

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

May 4, 2018

TO: Commissioners and Alternates
FROM: Enforcement Committee Members
SUBJECT: Enforcement Committee's Recommended Enforcement Decision Regarding Proposed Commission Cease and Desist and Civil Penalty Order No. CDO 2018.02; North Coast Rail Authority (NCRA)
(For Commission consideration on May 17, 2018)

Enforcement Committee's Recommendation

Executive Summary. On April 19, 2018, the Enforcement Committee held a noticed public hearing to consider the Executive Director's Recommended Enforcement Decision regarding proposed Cease and Desist and Civil Penalty Order No. CDO 2018.02, and the evidence and arguments submitted by BCDC staff and NCRA, respectively. This report summarizes the proceeding and the Enforcement Committee's decision to adopt the Executive Director's Recommended Enforcement Decision with one change. The Committee recommended adoption of the proposed Order with the modification that NCRA be entitled to a waiver of 100% of the total penalty amount, rather than 50% of the total penalty amount as recommended by staff, if by April 30, 2018 NCRA provided documentation acceptable to the Executive Director demonstrating its lack of financial resources and inability to pay the proposed penalty, and, thereafter, substantially complies with the site remediation conditions of the Order.

Enforcement Committee Recommendation. At the Enforcement Committee hearing, BCDC enforcement staff presented the facts of the case to the Committee as summarized in the Executive Director's Recommended Enforcement Decision. Then, NCRA's representative, David Anderson, explained his role as an engineering contractor for NCRA for the past twenty years, explained NCRA's legal interest as a perpetual leaseholder of the property, and stated that he had no objections to the provisions of the proposed Order, save his concern that NCRA would be unable to pay the recommended penalty because it is an underfunded public entity that can barely afford to pay the salaries of its staff, and is deeply indebted to its contractors and consultants. Mr. Anderson also stated that the cost of the site remediation project would be approximately \$50,000.

The Committee unanimously voted to adopt the Executive Director's Recommended Enforcement Decision and proposed Cease and Desist and Civil Penalty Order with the modification that NCRA be entitled to a waiver of 100% of the total penalty amount if: (1) NCRA promptly provided documentation acceptable to the Executive Director demonstrating NCRA's lack of financial resources and inability to pay; and (2) substantially complied with the remediation terms of the Order. To that end, Mr. Anderson agreed to provide appropriate documentation of NCRA's inability to pay to the Executive Director by April 30, 2018.

On April 23, 2018, NCRA provided to BCDC staff its audited financial statements for the fiscal year ending June 30, 2017, which included supplemental information through March 2018. These records show, among other matters, that: (1) NCRA has suffered recurring losses from operations and its total current liabilities substantially exceed its total current assets; (2) NCRA's financial status decreased overall during the 2017 fiscal year by almost \$1.29 million due to the fact that the costs to administer NCRA and maintain its rail lines exceed the revenues that can be generated from the lease of property and equipment; and (3) as of June 30, 2017, NCRA had an unrestricted deficit of almost \$8.77 million resulting primarily from accumulated losses incurred beginning over twenty years ago with the fiscal year ending June 30, 1996, that continued to accrue due to its inability to generate sufficient operating revenue to cover the administration and maintenance costs of its properties.

On April 25, 2018, the Executive Director determined that NCRA had demonstrated its lack of financial resources and inability to pay an administrative civil penalty of \$30,000, based on the information in its financial statements. Therefore, NCRA shall be entitled to a waiver of 100% of the administrative civil penalty if the Executive Director later determines that NCRA has substantially complied with the remediation terms of the Order.

The Executive Director shall notify NCRA in writing of his determination as to whether or not it has substantially complied with this Order within thirty days of receiving NCRA's written notice of completion of the remediation work submitted pursuant to Condition III.E of the Order. If the Executive Director determines that NCRA has not substantially complied with the terms of this Order and, therefore, is not entitled to the penalty waiver, then, pursuant to Government Code Section 66647, NCRA shall be required to pay the entire \$30,000 penalty within thirty days of the Executive Director's determination and demand for payment.

The Executive Director's Recommended Enforcement Decision and the Enforcement Committee's proposed Cease and Desist and Civil Penalty Order are attached to this memo as Exhibits A and B, respectively. The Index of Administrative Record in support of the findings in the Order, which has been supplemented since April 19, 2018, is attached to the Order and the documents cited therein are available to view online at www.bcdc.ca.gov/cm/.

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

April 6, 2018

(CORRECTED April 19, 2018)

TO: BCDC Enforcement Committee

FROM: Lawrence J. Goldzband, Executive Director (415-352-3653; larry.goldzband@bcdc.ca.gov)
Marc Zeppetello, Chief Counsel (415-352-3655; marc.zeppetello@bcdc.ca.gov)
Matthew Trujillo, Enforcement Analyst (415-352-3633; matthew.trujillo@bcdc.ca.gov)

SUBJECT: Executive Director's Recommended Enforcement Decision Regarding Proposed Commission Cease and Desist and Civil Penalty Order No. CDO 2018.02 Issued to the North Coast Rail Authority
(For BCDC Enforcement Committee consideration on April 19, 2018)

Executive Director's Recommendation

I. SUMMARY OF BACKGROUND TO THE ALLEGED VIOLATION

In summary, staff alleges that the North Coast Rail Authority (NCRA) is responsible for the unpermitted placement of approximately four cubic yards of gravel and dirt fill and repair work on a retaining wall in the Commission's San Francisco Bay jurisdiction in Novato, Marin County, in violation of Section 66632 of the McAtteer-Petris Act, in or around the spring of 2016. Subsequent to and as an indirect result of these activities, an unknown quantity of road debris was deposited into the Bay and shoreline band jurisdictions when the road was washed out by flood and/or storm waters during the winter of 2016/2017 and the spring of 2017. See Exhibits A through G.

This enforcement action was commenced on March 29, 2016 on the basis of a complaint from a member of the public alleging that an unauthorized retaining wall and gravel road bed had been placed in the Commission's jurisdiction at Hunters Club Road in Novato. The complainant expressed concerns that the retaining wall would block the flow of water through Beattie Marsh and cause flooding.

As a result of its investigation, staff determined that the violation had occurred within the Commission's Bay jurisdiction at the northern end of Hunters Club Road in Novato at Marin County Assessor's Parcel No. 157-051-09. The parcel is owned by the Sonoma Marin Area Rail Transit Authority (SMART) and operated by NCRA. The site of the violation is where the road crosses an approximately 565-yard-long, unnamed slough that runs through Beattie Marsh, providing a tidal connection between the marsh and the Petaluma River via a culvert under Hunters Club Road. Prior to 2016, the road provided vehicular access to the Black Point Swing Bridge operator's house located across the marsh on the other side of the Northwestern Pacific Railroad tracks that bisect the parcel. A debris field resulting from the violation may extend beyond the parcel limits, but that has yet to be confirmed through a comprehensive survey of the site conducted by or for NCRA.

As detailed in the Violation Report/Complaint for the Imposition of Administrative Civil Penalties ("Violation Report/Complaint") and evidenced by the administrative record, from May 23, 2016 through August 2, 2017, BCDC staff pursued a resolution of the violation through the standardized administrative fine process pursuant to BCDC Regulation (14 CCR) Section 11386. However, Respondent failed to follow staff's repeated direction to seek and obtain a Commission permit to authorize the unpermitted Bay fill placed on the road. Standardized fines accrued to the maximum amount of \$30,000 on May 3, 2017.

On September 5, 2017, BCDC staff mailed the Violation Report/Complaint naming NCRA and the Sonoma-Marín Area Rail Transit Authority (SMART) as co-respondents for the violation, after providing sufficient notice pursuant to BCDC Regulation (14 CCR) Section 11386 on June 28, 2017 that they would lose the opportunity to resolve the violation by paying a standardized administrative fine if they failed to resolve the violation within thirty-five days of the date of the notice. SMART was dismissed from the enforcement proceedings without prejudice by the Executive Director on October 16, 2017, making NCRA the sole respondent going forward.

