the RTC most of all! - regardless of whether or not we support the idea of passenger rail. Please do not sign a contract with Progressive Rail or any other operator until the Unified Corridor Study has been completed.

Sincerely,

Tim Brattan and Suzi Mahler

From: Carol [mailto: [REDACTED]]
Sent: Thursday, May 31, 2018 10:13 AM
To: info@sccrtc.org
Subject: Progressive rail contract

Dear Mr. Mendez

I write to request that the SCCRTC, NOT! Sign the current contract with Progressive Rail. There are significant risks to our community with this contract.

1) the potential for areas of our community to become a rail yard, affecting quality of life and home values in our community.

SCCRTC Has only to look at how Progressive Rail has treated their own community. Which HAS become a Rail Yard! Where residents are dealing with; trespassers, graffiti, cars sitting long enough to have stagnant water. Progressive provides NO security and in Lakeville residents are patrolling!

2) Severely limits local control of the corridor.

It won't matter what the community wants. Once in Progressive will do what THEY want. Look again to Lakeville MN, where Progressive has remained UNRESPONSIVE TO LOCAL CONCERNS.

3)How can RTC decide before the outcome of the Unified Corridor Investment Study is done.

4) The contract insufficiently protects RTC.

Federal law pre-empts the field of law dealing with rail companies leaving individual citizens, communities, And the RTC, HELPLESS TO RAILROADS. RTC will not be on equal footing with Progressive.

These issues should be of grave concern to RTC. YOU are also members of this community, please act with care and concern before you go forward. This may be a Pandora's box which if agreed to cannot be closed.

Sincerely
Carol Reid

From: Tom Shepherd
Sent: Thursday, May 31, 2018 11:47 AM

To: info@scrctc.org; 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.mcpherson@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; tim_gubbins@dot.ca.gov; Gine.Johnson@santacruzcounty.us
Cc: Nancy Connelly; Miles Reiter

Subject: Rail Proposal Comments

Good Morning,

I am writing to submit my comments to the Santa Cruz Regional Transportation Commission and their analysis of the rail proposal now under consideration. My perspective is specific to the potential that rail has as an option for produce shipments originating in the county.

Please feel free to contact me if there are any additional questions that I can help answer.

Respectfully,
Tom Shepherd
Vice President of Distribution and Logistics



To: Santa Cruz County Regional Transportation Commission

May 31, 2018

I am writing to comment on the viability of a local rail line to transport produce from Santa Cruz County to major United States market locations. My name is Tom Shepherd and I work at Driscoll's as Vice President of Logistics. My responsibilities include oversight of the execution of all fruit distribution and transportation activities within the Driscoll's of the Americas (DOTA) network. My career resume has included a blend of logistics experiences. I've previously worked for a major rail carrier and have been involved in logistics within the local produce industry for over 30 years. Also included is direct experience in rail service design and involvement in organizing the shipments of thousands of produce loads by rail during this period.

Strawberries, raspberries, and blackberries represent the top three valued produce crops in Santa Cruz County. Speed to market and ease of use are two of the top considerations when investigating rail as a feasible option for most produce commodities grown in this area grown – especially berries.

Driscoll's does ship berries by rail but this volume currently represents a very small percentage when compared to the truck loads that our company seasonally ships from California. There are only a few rail corridors that provide the type of service required for most highly perishable fruit and vegetables originating in this area. Produce shipped by rail from Santa Cruz, San Benito, and Monterey counties is predominantly trucked in trailers to rail facilities in Stockton or Los Angeles to

be loaded onto expedited intermodal trains to Chicago. In 2017, Driscoll's arranged 47 berry shipments for transport by rail. All but one was shipped from Southern California.

Individual site rail spurs and the use of refrigerated box cars is not an option for Driscoll's, for most area produce shippers, or for our customers. Prohibitive factors include service constraints, speed to market, equipment types, size, and access.