On October 3, 2017, BCDC staff met with NCRA staff to discuss the allegation set forth in the Violation Report/Complaint. NCRA's representatives agreed to develop and implement a plan for removing gravel and any other unnatural material from the slough to the extent necessary to remediate the damages. NCRA did not submit a formal Statement of Defense. Instead, NCRA submitted a remediation plan on November 22, 2017.

On January 10, 2018, BCDC staff informed NCRA that its plan was insufficient in detail and scope to secure approval from BCDC staff, and that staff would recommend that the proposed Order to the Commission's Enforcement Committee include conditions requiring NCRA to develop a more comprehensive remediation and mitigation plan for the site to be prepared by a qualified professional at NCRA's expense. Additionally, staff invited NCRA to engage in negotiations for a stipulated Order but received no response.

On January 11, 2018, BCDC staff visited the site to observe and record the current conditions. Staff's observations verified that the scope of NCRA's proposed remediation plan was inadequate. There was more debris in the slough and the marsh than the plan indicated and there was evidence of severe erosion to the banks of the slough and indications of deleterious effects of concentrated deposits of road debris on the hydrology of the system. It is unclear how often the road gets overtopped by bay waters. The visit affirmed staff's belief that a more rigorous study of the site was needed to enable NCRA to develop and implement an appropriate remediation and mitigation plan.

On January 19, 2018, BCDC staff sent NCRA a notice of its intent to proceed with a contested Enforcement Committee hearing unless NCRA responded to staff's request to negotiate a stipulated Order. On January 22, 2018, NCRA responded to staff's request affirming it desired to pursue a stipulated order, though it did not submit an updated remediation plan.

On February 27, 2018, BCDC staff sent NCRA a draft copy of a proposed Commission Cease and Desist and Civil Penalty Order, requesting that NCRA review the draft document and mark it up with their suggested edits, and schedule a meeting for the following week to possibly negotiate a stipulated order. On March 13, 2018, BCDC staff met with NCRA's representative

David Anderson and discussed the content of the draft order. At this meeting, Mr. Anderson stated he believed that the site assessment and remediation actions that staff outlined in the draft order were too onerous and expensive for NCRA to comply with.

However, staff explained that the actions NCRA has taken to-date and the actions it proposed in the plan that it submitted on November 22, 2017 were insufficient to reliably assess the damage caused to the slough and marsh as a result of the unauthorized road work. Therefore, NCRA must present a more comprehensive site assessment and evidence-based remediation plan to BCDC that clearly demonstrates that NCRA has thoroughly investigated the environmental conditions at the site, assessed the extent and effects of the debris that originated from the road in the winter of 2016/2017 and spring of 2017 and ever since then, and provides a justification for its proposed remedial actions based on its assessment.

No agreement was reached at the meeting, but staff carefully reviewed the content of the order with Mr. Anderson and provided clarification on all of his questions and concerns. Mr. Anderson agreed to discuss the proposed order with NCRA's board of directors at its meeting the next day.

On March 29, 2018, after two weeks without any follow up from NCRA, staff e-mailed NCRA advising it that a stipulated order must be completed by April 5, 2018 if to be presented to the Enforcement Committee on April 19, 2018. On April 2, 2018, Mr. Anderson submitted a version of the draft order with suggested edits of the order's findings and the scope of the remediation plan. However, staff determined that the requested edits of the findings were redundant, unsupported by the administrative record, and/or inappropriate; and the edits to the scope of the remediation plan, with the exception of one edit, would, if incorporated, limit the scope of the site assessment and remediation of the site to an unacceptably ineffectual degree. Therefore, staff did not accept NCRA's proposed changes to the order, except Mr. Anderson's suggestion to incorporate the use of available historical data to aid in the assessment of the impacts to the habitat and an extension of the deadline to submit its remediation plan from 45 days to 60 days. However, Mr. Anderson's statements are summarized in Section III.

As of the mailing date of this report, Respondent continues to assert its belief that it is responsible for removing no more than five cubic yards of fill, that the scope of any further site assessment or remediation plan should not include the approximately 5-acre section of Beattie Marsh located immediately southwest of Hunter's Club Road and fed by a culvert located under the road, it will seek to demonstrate that the hydrology of the site has not been negatively impacted by the debris in the slough, and that the habitat has not been impacted significantly enough to require mitigations actions. Staff believes that before mitigation measures can be determined and implemented, as needed, NCRA must develop a comprehensive site assessment to understand the full breadth and scope of the debris field in the slough, what, if any, impacts the debris field may have had and may continue to have on the local habitat.

II. SUMMARY OF THE ESSENTIAL ALLEGATIONS IN THE VIOLATION REPORT/COMPLAINT

Respondent is alleged to have violated Section 66632 of the McAteer-Petris Act in or around the spring of 2016 by placing approximately four cubic yards of dirt and gravel, stakes, and wooden boards on Hunters Club Road in the Commission's jurisdiction, which was subsequently redistributed by tidal water flowing through the site during the winter of 2016/2017 and/or spring of 2017, resulting in a large, persistent amount of road debris in the slough and the marsh that may be affecting the local habitat.

III. SUMMARY OF ALL ESSENTIAL ALLEGATIONS EITHER ADMITTED OR NOT CONTESTED BY RESPONDENTS; DEFENSES AND MITIGATING FACTORS RAISED BY RESPONDENTS

On October 6, 2016, SMART submitted its statement of defense, in which SMART argued that it took no part in the actions that constituted a violation of the McAteer-Petris Act and, although it is the parcel owner of record, it bears no responsibility for the actions of the easement holder, NCRA. Based on the information contained in its statement of defense, SMART was dismissed from the enforcement proceedings without prejudice by the Executive Director on October 16, 2017.

NCRA was granted an extension of the 35-day deadline to submit its Statement of Defense until November 24, 2017. However, NCRA elected not to submit a Statement of Defense. Therefore, NCRA may not dispute its liability for the alleged violation or assert any defense to such liability. NCRA has stated in meetings that it is underfunded and would not be able to pay a civil penalty; however, it has not produced any records, financial or otherwise, to support this claim.

In comments submitted by NCRA to staff in a draft proposed Commission Cease and Desist and Civil Penalty Order on April 2, 2018, Respondent claimed:

A. Respondent investigated the complaint upon initial notification by BCDC staff by making a site visit and interviewing the staff of its freight operator and track maintenance contractor, the Northwestern Pacific Railroad Company (NWP). Respondent claimed that unauthorized fill was placed on the road to repair damages that occurred when the road washed out as a result of a combination of a major rain event coupled with a high tide, and that the flooding floated out the existing timber head wall above the culvert, resulting in the loss of approximately five (cubic) yards of gravel material that was carried away by the receding flood waters. Respondent's claimed that the headwall was properly replaced and that the culvert was not blocked by road debris. Respondent claims that it made several return site visits to assure that the culvert under the road was not impacted by the event of the flood and the subsequent repair in-kind.

B. Respondent was made aware of the requirements for a permit for the in-kind repair to road and maintained communication with BCDC, and that it hired a wetlands specialist to meet at the site to help with the permit application. Respondent claimed it conducted site visits to understand and verify BCDC staff's claim that the repair had modified the flow of water from the frequent overtopping of the drive during the inflow and outflow of high tides, and it verified that the repaired road profile was high and was changing the normal tidal flow pattern that had existing over the driveway. Respondent claimed it discussed the need for a survey with BCDC staff to determine a regrading plan to bring the over topping tidal flow back to its normal pattern, and that a survey was completed and a grading plan was designed to correct the drive profile and was submitted to BCDC staff for review. Respondent claimed it had several calls with BCDC staff discussing permit conditions and explaining the complicated relationships between NCRA, SMART, and NWP. Respondent claimed that before the application process was initiated, another major flood event occurred (in or around the winter 2016/2017 or spring 2017) and washed out the repair.