There have been studies to develop local intermodal service for produce shipments in the past. However, several challenges remain unsolved. Four of these that are relevant to this discussion are:

- 1) The Union Pacific main line that runs through both Salinas and Pajaro is not a primary rail corridor. Shippers save multiple days by trucking produce to the larger rail hubs located in Stockton and Los Angeles.
- 2) Sufficient volumes of rail shipments would need to be developed to establish dedicated expedited trains serving our local counties to reduce transit time. There is no expedited train service now in our Central Coast corridor outside of passenger service provided by Amtrak.
- 3) Produce is picked, cooled, and shipped throughout the day in our region. Managing this process around the timing of a single train, even if daily, would be insufficient to compete with the flexibility currently inherent with trucking options.
- 4) The seasonality and variability of produce supplies in our three counties would make a year round intermodal option difficult to sustain. This includes the challenges of establishing an ongoing economic balance of inbound and outbound freight into the area.

In conclusion, it is my opinion that the establishment of a rail option for the highly perishable produce commodities grown in Santa Cruz County does not provide the regional and broader network answers that would result in creating a viable shipping alternative for local companies. Please contact me if I can provide any additional information in support of your efforts.

Respectfully submitted,
Tom Shepherd
Vice President of Distribution and Logistics

From: Brooke Towne [REDACTED]
Sent: Friday, June 01, 2018 6:36 AM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson
Subject: Stop Progressive Rail

Please do not enter Santa Cruz into any contracts with Dave Fellon. His business practices are not a good fit for the people who live and work in Santa Cruz.

Thank you,
Brooke

From: Peter Emanuel [REDACTED]
Sent: Friday, June 01, 2018 9:49 AM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez; Cynthia Chase; Mike Rotkin
Subject: Progressive Rail

I implore all of you to please not vote to ratify the Progressive Rail contract on June 14th. It is a classic trap of "be careful what you wish for". It is quite tempting to look to private companies to help finance a large project in times of fiscal hardship in our county. However, Progressive appears to be a terrible choice. Looking at their past business enterprises and the current proposal, there is

every reason to believe that this relationship would go terribly wrong and destroy a golden opportunity of opening up the rail corridor to much more worthy uses. Their short track businesses of moving fossil fuels from fracking sites by rail to truck distribution centers points in the Midwest could quite easily be extrapolated to be expanded into our California market using our corridor in a similar way. Just look at the propane distribution contract they have already set up in Watsonville. Furthermore, there seems to be no legal commitment to supporting what the population of our county wants for this corridor. The management of Progressive have already been indicted in the Midwest for security fraud so there is no reason to ever believe their motivation is other than purely self serving and for their own profit. I don't really understand the legal implications RTC is under to find a partner but surely there must be a way to find a relationship that works in the best interests of our citizens. Progressive seems to me to be the worst possible choice and we should vote an emphatic NO before we really regret this.

Sincerely,
Peter Emanuel

From: Amy Smith [REDACTED]
Sent: Saturday, June 02, 2018 7:24 AM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez; Cynthia Chase; Mike Rotkin
Subject: Stop the rail

Do not sign this contract with progressive rail. We do not need a one way rail road. Waste of space. Please stop ruining our beach counties. Between the egregious home prices, lack of rent control, the terrible road infrastructure and new construction planning around here this is becoming fast a terrible place to live.

Signing a ten year contract with progressive rail will add to this misery tremendously. Stop and think about what is truly best- not for the railroad - but for the people and children that will live here in 5-10 years.

Forward thought.

Empathy.

Strong character to support our environment.

No to progressive rail.

Katherine Smith

From: Bradley Frey [REDACTED]
Sent: Saturday, June 02, 2018 12:28 PM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez; Cynthia Chase; Mike Rotkin
Subject: Stop the madness

We the people DO NOT want the RTC to proceed with a contract with Progressive Rail.

We need a safe and affordable bike and walking path.

We want the Greenway plan! Now!

Best Regards,
Brad Frey

From: David McCormic [REDACTED]
Sent: Saturday, June 02, 2018 2:18 PM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez;

Cynthia Chase; Mike Rotkin
Subject: Do not support contract with Progressive Rail

Good afternoon,

Please do not enter into a 10 year contract with progressive rail for the Santa Cruz rail corridor. We need to invest in active transportation solutions like the multi use trail not in chasing the dream of rail service, which is simply not economical at this point.