C. A subsequent road repair was not initiated because the road was no longer in use by NCRA/NWP. Respondent contended that the complete removal of the road and the culvert would be the best solution to alleviate the long-standing issues of these structures being impacted by floodwaters and washouts.

D. Respondent mapped the area with a high-resolution camera using a drone to determine the extent of the fill in the immediate area of the embankment erosion and the slough from the eastern side of the road to the Petaluma River, and that it consulted with the environmental scientist it hired to assess the impacts of the events and assist with the development of a proposal to remove the gravel that was observed from the mapping. It claimed that a concept plan was developed that would minimize slough impacts that included a work schedule design to avoid undue impacts to the habitat.

IV. SUMMARY OF UNRESOLVED ISSUES: APPROPRIATE ADMINISTRATIVE CIVIL PENALTY

A. **SMART's Defense.** SMART is not subject to an administrative civil penalty, because it has been dismissed from these proceedings.

B. **NCRA's Defense.** NCRA has proffered no formal defenses or mitigating factors due to its failure to submit a Statement of Defense. NCRA has stated in meetings that it is underfunded and would not be able to pay a civil penalty, however, it has not produced any records to support this claim.

C. **Staff's Analysis.** This case should go before the Enforcement Committee because staff believes Respondent has not dedicated enough effort to addressing this violation or the effects thereof on the marsh and slough. It has been nearly two years since Respondent was notified about its violation, but staff has been unable to elicit a sufficient response from Respondent to enable this case to be resolved at the administrative level. For instance, Respondent claims to have conducted a thorough assessment of the site that it used as a basis for the remediation plan it submitted to staff in November 2017. However, the plan is substantially lacking in detail and scope. It consists of a single page with no indication of the preparer, a scant-to-negligible description of the site-survey methodology, no description of the data collected or used, and no analysis of why and how the proposed work would result in the removal of the debris, secure the road from further erosion into the Bay and maintains the tidal connection between the marsh and the Petaluma River. The lack of these characteristics and any contextual information about the tidal flows, storm effects, and condition of the culvert makes it impossible for staff to assess the rigor of survey and, therefore, of the proposed remediation measures, making it infeasible to approve the plan.

For example, the plan fails to provide a comprehensive assessment of the extent and volume of the gravel and other material deposited in the Bay. Whereas, in July 2017, BCDC staff observed road debris as far as approximately 120 feet from the road, staff believes that the debris field may extend much further bayward of the road than is represented by NCRA in its remediation plan. Therefore, a comprehensive survey of the debris field by a qualified professional should be necessary. Furthermore, the plan fails to provide any assessment of the effects of the debris on the natural characteristics and dynamics of the marsh, slough or bay, such as the hydrology of the slough, unnatural accretion and/or erosion along the banks, and deleterious effects on the health of the plants and animals that are endemic to the marsh.

Also, the proposed scope and work window of the plan fail to account for additional debris that could be deposited into the slough in the interim, when the road is overtopped by storm, flood, and, possibly, tidal waters in the future. Finally, the plan does not include any measures to secure, maintain, or remove the road, culvert, or what remains of the retaining wall to ensure that

these abandoned structures will not pose any further threat to the bay or the marsh habitat in the future. This is an important consideration given the fact that NCRA has stated that the road will no longer be used, and, therefore, it has no intention to repair or continue maintaining it.

D. Executive Director's Recommended Civil Penalty. The Executive Director recommends that the Respondent be assessed a civil penalty of \$30,000, pursuant to Government Code Sections 66641.5(e) and 66641.9, to satisfy its liability for civil penalties for the alleged violation, through the date of the Order.

The total civil penalty of \$30,000 includes the following:

1. Respondent should be assessed a penalty of \$4,000 for its failure to seek and obtain a Commission permit to place fill in the Commission's jurisdiction in or around the spring of 2016, which is presumed to have taken place over at least two days at a rate of \$2,000 per day.
2. Respondent should be assessed a penalty of \$100 per day for its failure to seek and obtain a Commission permit to authorize the unpermitted road work after-the-fact from the date BCDC staff first notified Respondent of the violation on May 23, 2016, through the date Respondent lost the opportunity to resolve the enforcement action by paying a standardized administrative fine on August 2, 2017. At \$100/day, the penalty for this 436-day-long period would be assessed a penalty \$24,000.
3. Respondent should be assessed \$20 per day for the period from September 5, 2017, the date of issuance of the Violation Report/Complaint, through the date of issuance of this Order (May 17, 2018) for the unpermitted placement of fill. At \$20/day, the penalty for this approximately 255-day-long period, though totaling \$5,100, would be capped at \$2,000.

The amount of the penalty is reasonable and appropriate, given the nature, extent, and gravity of the violation, particularly its indirect effects on the slough and the marsh, and the cost to the state in pursuing this enforcement action from May 23, 2016 through the date of issuance of this Order. This effort was shared by one Enforcement Analyst, the Chief of Enforcement, the Staff Counsel, the Chief Counsel, two administrative support staff, the Staff Engineer, and one Permit Analyst, with additional support by the Regulatory Director and the Executive Director.

With respect to Respondent, the amount of the daily civil penalties from May 23, 2016 through August 2, 2017 and September 5, 2017, through the date of issuance of this Order, respectively, take into account its claimed limited ability to pay (alleged, but unsubstantiated), its degree of culpability, and its voluntary resolution efforts undertaken to-date. Respondent is a purportedly underfunded public entity that, as a lessee of the parcel, is limited in its authority to conduct intensive work on the road without the assent of the lessor (i.e., SMART). In the interests of resolving the violation, Respondent has made a limited effort to conduct a site survey and formulate a remediation plan. However, its efforts have been insufficient thus far, and those efforts are far outweighed by the significant damage to the nature of the site, as observed by BCDC staff, and the cost to the State in pursuing this enforcement action. Therefore, based on consideration of all relevant factors an assessment of total penalty of \$30,000, determined as described above, is warranted.

However, in light of NCRA's alleged, but unsubstantiated, claim that it is an underfunded state agency, staff believes that given the choice between requiring NCRA to allocate its limited resources to pay the full penalty of \$30,000, which may adversely affect its ability to comply with the conditions of this order, versus allocating its resources to do its utmost to remediate the marsh and slough and secure Hunters Club Road against future wash-outs, it is in the best interests of the natural resource and the Bay Area community to allow Respondent to be entitled to a waiver of 50% of the total penalty amount if the Executive Director determines that NCRA has substantially complied with the terms of this Order. The Executive Director shall notify Respondent in writing of his determination as to whether or not Respondent has substantially complied with this Order, and therefore, whether or not Respondent shall be entitled to a waiver of 50% of the total penalty within 30 days of receiving Respondent's written notice of completion of the remediation work submitted pursuant to Condition III.E of the proposed Order.

Pursuant to Government Code Section 66647, Respondent shall remit payment to the Commission, in the form of cashier's checks payable to the San Francisco Bay Conservation and Development Commission - Bay Fill Clean-Up and Abatement Fund, as follows: (1) within thirty days of the issuance of this order, a payment of \$15,000; and (2) unless the Executive Director has determined, in accordance with the preceding paragraph, that Respondent is entitled to a waiver of 50% of the total penalty amount, within thirty days of the Executive Director's request for remittance of the remaining balance of the penalty, a payment of \$15,000.

V. RECOMMENDED COMMISSION ACTION

The Executive Director recommends that the Enforcement Committee adopt the Recommended Enforcement Decision and proposed Cease and Desist and Civil Penalty Order to require NCRA to:

- A. On and after the Effective Date of this Order, cease and desist from all activity in violation of the McAteer-Petris Act.
- B. No later than 60 days after the Effective Date of this Order, submit a comprehensive plan acceptable to the Executive Director for the remediation and mitigation of the site. The plan must be prepared by a qualified professional or professionals at NCRA's expense (or that of a third party or third parties), in consultation with all relevant local, state and federal agencies, that includes, but is not limited to:
 1. An assessment of the full extent of the road debris in the marsh and slough and all impacts to the habitat, including, but not limited to the hydrology of the slough and the marsh, erosion, plant and animal health.
 2. Provisions for the removal of all debris originating from the road as a direct or indirect result of the unpermitted roadwork that is believed to have taken place in or around the spring of 2016, including road debris that will likely be deposited into the slough and marsh as a result of subsequent storm and flood events during the intervening time period ranging from the last time the road was flooded in 2016/2017 through the date(s) that the remediation and mitigation work will be completed in 2018 or later.
 3. Provisions to ensure that the road will not continue to pose a hazard to the marsh, slough, shoreline or bay.

C. Require NCRA to commence the approved remediation and mitigation plan no later than promptly after approval of the remediation plan by the Executive Director.

D. Seek and obtain an extension of time from the Executive Director to comply with any deadline prescribed in the Order, as needed.

E. Provide written notice to the Executive Director no later than five days after the completion of the remediation work.

F. Monitor the site for no less than two years after the completion of the remediation work.

G. Pay a civil penalty of \$30,000 to resolve its civil liability for violating the law. \$15,000 shall be due within thirty days of the issuance of the Order, but 50% of the penalty shall be waived if the Executive Director determines, in writing, that Respondent has substantially complied with the terms of the Order.

VI. RECOMMENDATION

For all the foregoing reasons, the Executive Director recommends that the Enforcement Committee adopt the accompanying proposed Commission Cease and Desist and Civil Penalty Order No. CDO 2018.02 to the North Coast Rail Authority.

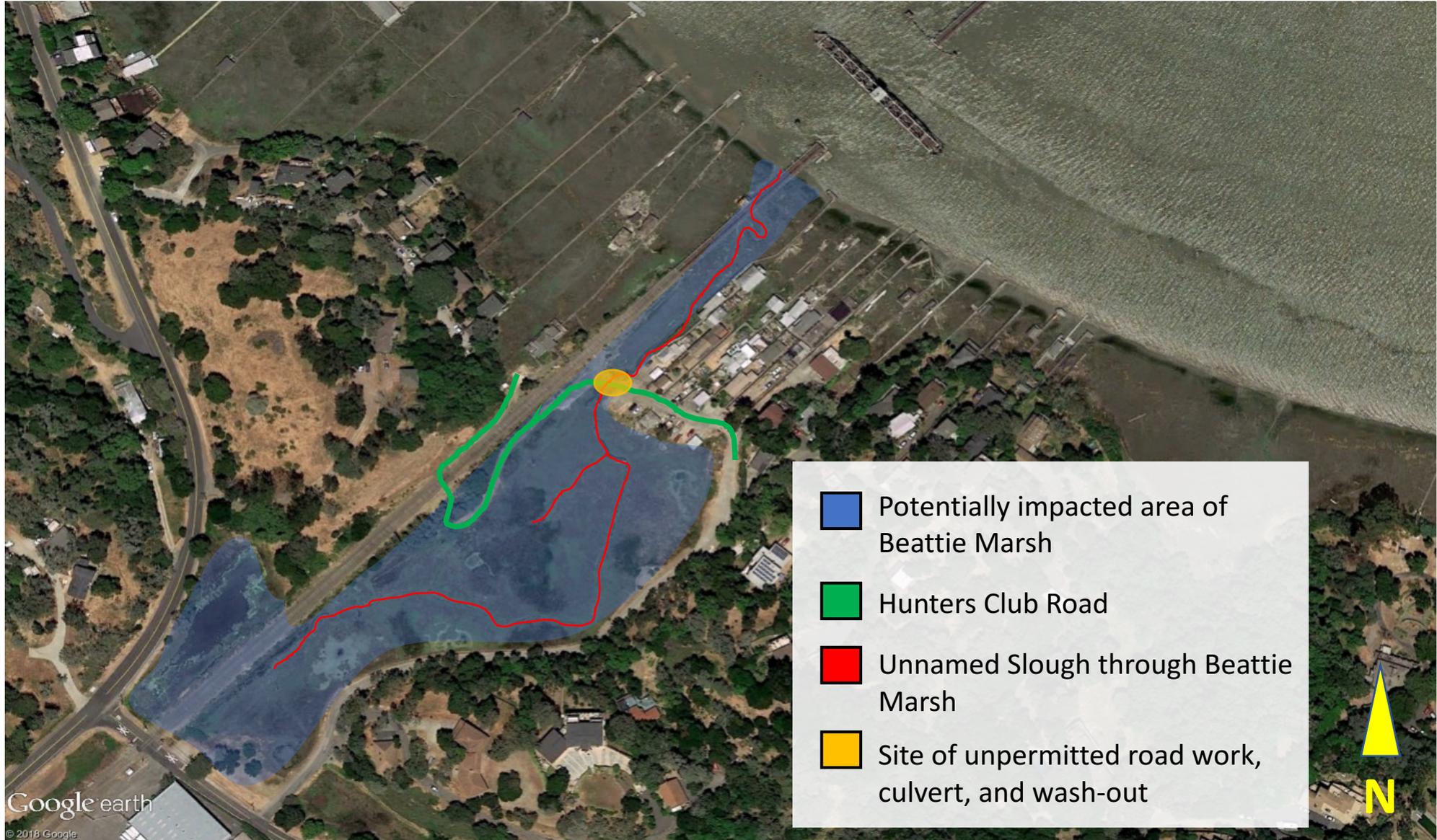
Attached to the Executive Director's Recommended Enforcement Decision is the Executive Director's Proposed Cease and Desist and Civil Penalty Order No. CDO 2018.02.