Investing in a trail through the corridor, will be a much more responsible choice for our communities. Signing with Progressive, puts this most sustainable, economical, and immediately beneficial project at least another decade out. All so there can be token rail service for holiday tourism and the storage of oil tankers.

We need a trail now, please abandon this contract with Progressive, who has a track record of social malfeasance and do the right thing.

Thank you,
Dave McCormic
Santa Cruz

From: Jason Smyth [REDACTED]
Sent: Saturday, June 02, 2018 11:00 AM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez; Cynthia Chase; Mike Rotkin
Subject: No on progressive rail

Stop progressive rail!!! These corporations don't care about our county they care about profits. Do the right thing.

Concerned Aptos voter,
Jason Smyth

From: Matt Paiss [REDACTED]
Sent: Saturday, June 02, 2018 3:25 PM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez; Cynthia Chase; Mike Rotkin
Subject: Please Do Not Sign Contract for Progressive Rail

I am a SC County resident, homeowner, and business owner. I am writing in opposition to the Progressive Rail contract. The county needs safe wide, walking & biking paths, not cargo rail service.
Please DO NOT SIGN A CONTRACT WITH PROGRESSIVE RAIL and preserve the greenway option.

Respectfully,

Matt Paiss

From: Harriet Maglin [REDACTED]
Sent: Saturday, June 02, 2018 9:56 AM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez; Cynthia Chase; Mike Rotkin
Subject: Progressive Rail Contract

We do not need a freight service or trains parked in our rail corridor. We need a clean, safe biking/walking trail that connects with the current Monterey Scenic Trail. Vote NO on the Progressive contract. It's a bad deal with unforeseen monetary and environmental consequences.

Harriet Maglin

From: Robert Fabbri [REDACTED]
Sent: Saturday, June 02, 2018 7:01 PM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez; Cynthia Chase; Mike Rotkin
Subject: Progressive Rail

Dear Commissioners,
Please vote "No" on the Progressive Rail proposal. A rail freight carrier is not needed nor wanted in Santa Cruz County. Leave the rail route open for public access.
Thank you,

Bob Fabbri

From: Enda Brennan [REDACTED]
Sent: Saturday, June 02, 2018 11:39 PM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez; Cynthia Chase; Mike Rotkin
Subject: Please say no to progressive (not) rail

Dear RTC commissioners. The Vote you take on June 14 will be the most important vote this year, I believe. Even though your staff believes otherwise, it is very clear to me as an attorney who has been in practice for almost 40 years that there is a little if any legal downside to you waiting until after the unified Corridor study is completed before you sign off on a one-sided deal with "progressive" rail. I am sure that every single one of you is environmentally sensitive. I hope you share my concerns about letting a company whose executives have a strong oil and gas background Get in the driver seat of our transportation policy here in Santa Cruz County. I am counting on every single one of you to exercise your independent judgment, listen to literally thousands of your constituents and be willing to overrule the staff recommendation. Thanks again for listening, Enda Brennan

From: Larry Goodman [REDACTED]
Sent: Sunday, June 03, 2018 6:52 AM
To: info@scrtc.org
Subject: Just saaay, NO!

Purportedly, Santa Cruz is a *Progressive Community* ... why would our political Representatives even consider bringing into our community - known pollutants, especially along a pedestrian/bicyclist pathway?

Vote to make our community a clean, Green healthy ocean environment !

Larry Goodman

From: Bruce [REDACTED]
Sent: Sunday, June 03, 2018 10:03 AM
To: info@scrtc.org
Subject: rail contract

Vote No on the contract with Progressive Rail Bruce Abt

From: Sandy Hager [REDACTED]
Sent: Sunday, June 03, 2018 3:04 PM
To: info@scrtc.org
Cc: [REDACTED]
Subject: I support Greenway

Dear Commissioners,

I support Santa Cruz County Greenway's plan for the rail corridor and their healthy, forward-thinking vision for our overall county transportation outlook.