North Coast Railroad Authority

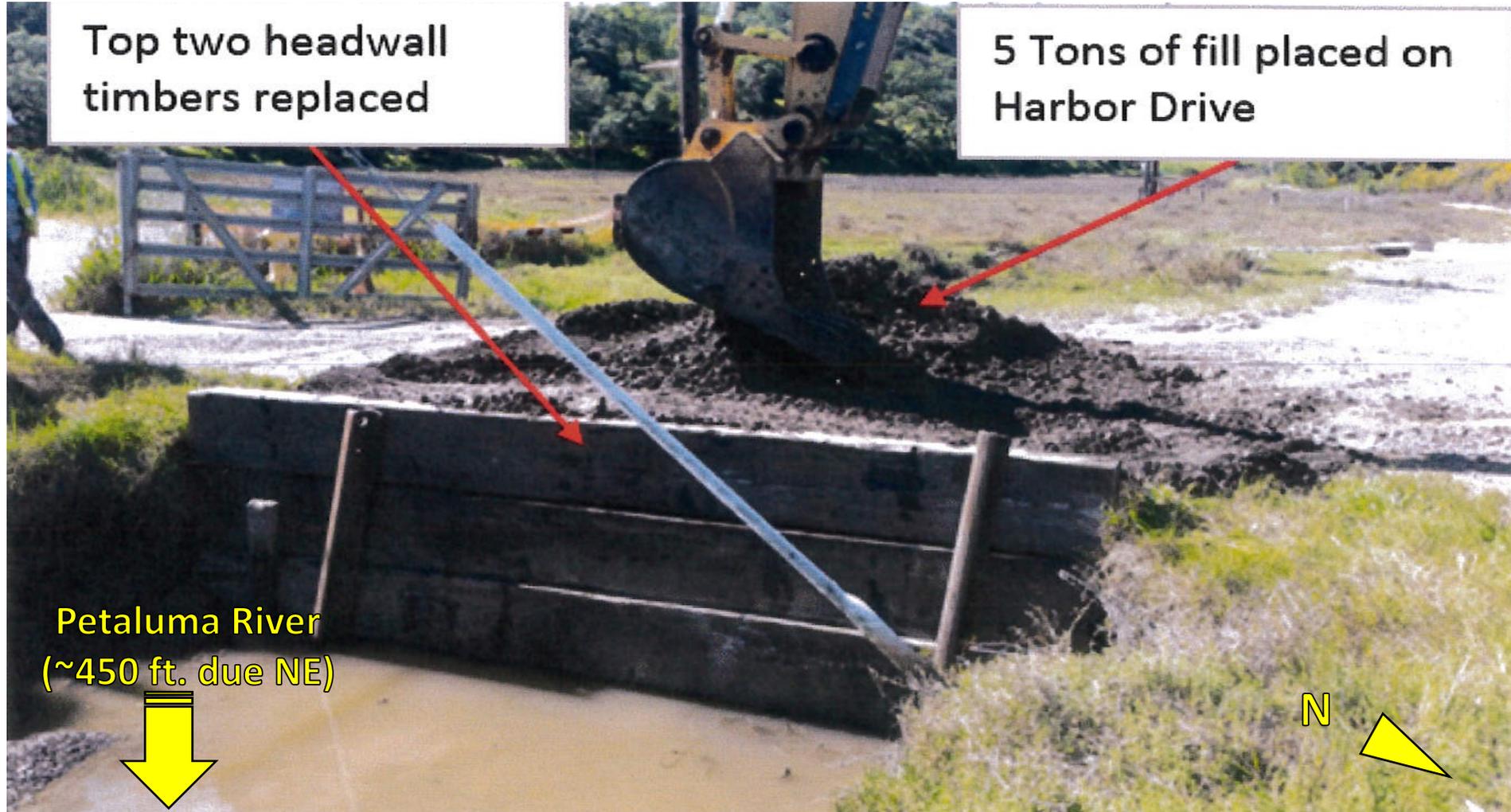
CDO 2018.02

Exhibit A: Vicinity Map





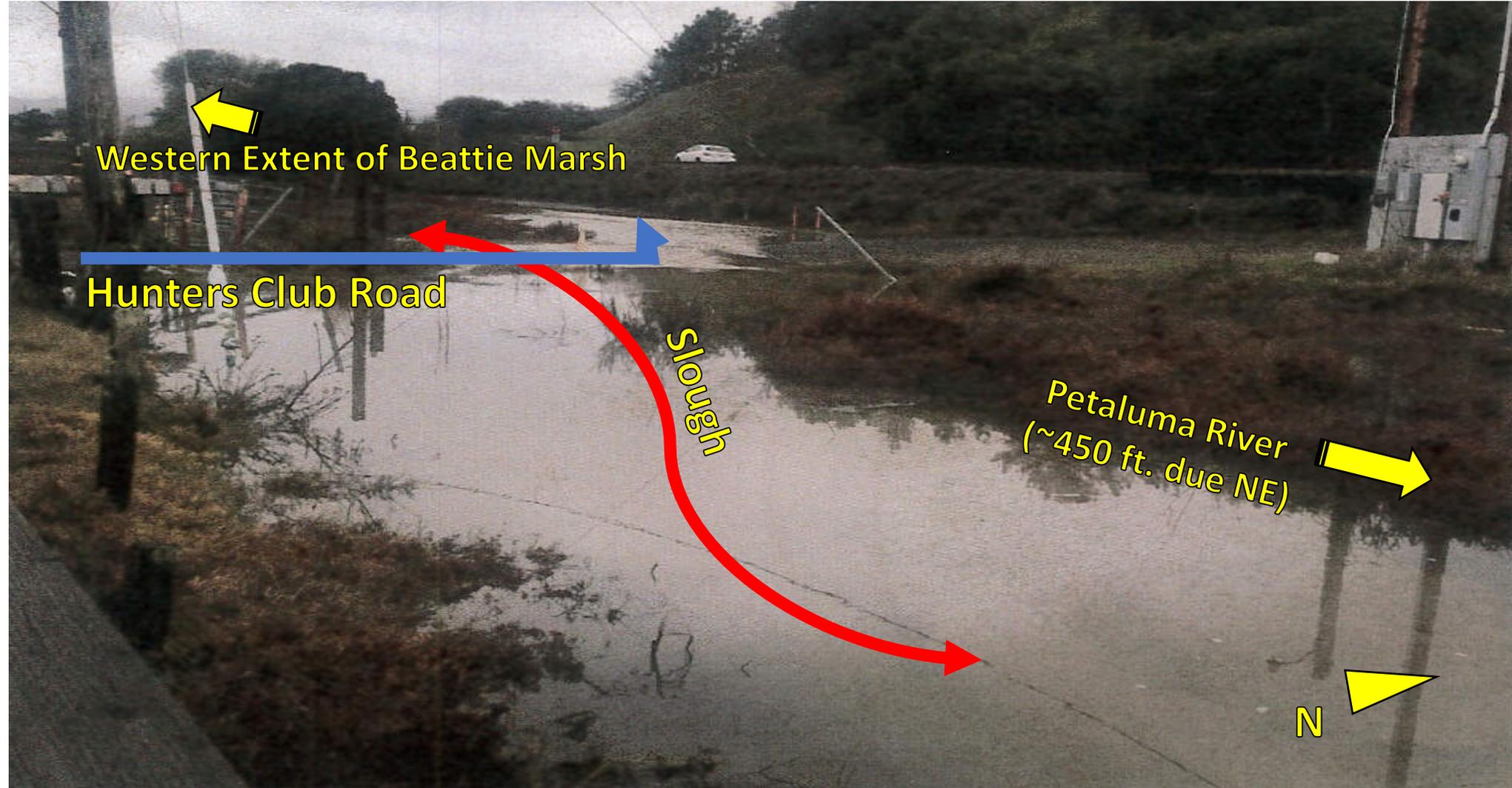
North Coast Railroad Authority
CDO 2018.02
Exhibit C: Unauthorized Road Work



Annotated photograph of the unauthorized road repair work (ca. Spring 2016) submitted to Adrienne Klein by David Anderson on May 28, 2016. Photo and annotations by Northwestern Pacific Railroad Company.



Repaired road and retaining wall after the completion of the unauthorized repair work in March 2016. Debris from the prior road damage episode(s) was left in the slough. (Photo credit: BCDC staff, June 24, 2016)