Please help to ensure Greenway's alternative plan is given fair consideration in the Unified Corridor Study. Our county needs realistic, affordable alternatives to gridlock not a fantasy train with invisible riders.

Thank you,

Sandy Hager

From: Christopher Lucas [REDACTED]
Sent: Sunday, June 03, 2018 5:26 PM
To: 'Santa Cruz County RTC'; 'John Leopold'; 'Ed Bottorff'; 'Zach Friend'; 'Ryan Coonerty'; 'Greg Caput'; 'Bruce McPherson'; 'Jacques Bertrand'; 'Sandy Brown'; 'Randy Johnson'; 'Trina Coffman-Gomez'; 'Cynthia Chase'; 'Mike Rotkin'
Subject: NO to Progressive Rail, YES to GREENWAY!

To all our Community Leaders,

Please STOP the insanity of endorsing Progressive Rail in Santa Cruz county!

Please endorse GREENWAY's vision of a safe, healthy, eco-friendly multi-use recreation path for all to use and enjoy!

Chris Lucas

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

From: Ken Burnap[mailto:[REDACTED]]
Sent: Sunday, June 03, 2018 6:21 PM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez; Cynthia Chase; Mike Rotkin
Subject: Progressive rail

You have got to be kidding??? Seriously considering this company to become involved in a already contentious rail system in Santa Cruz when they have a best a sketchy record is just borderline crazy Vote no!!!

From: Randa Solick [REDACTED]
Sent: Sunday, June 03, 2018 8:28 PM
To: info@scrtc.org
Subject: No to Progressive Rail contract!

We don't need freight instead of commuter rail, and we definitely don't need to deal with a company that promotes oil and gas transport in its northern dealings. Please be responsive to the publisher and say NO to a contract with that company.

Thank you, Randa Solick

From: Shelby Frame [REDACTED]
Sent: Monday, June 04, 2018 12:04 AM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez; Cynthia Chase; Mike Rotkin
Subject: Stop progressive rail!

As a resident of Santa Cruz the last thing that we need is heavy freight trains passing through our town. Trains are both dangerous and noisy and reduce the charm of Santa Cruz. We need to stop progressive rail from ruining our community. Freight rail is not going to benefit her families or the quiet community that we have built.

We need to put a bike path instead of a rail system. We need a quiet and safe way to enable people to travel around town. The bike path will significantly add to the community and help enable people to bring their love where they live.

Please do not let progressive rail ruin our Town.

From: Taylor Frame [REDACTED]
Sent: Sunday, June 03, 2018 11:53 PM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez; Cynthia Chase; Mike Rotkin
Subject: Don't Let Freight Trains Ruin our town

As a long time resident and land owner near the proposed tracks, I am against letting freight trains pass through our town. I have small children and I can't stand the danger and noise it will create.

Please vote to support a bike path instead. We need a safe and eco friendly path that will improve the town, not destroy it with rail traffic. No resident wants heavy rail to roll through our town. Don't let this happen. You represent us and need to listen to the people.

Taylor Frame

From: Paul Reid [REDACTED]
Sent: Monday, June 04, 2018 6:46 AM
To: info@scrtc.org
Cc: john.leopold@ca.santa-cruz.ca.us
Subject: Progressive Rail Contract

To whom it may concern:

For the record, I am opposed to the RTC issuing a contract to Progressive Rail for any rail lines in Santa Cruz county.

Paul J. Reid

From: Jean Mahoney [REDACTED]
Sent: Monday, June 04, 2018 7:00 AM
To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez; Cynthia Chase; Mike Rotkin
Subject: Stop progressive rail

Please do not vote to have Progressive Rail on our rail corridor. I do not believe their interests are the best for our residents transportation needs.

Thank you,
Jean Mahoney
Santa Cruz City Schools Teacher

From: Andrea Miller [REDACTED]
Sent: Monday, June 04, 2018 9:13 AM
To: info@scrtc.org
Subject: NO to Progressive Rail

Dear Commissioners,

Clearly, after reading the article in today's Sentinel, the Monterey Bay Area should say NO to Progressive Rail.

Thank you for keeping us safe from an environmental catastrophe and to KEEPING US MOVING!

Best regards,

Andrea Miller

From: [REDACTED]
Sent: Tuesday, June 05, 2018 10:22 AM
To: john.leopold@co.santa-cruz.ca.us
Cc: George Dondero; Luis Mendez; lowell.hurst@cityofwatsonville.org; trina.coffman@cityofwatsonville.org; jimmypanetta@mail.house.gov
Subject: RTC Operating Agreement With Progressive Rail

Dear Commissioner Leopold,

The current rail operator for the Santa Cruz Branch Rail Line, the Santa Cruz & Monterey Bay Railway (SC&MB), was supposed to be replaced by Progressive Rail on April 1, 2018 as the common carrier. The SC&MB has been in default with their agreement with the RTC for over a year and based on industry reports its parent company, Iowa Pacific, could cease operation at any time.

Due to extreme pressure from groups that want the tracks removed for a recreational trail without adjacent rail, the operating agreement between the RTC and Progressive Rail has been delayed. These groups proclaim there is no need to sign a new agreement with Progressive Rail at this time. Unfortunately certain RTC Commissioners do not understand the RTC's responsibility to see common carrier service is not interrupted.

Due to Iowa Pacific's financial situation they have not been able to maintain the tracks or have track inspections conducted since April 1, 2018, the date they were supposed to hand over operations to Progressive Rail. As of two weeks ago trains are not able to operate over RTC tracks and the Santa Cruz & Monterey Bay Railway has been unable to fulfill its common carrier obligation for rail customers on the Santa Cruz Branch Rail Line.

The customers and their current situations are:

Big Creek Lumber – Currently has 10 centerbeam cars of lumber either sitting in UP's Pajaro yard or inbound that can't be delivered to Big Creek Lumber.

Lineage Logistics – Can't receive refrigerated cars for shipment of produce to customers.

Del Mar Foods – Can't receive refrigerated cars for shipment of produce to customers.

Agron – Can't receive soybean feedstock for production of biodiesel.

The Watsonville companies that rely on rail service to operate, along with their employees, are in serious jeopardy now due to delays in signing an agreement with Progressive Rail. Not having a responsible and financially sound rail operator to maintain the rail infrastructure puts the entire City of Watsonville at risk.

On June 14, 2018 the RTC Commission will vote on an operating agreement between the RTC and Progressive Rail. RTC staff and their negotiators have worked tirelessly for the best possible agreement for Santa Cruz County. I ask that the operating agreement with Progressive Rail be approved and transfer of common carrier responsibility be fast tracked with the Surface Transportation Board. To do otherwise would put Watsonville businesses, their employees and Watsonville residents at risk.

Sincerely,

Howard Cohen
Aptos, CA Resident

From: Dennis Case [REDACTED]
Sent: Monday, June 04, 2018 10:33 AM
To: General Info
Subject: Re: Now on YouTube: SCCRTC's Innovators in Transportation Speaker Series-Talk 1 "Planning for a Prosperous Santa Cruz County" May 16th 2018

Please do not sign a contract with Progressive Rail. Respectfully Submitted, Dennis Case

From: Jim Goularte [REDACTED]
Sent: Monday, June 04, 2018 10:55 AM
To: 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.mcpherson@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; info@sccrtc.org
Subject: Progressive Rail

Hi,

As a resident of Aptos, I am very concerned about your potential signing of a contract with Progressive Rail. As our local leaders, you should not endorse a company like Progressive Rail which has a proven history of fraud, safety, health, traffic and environmental concerns.

Please listen to your residents concerns. Your decisions will effect the daily lives and safety of those you represent.