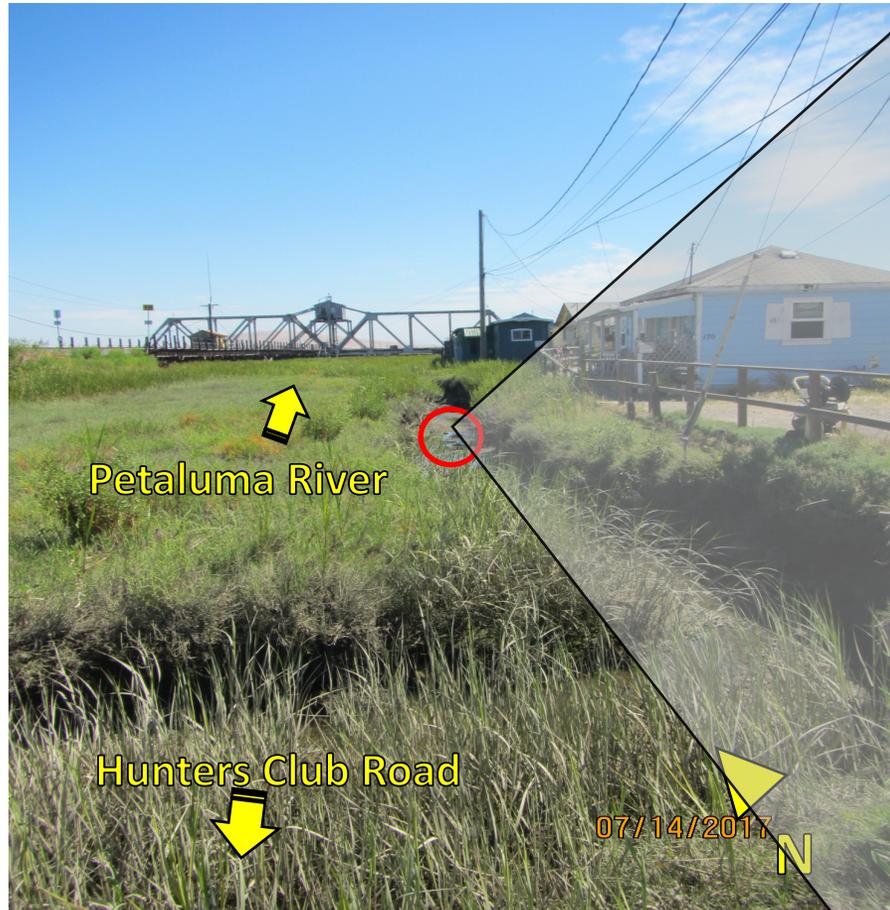


Photograph of tidal waters inundating Hunters Club Road and the access road to the bridge operators house, ca. March 2016, submitted by a private party to BCDC staff on June 24, 2016.



Water damaged the surface of Hunters Club Road and retaining wall, and distributed road debris in the foreground during Winter 2017. Tidal water is pooling at the culvert (submerged) with unknown effects on the hydrology of the western extent of Beattie Marsh consisting of approximately 237,000 square feet. (Photo credit: BCDC staff, July 14, 2017)

North Coast Railroad Authority
CDO 2018.02
Exhibit G: Road Debris in the Slough



Road debris is dispersed at least 100 feet bayward into the slough, as photographed from the road. The full extent of the debris field is unknown. (Photo credit: BCDC staff, July 14, 2017)

San Francisco Bay Conservation and Development Commission

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North Coast Railroad Authority
c/o Mitch Stogner, Executive Director
419 Talmage Road, Suite M
Ukiah, California 94582

Respondent

COMMISSION
CEASE AND DESIST AND CIVIL PENALTY
ORDER NO. CDO 2018.02

Effective Date: May 21, 2018

TO NORTH COAST RAILROAD AUTHORITY:

I. CEASE AND DESIST ORDER

Pursuant to California Government Code Section 66638, the North Coast Railroad Authority, all of its agents and employees, and any other persons acting on behalf of or in concert with it (collectively, "NCRA" or "Respondent") are hereby ordered to:

- A. Cease and desist from violating the McAteer-Petris Act ("MPA").
- B. Fully comply with the requirements of Sections III, IV, and V of this Cease and Desist and Civil Penalty Order.

II. FINDINGS

This Order is based on the following findings. The administrative record in support of these findings includes the documents cited herein and all additional documents cited in the Index of Administrative Record attached hereto.

A. The violation occurred within the Commission's Bay jurisdiction at the northern end of Hunters Club Road in Novato, Marin County, Assessor's Parcel No. 157-051-09. The parcel is owned by the Sonoma Marin Area Rail Transit Authority (SMART). The site of the violation is where the road crosses an approximately 565-yard-long, unnamed slough that runs through Beattie Marsh, parallel to the Northwestern Pacific railroad line to the north, providing a tidal connection between the marsh and the Petaluma River via a culvert under the road.

B. On March 29, 2016, BCDC staff received a complaint from a member of the public alleging that a retaining wall was being constructed in the Bay at the mouth of a slough under the Black Point Swing Bridge, concerned the retaining wall would block the flow of water and cause flooding.¹ Respondent was informed in a May 23, 2016 letter by BCDC Chief of Enforcement Adrienne Klein that it had thirty-five days to resolve the violation or else be subject to the imposition of standardized administrative fines.²

¹ BCDC Violation Investigation Report Form dated March 29, 2016.

² Letter by Adrienne Klein entitled, "Unauthorized reconstruction of a washed-out road in the Petaluma River, in SF Bay, located west of the Black Point Bridge and east of Grandview Avenue (which intersects with Beattie Avenue and Harbor Drive) in Novato, Marin County (Enforcement File No. ER2016.017)," dated May 23, 2016.

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Civil Penalty Order No. CDO 2018.02
North Coast Railroad Authority
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C. From May 23, 2016 through August 2, 2017, BCDC staff pursued a resolution of the violation through the standardized administrative fine process, pursuant to BCDC Regulation (14 CCR) Section 11386, through correspondences and several phone conversations with Respondent. However, Respondent failed to comply with staff's repeated direction to seek and obtain a Commission permit to authorize the unpermitted Bay fill placed on the road and take affirmative actions to mitigate the damage wrought on the marsh and slough by road debris that was subsequently deposited in the slough as a result of high water flows in the winter of 2016/2017 and/or spring of 2017. On June 28, 2017, BCDC staff informed Respondent that it would no longer have the opportunity to resolve the violation through the standardized fine process effective August 2, 2017 (i.e., after 35 days of the notice), and that staff would initiate formal enforcement proceedings.³

D. Administrative fines accrued to the maximum amount of \$30,000 on May 3, 2017.

E. On September 5, 2017, BCDC staff mailed a Violation Report/Complaint for the Imposition of Administrative Civil Penalties ("Violation Report/Complaint") naming NCRA and SMART as co-respondents for the violation.⁴

F. On October 3, 2017, BCDC staff met with NCRA Executive Director Mitch Stogner and NCRA's representative and engineering contractor, David Anderson, to discuss the allegation set forth in the Violation Report/Complaint. They agreed to develop and implement a plan for removing gravel and any other unnatural material from the slough to the extent necessary to remediate the damages to Beattie Marsh and the unnamed slough that feeds it, as a result of Respondent's placement of Bay fill in or adjacent to the slough for road repair purposes; which material was subsequently deposited in the slough as a result of high water flows in the slough in the winter of 2016/2017 and/or spring of 2017.⁵

G. On October 16, 2017, SMART was dismissed from the enforcement proceedings without prejudice by the Executive Director of BCDC based on the information contained in its Statement of Defense received on October 6, 2017. In its Statement of Defense, SMART argued that it took no part in the actions that constituted a violation of the McAteer-Petris Act and, although it is the parcel owner of record, it bears no responsibility for the actions of the easement holder, NCRA.⁶ Also on October 16, 2017, NCRA was granted an extension of the 35-day deadline, until November 24, 2017, to submit its Statement of Defense.^{7, 8}

³ Letter from Matthew Trujillo entitled, "Termination of Standardized Fine Process to Resolve Violations of the McAteer-Petris Act; BCDC Enforcement File No. ER2016.017," dated June 28, 2017.

⁴ BCDC Violation Report/Complaint for the Imposition of Administrative Civil Penalties, dated September 5, 2017.

⁵ E-mail by Matthew Trujillo entitled, "Violation Report/Complaint Served on 2017-09-05 for BCDC Enforcement File No. ER2016.017," dated October 5, 2017.

⁶ *Statement of Defense of the Sonoma Marin Area Rail Transit District*, received by BCDC staff on October 6, 2017.

⁷ E-mail by John Bowers entitled, "Violation Report/Complaint Served on 2017-09-05 for BCDC Enforcement File No. ER2016.017," dated October 16, 2017.

⁸ E-mail by John Bowers entitled, "NCRA's Request to Extend the Deadline to Submit a Statement of Defense for Enforcement Proceeding No. 2016.017," dated October 16, 2017.