Thank You,
Jim Goularte

From: Eileen Lacey [REDACTED]
Sent: Monday, June 04, 2018 12:15 PM
To: openup@cats.ucsc.edu; cchase@cityofsantacruz.com; trina.coffman@cityofwatsonville.org; rlj12@comcast.net; sbrown@cityofsantacruz.com; jbertrand@ci.capitola.ca.us; bruce.mcpherson@co.santa-cruz.ca.us; greg.caput@co.santa-cruz.ca.us; ryan.coonerty@santacruzcounty.us; zach.friend@co.santa-cruz.ca.us; ebottorff167@yahoo.com; john.leopold@co.santa-cruz.ca.us; info@sccrtc.org
Subject: NO on progressive rail

From: richard klevins [REDACTED]
Sent: Thursday, May 31, 2018 3:09 PM
To: info@sccrtc.org
Subject: I support Greenway

Dear Commissioners,

I support Santa Cruz County Greenway's plan for the rail corridor and their healthy, forward-thinking vision for our overall county transportation outlook.

Please help to ensure Greenway's alternative plan is given fair consideration in the Unified Corridor Study. Our county needs realistic, affordable alternatives to gridlock not a fantasy train with invisible riders.

The Rail Trail Will Never Get Built, you will spend tens of millions on studies and starts but never get it done. Your budget is \$5 Million a mile??

I ride a bike frequently in the county, also in the East U.S. and Europe. We have greatest lack of bike trails and least safe biking of anywhere I ride.

Thank you for adding stripes and green markers around the county.

Most bike trails and rail trails are just compacted earth or gravel, some are paved.

All are used.

A bike trail will get tremendous use, we need it now.

Please respond.

Thank you,

Richard Klevins

From: Paloma Richeson [REDACTED]

Sent: Monday, June 04, 2018 6:40 PM

To: Santa Cruz County RTC; John Leopold; Ed Bottorff; Zach Friend; Ryan Coonerty; Greg Caput; Bruce McPherson; Jacques Bertrand; Sandy Brown; Randy Johnson; Trina Coffman-Gomez; Cynthia Chase; Mike Rotkin

Subject: Vote NO on Progressive Rail

Dear Santa Cruz County RTC and Santa Cruz Council Members,

I strongly request that you vote AGAINST the Progressive Rail option this June 14th. My husband and I bought a house on the corner of Rankin and Seaside two years ago. The railroad is approximately 30 yards outside of our bedroom windows and our backyard fence. We have 4 teenagers and a grandmother who live on the property. Three individuals in our family have asthma. This immediate neighborhood also holds a pre-school and two families with children under 5 years old. Our story could be repeated multiple times up and down the railway.

This is all to say that supporting a freight line that would very likely hold harmful materials, not to mention the additional excessive dust and dirt from normal rail line functioning, could cause potential health problems to the families near by. Why turn the expensive and hip lower Westside into a Superfund site?? I would not want to sit outside for a beer and nice dinner at the Santa Cruz Brewery, the West End Tap Room or Humble Sea while a large, noisy, and polluting freight train stopped my conversation and left a layer of soot on my consumables. What happened to the health promoting aspects of the Trail that the RTC was promoting last year at the town meeting I attended at the Live Oak Elementary? How can you share a health promoting trail line with a toxic freight train? Does the Progressive Rail contract eliminate the Trail all together?

I am well aware of the controversy between a Rail and Trail and Trail Only option for this rail line. As a neighbor to the tracks, I prefer Trail Only. However, I would be more open to a commuter line supported by green technology, before I would ever vote for a freight line. I know the RTC used Equity as one of its tagline messages for the Rail-Trai. Progressive Rail does nothing to promote Equity in our community.

Please, consider deeply the long term health and lifestyle impacts of granting the Progressive Rail contract. This is NOT the project to pursue. Find another rail project that will support the People of Santa Cruz and promote Equity, help reduce the impact of traffic, and will use Green Technology.

Thank you for your Consideration,
Primavera Hernandez, MPH

From: PJ Mecozzi []
Sent: Wednesday, June 06, 2018 3:28 PM
To: lowell.hurst@cityofwatsonville.org; George Dondero
Cc: trina.coffman@cityofwatsonville.org
Subject: RTC and Progressive Rail

Dear Mayor Hurst & Director Dondero,

Del Mar Foods is a Frozen Fruit & Vegetable Processor that will celebrate its 60th year of uninterrupted operations in 2019, at our same location in Watsonville.
Yesterday, I signed 428 weekly payroll checks.