H. On November 22, 2017, instead of a formal Statement of Defense, Respondent submitted to BCDC staff a plan to remove, “gravel and any other unnatural material from the slough to the extent necessary to remediate the damages wrought on the Beattie Marsh and the slough that feeds it.”⁹

I. On January 10, 2018, BCDC staff informed NCRA that its remediation plan is inadequate, and that staff would be asking for a more comprehensive plan in the proposed order. Staff also informed NCRA that the proposed order would require NCRA to seek and obtain a Commission permit to secure the abandoned road against future wash-outs and would impose a civil penalty. Staff invited Respondent to work together to negotiate a proposed stipulated order to present to the Enforcement Committee but received no response.¹⁰

J. On January 11, 2018, BCDC staff visited the site at low tide to observe and record the conditions of the surface of the road, the culvert beneath the road, the slough and marsh, the flow of water through the marsh and slough via the culvert, and the extent of road debris in the slough and marsh.¹¹ Staff notified Respondent about the site visit in advance by e-mail (January 9, 2018)¹² and phone (January 11, 2018) and invited them to attend, but Respondent did not acknowledge the invitation and did not attend the site visit.

K. On January 19, 2018, BCDC staff emailed Respondent with another invitation to engage in negotiations for a proposed stipulated order. Mr. Stogner replied on January 22, 2018 stating that he had directed Mr. Anderson to work with staff on a proposed stipulated order.¹³

L. On February 27, 2018, BCDC staff sent NCRA a draft copy of a proposed Commission Cease and Desist and Civil Penalty Order, requesting that NCRA review the draft document and mark it up with their suggested edits, and schedule a meeting for the following week to attempt to negotiate a stipulated order. On March 13, 2018, BCDC staff met with NCRA’s representative Dave Anderson and discussed the content of the draft order. No agreement was reached at the meeting, but staff carefully reviewed the content of the draft proposed order with Mr. Anderson and provided clarification on all of his questions and concerns. Mr. Anderson agreed to discuss the proposed order with NCRA’s board of directors the next day. Staff indicated that it would await further communication from NCRA.

⁹ NCRA’s proposed mitigation plan, dated November 22, 2017.

¹⁰ E-mail by Matthew Trujillo entitled, “Response to Your Implementation Plan and Rescheduling of the BCDC Enforcement Committee Hearing,” dated January 10, 2018.

¹¹ Record of Observations and Notes by Adrienne Klein, Matthew Trujillo, Rafael Montes and Walt Deppe entitled, “Thursday, January 11, 2018 Site Visit to NCRA Roadway,” January 2018.

¹² E-mail by Matthew Trujillo entitled, “Notice of Site Visit - BCDC Enforcement File No. ER2016.017,” dated January 9, 2018.

¹³ E-mail by Mitch Stogner entitled, “Response to Your Implementation Plan and Rescheduling of the BCDC Enforcement Committee Hearing,” dated January 22, 2018.

M. On March 29, 2018, after two weeks without any follow up from NCRA, BCDC staff e-mailed NCRA advising it that a stipulated order would have to be completed by April 5, 2018 if it was to be presented to the Enforcement Committee on April 19, 2018. On April 2, 2018, Mr. Anderson submitted a version of the draft order with suggested additional findings and changes to the scope of the remediation plan that would be required by the Order.¹⁴ However, staff determined that the edits to the findings were redundant, unsupported by the administrative record, and/or inappropriate; and also determined that the edits to the scope of the remediation plan, with the exception of one edit, would, if incorporated, limit the scope of the site assessment and remediation of the site to an unacceptably ineffectual degree. Therefore, staff did not accept NCRA's proposed changes to the draft order, except Mr. Anderson's suggestions to incorporate the use of available historical data to aid in the assessment of the impacts to the habitat and an extension of the deadline to submit its remediation plan from 45 days to 60 days.

N. On April 6, 2018, the Executive Director issued his Recommended Enforcement Decision, which included a proposed Cease and Desist and Civil Penalty Order. With respect to the proposed administrative civil penalty of \$30,000, staff recommended, in light of NCRA's alleged, but unsubstantiated claim that it is an underfunded state agency, that NCRA be entitled to a waiver of 50% of the penalty amount if the Executive Director determines that NCRA has substantially complied with the requirements of the Order.

O. On April 19, 2018, during a public hearing on the matter, the BCDC Enforcement Committee unanimously voted to adopt the Executive Director's Recommended Enforcement Decision and proposed Cease and Desist and Civil Penalty Order with the modification that NCRA be entitled to a waiver of 100% of the proposed \$30,000 administrative civil penalty, instead of 50% as suggested by staff, if NCRA provided documentation of its inability to pay the penalty by no later than April 30, 2018 and substantially complied with the terms of the Order.¹⁵ NCRA agreed to provide appropriate documentation of its inability to pay by April 30, 2018.

P. On April 23, 2018, NCRA provided to BCDC staff its audited financial statements for the year ending on June 30, 2017 which included supplemental information through March 2018, as documentation of its inability to pay the proposed administrative civil penalty.¹⁶

¹⁴ Draft proposed "Commission Cease and Desist and Civil Penalty Order No. CDO 2018.02," annotated by Mr. Anderson, submitted to BCDC staff on April 2, 2018.

¹⁵ Transcript of the April 19, 2018 Enforcement Committee meeting.

¹⁶ *North Coast Railroad Authority Financial Statements for the Year Ended June 30, 2017*, prepared by Prisent & Brinker, LLP, dated March 27, 2018.

Q. On April 25, 2018, the Executive Director determined that NCRA had demonstrated its lack of financial resources and inability to pay an administrative civil penalty of \$30,000, based on the information in its financial statements, which show, among other matters, that: (1) NCRA has suffered recurring losses from operations and its total current liabilities substantially exceed its total current assets; (2) NCRA's financial status decreased overall during the 2017 fiscal year by almost \$1.29 million due to the fact that the costs to administer NCRA and maintain its rail line exceed the revenues that can be generated from the lease of property and equipment; and (3) as of June 30, 2017, NCRA had an unrestricted deficit of almost \$8.77 million resulting primarily from accumulated losses incurred beginning over twenty years ago with the fiscal year ended June 30, 1996, that continued to accrue due to its inability to generate sufficient operating revenue to cover the administration and maintenance costs of its properties.

III. CONDITIONS

A. On and after the Effective Date of this Order, Respondent shall cease and desist from all activity in violation of the MPA.

B. No later than 60 days after the Effective Date of this Order, NCRA shall submit of a comprehensive plan for review and approval by the Executive Director for the remediation of the damage at the site, prepared by a qualified professional or professionals, after consultation with all relevant local, state and federal agencies, including, but not limited to the Regional Water Quality Control Board, the Army Corps of Engineers, and the California Department of Fish and Wildlife.

The plan shall include, but may not be not limited to:

1. An assessment of the tidal cycle and storm effects in the area and the continued risk of road flooding and culvert congestion resulting from these influences.
2. An assessment of the full extent, volume, and nature of the debris originating from the road and deposited in the culvert, slough, and marsh.
3. An assessment of all impacts to the habitat, including, but not limited to, the hydrology of the culvert, slough, and marsh, unnatural accretion and/or erosion, and any changes to the nature of the marsh and slough resulting from the wash out of the road and deposition of debris on plant and animal health. Where available, historical data should be used to assist with the assessment.
4. Provisions for the removal of all debris originating from the road as a direct or indirect result of the unpermitted road work that took place in or around the spring of 2016, including road debris that has been or will likely be deposited into the culvert, slough, and marsh as a result of subsequent storm and flood events during the intervening time period ranging from the last time the road was flooded in 2016/2017 through the date(s) that the remediation and mitigation work will be completed in 2018 or later.

5. Provisions to ensure that the road and associated structures will not continue to pose a hazard to the marsh or slough after the remediation has been completed.
6. Provisions for the mitigation of any identified impacts to the habitat of the slough and marsh as a result of the unpermitted road work.
7. An explanation of the methodology used to conduct the assessment and the analysis of the data, and an appendix containing the raw data.
8. An implementation schedule including the dates by which the work will commence and finish, taking into account any work windows required by BCDC or other agencies to avoid effects to spawning, migration, or other critical activities of species that may be affected by the work.
9. A provision to monitor the site for no less than two years after the completion of the remediation work to ensure the remediation was a success.

C. Promptly after approval of the remediation plan by the Executive Director, Respondent shall implement the approved remediation plan in strict accordance with the implementation schedule specified therein.

D. Extension of Time

1. If Respondent believes that an event arising from a cause or causes beyond its control will delay timely compliance with any provision of Paragraphs III.B and III.C and justifies an extension of a compliance date set forth therein, Respondent shall notify BCDC's staff counsel by e-mail within five business days of when Respondent first knew of the event. The e-mail notice shall describe the cause(s) of the delay, the anticipated length of time the delay may persist, the measures taken or to be taken by Respondents to prevent or minimize the delay, the schedule by which these measures will be implemented, and the additional time requested to comply.
2. The Executive Director may grant an appropriate extension of time, for demonstrated good cause, to comply with any provision of Paragraphs III.B or III.C in response to a request made by Respondent pursuant to Paragraph III.D.1.

E. No later than five days after completing the remediation work, Respondent shall submit to the Executive Director a written statement declaring that the work has been completed in accordance with the approved remediation plan, signed by a qualified professional and the Executive Director of NCRA.

F. No later than five days after completing the monitoring program, Respondent shall submit to the Executive Director a written statement declaring that the monitoring program has been completed in accordance with the approved remediation plan, signed by a qualified professional and the Executive Director of NCRA.

IV. CIVIL PENALTY ORDER

Pursuant to Government Code Sections 66641.5(e) and 66641.9, the Commission hereby assesses and orders Respondent to pay a civil penalty of \$30,000 except as modified in Section IV below. This penalty payment shall constitute Respondent's full and complete satisfaction of its liability for civil penalties for the alleged violation, through the date of this Order.

A. **Assessed Penalty.** The total civil penalty of \$30,000 includes the following:

1. Respondent is assessed a penalty of \$4,000 for its failure to seek and obtain a Commission permit to place fill in the Commission's jurisdiction in or around the spring of 2016, which is presumed to have taken place over at least two days at a rate of \$2,000 per day.
2. Respondent is assessed a penalty of \$100 per day for its failure to seek and obtain a Commission permit to authorize the unpermitted road work after-the-fact from the date BCDC staff first notified Respondent of the violation on May 23, 2016, through the date Respondent lost the opportunity to resolve the enforcement action by paying a standardized administrative fine on August 2, 2017. At \$100/day, a penalty of \$24,000 shall be assessed for this 436-day-long period.
3. Respondent shall be assessed \$20 per day for the period from September 5, 2017, the date of issuance of the Violation Report/Complaint, through the date of issuance of this Order (May 18, 2018) for the unauthorized placement of fill. At \$20/day, the penalty for this approximately 256-day-long period, though totaling \$5,120, shall be capped at \$2,000.

The Commission finds that the amount of the penalty is reasonable and appropriate, given the nature, extent, and gravity of the violation, particularly its indirect effects on the slough and the marsh, as understood to-date, and the cost to the state in pursuing this enforcement action from May 23, 2016 through the date of issuance of this Order. This effort was shared by one Enforcement Analyst, the Chief of Enforcement, Staff Counsel, Chief Counsel, two administrative support staff, the Staff Engineer, and one Permit Analyst, with additional support by the Regulatory Director and the Executive Director.

With respect to Respondent, the amount of the civil penalty takes into account its limited ability to pay, its degree of culpability, and its voluntary resolution efforts undertaken to-date. Respondent is an underfunded public entity that, as a lessee of the parcel, is limited in its authority to conduct intensive work on the road without the assent of the lessor (i.e., SMART). In the interests of resolving the violation, Respondent has made a limited effort to conduct a site survey and formulate a remediation plan. However, its efforts have been insufficient thus far, and those efforts are far outweighed by the significant damage to the nature of the site as observed by BCDC staff, and the cost to the State in pursuing this enforcement action. Therefore, based on consideration of all relevant factors an assessment of total penalty of \$30,000 is warranted.

B. Penalty Waiver. In light of NCRA's substantiated claim that it is an underfunded state agency, the Commission has determined that given the choice between requiring NCRA to allocate its limited resources to pay the proposed administrative civil penalty of \$30,000, which may adversely affect its ability to comply with the conditions of this order, versus allocating its resources to do its utmost to remediate the marsh and slough and secure Hunters Club Road against future wash-outs, it would be in the best interests of the natural resource and the Bay Area community to allow Respondent to be entitled to a waiver of 100% of the total penalty amount if the Executive Director determines that NCRA has substantially complied with the terms of this Order.

1. The Executive Director shall notify Respondent in writing of his determination as to whether or not Respondent has substantially complied with this Order within 30 days of receiving Respondent's written notice of completion of the remediation work submitted pursuant to Condition III.E of this Order.
2. If the Executive Director determines that NCRA has not substantially complied with the terms of this Order and, therefore, is not entitled to the penalty waiver, then, pursuant to Government Code Section 66647, Respondent shall remit payment to the Commission by cashier's check in the amount of \$30,000, payable to the San Francisco Bay Conservation and Development Commission - Bay Fill Clean-Up and Abatement Fund, within thirty days of the Executive Director's determination and demand for payment.

V. TERMS

A. Under Government Code Section 66641, any person who intentionally or negligently violates any cease and desist order issued by the Commission may be liable civilly in the sum of up to \$6,000 for each day in which such violations persist. In addition, upon the failure of any person to comply with any cease and desist order issued by the Commission and upon the request of the Commission, the Attorney General of the State of California may petition the superior court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease and desist order.

B. This Order does not affect any duties, right, or obligations under private agreements or under regulations of other public bodies.

C. Respondent must conform strictly to this Order.

D. This Order does not constitute a recognition of property rights.

E. This Order is effective upon issuance thereof.

VI. OPPORTUNITY FOR JUDICIAL REVIEW

Under Government Code Sections 66639 and 66641.7(a), within thirty days after service of a copy of a cease and desist order and civil penalty order issued by the Commission, Respondent may file with the superior court a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

FOR THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

Dated: _____

LAWRENCE J. GOLDZBAND
Executive Director
San Francisco Bay Conservation and
Development Commission

INDEX OF ADMINISTRATIVE RECORD

Record No.	Date	Document Description
1	11/10/1969	Aerial photographs of the violation site by Air-Photo Company, Inc.
2	4/30/1996	Quitclaim deed transferring fee ownership of the parcel from Southern Pacific Transportation Company to Northwestern Pacific Railroad Authority
3	5/17/1996	Surface Transportation Board Finance Docket No. 32910 entitled, "Northwestern Pacific Railroad Authority; Acquisition Exemption; Former Northwestern Pacific Railroad Line From Southern Pacific Transportation Company and Golden Gate Bridge, Highway and Transportation District," Federal Register Vol. 61, No. 97
4	2004	Dissolution Agreement Between the Golden Gate Bridge, Highway and Transportation District, the County of Marin and the North Coast Railroad Authority
5	9/14/2006	North Coast Railroad Authority press release entitled, "NCRA Approves Operator Contract"
6	12/14/2010	Notice of Intent of Proceed No. NOI2010.024 Under BCDC Regionwide Permit No. RWP-3, As Amended Through December 18, 2008
7	6/5/2011	Memorandum to the NCRA Board of Directors from Christopher Near, NCRA Legal Counsel, entitled, "Operating Agreement with SMART"
8	6/20/2011	Operating and Coordination Agreement for the Northwestern Pacific Line between SMART and NCRA
9	3/25/2016	Letter and photographs (taken ca. March 2016) from Jim Armstrong, private citizen, to the Marin County Department of Public Works "Northwest Pacific Railroad etal [sic] APN. 157-051-09 Request for Project