Many of our customers are located east of the Mississippi River which makes Rail Car service very attractive. Each year we ship millions of pounds of product via Rail Cars.

For the last 18 months (until they pulled up stakes and left town) I had been hounding Iowa Pacific to move the tankers that abut our property. They block our shipping access from the Spur that we have on site, as well as create a most unwanted harborage for pests and people.

I appreciate those groups and individuals that are weighing in for a utopian solution, but "let's not let the perfect be the enemy of the good." If Progressive Rail is committed to moving these miserable tankers to a bone yard somewhere, upgrading the tracks and trail , and restoring line service, everyone should declare this a victory.

Thank you for your consideration, and please let me know if I can be of any service in this process.

Sincerely,--
PJ Mecozzi
President





City of Watsonville

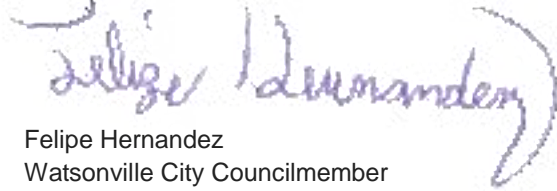
Celebrating 150 Years

April 18, 2018

Dear Commissioners,

Please accept recommendations from RTC staff to sign a contract with Progressive Rail as it is presented, so existing freight customers can be serviced and that the region can continue to use this valuable corridor, with the potential to expand its use in the future. It is imperative that an agreement between the RTC and a new rail operator is in place before the current rail operator is forced to abandon service. Signing an agreement with Progressive Rail will allow rail service to continue uninterrupted for rail customers in Watsonville, while the Unified Corridor Study is completed and Thank you for considering my request.

Thanks,



Felipe Hernandez
Watsonville City Councilmember



SANTA CRUZ COUNTY GROUP

Of The Ventana Chapter

P.O. Box 604, Santa Cruz, CA 95061

<https://ventana2.sierraclub.org/santacruz/>

e-mail: sierraclubsantacruz@gmail.com

June 6, 2018

Santa Cruz County Regional Transportation Commission

[1523 Pacific Avenue](#)

[Santa Cruz CA 95060](#)

by U.S. mail and by email, to info@sccrtc.org

Subject: Public Review Draft Agreement, RTC with Progressive Rail, for rail freight and rail transportation operations

Dear RTC Commissioners and RTC staff:

The Sierra Club supports, in general terms, the continuation of rail freight service on the Santa Cruz Branch Line. The National Sierra Club's transportation policy statement finds the following: "Freight railroads, especially electrified, are preferred over highway or air freight to save energy and land, and cut noise and pollutant emissions."

That noted, we see the following opportunities to bring the public review draft Agreement into better alignment with existing local land use policies and expectations for environmentally sound practices:

1. Vegetation management and weed control as discussed in section 5.2.2 should be clarified to require best non-toxic management practices to restrict use of pesticides or other toxic substances. We would also like to see some stated commitment in the subsequent section 5.2.3 to control harms to or removals of adjacent mature trees. We note that the tracks go through areas that are highly valued for their biodiversity. We request that Progressive Rail and Commission adopt an environmental protection protocol to assure that any projects such as pruning/vegetation, construction, developments adhere to local, State and Federal environment policies and laws, i.e. bird breeding/nesting season.

2. While we recognize the draft contract excludes the responsibility of Progressive Rail to build fencing, should that be amended, we recommend the contract be modified to include the following intent: Should the

Railway desire to construct any new fencing within the FEP or any other part of the rail corridor property, the fencing shall be located and/or designed to avoid adverse impact on existing wildlife corridors. Furthermore, fencing outside the FEP may only be installed with the prior written consent of the Commission.

3. Increased use of the rail may create challenges for wildlife crossing. We recommend conducting a biological survey to determine areas of frequent wildlife crossing. Track areas of concern will need to include wildlife crossing adaptations.

4. Rail car storage placed on the rail line does not belong in the high-value scenic viewshed of the North Coast including in the Coast Dairies and Sand Hill Bluff (adjoining Wilder Ranch) vicinities. Nor does rail car storage appear compatible with the planned route of the Monterey Bay Scenic Sanctuary Trail. The intended linear siting of rail car storage to generally reduce views of the storage locations just from autos traveling Highway 1 does not resolve the broader viewshed concern. The portion of the contract allowing this North Coast rail car storage should be deleted. All proposed locations for storing rail cars, if any, are subject to prior review and written approval by the Commission.

5. We see section 6.3 of the contract as being vague and subject to disputed interpretations as to whether there will be a defined, functioning limit on what Progressive Rail might choose to do or build on the rail corridor Property, including on the Property but outside the Freight Easement Property. Of special concern is the statement,

"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)."

Might an out-of-state business person later assert this to mean Progressive Rail may build a warehousing storage facility wheresoever it chooses on the rail Property, describing it as one of its freight service operating rights under federal law? Once the contract language is adopted, would the RTC have an uncompromised right to say no to something like a locally incongruent new storage facility of some kind? We don't see that made clear, nor is it spelled out that the RTC shall make its own approval decisions in consultation with and fully compatible with local land use policies of adjoining local jurisdictions.

6. Language needs to be included to prevent transportation or storage of toxic or hazardous freight, including storage of propane on the Branch Line. If the contract is approved without such restrictions, does the county have adequate emergency measures in place in case of toxic or hazardous material spillage or propane fire on the rail line?

7. While passenger rail service is not included in the draft contract, we regard a decade without any progress on passenger service as a long delay. Accordingly, the Sierra Club requests that you consider negotiating with Progressive Rail to undertake upgrading the line to Class 4 continuously welded rail within the time span of the contract.

Thank you for considering and responding to these recommendations. We hope to see their incorporation in the final contract agreement.

Sincerely,
Gillian

Gillian Greensite, Chair
Sierra Club, Santa Cruz County Group

Notice of Exemption

ATTACHMENT 4

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk
County of: Santa Cruz
701 Ocean Street, Rm. 301
Santa Cruz, CA 95060

From: (Public Agency):
Santa Cruz County Regional Transportation Commission
1523 Pacific Ave, Santa Cruz, CA 95060

(Address)

Project Title: Award and Execution of Operator Agreement for Rail Service, Santa Cruz Branch Rail Line

Project Applicant: Santa Cruz County Regional Transportation Commission

Project Location - Specific:
Santa Cruz Branch Rail Line, County of Santa Cruz

Project Location - City: Project Location - County: Santa Cruz

Description of Nature, Purpose and Beneficiaries of Project:
Due to default by previous rail operator, this action is to award and execute an agreement with a new rail operator for the Santa Cruz Branch Rail Line, consisting of freight service operated pursuant to a privately-held Freight Easement, at a minimum level not exceeding existing operations, and passenger rail service.

Name of Public Agency Approving Project: Santa Cruz County Regional Transportation Commission

Name of Person or Agency Carrying Out Project: Santa Cruz County Regional Transportation Commission

Exempt Status: (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
Declared Emergency (Sec. 21080(b)(3); 15269(a));
Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
[X] Categorical Exemption. State type and section number: Class 1 and Class 2
[X] Statutory Exemptions. State code number: PRC 21080(b)(10)

Reasons why project is exempt:
Freight operations pursuant to the Freight Easement are not subject to CEQA under the Interstate Commerce Commission Termination Act. Requirements for minimum freight service levels that do not exceed existing operations and replacement or reconstruction of existing structures and facilities are categorically exempt under the Class 1 and Class 2 exemptions. Initiation or increase of passenger rail service is statutorily exempt.

Lead Agency
Contact Person: Luis Pavel Mendez Area Code/Telephone/Extension: (831) 460-3200

If filed by applicant:

- 1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? [] Yes [] No

Signature: Date: Title:

[X] Signed by Lead Agency [] Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: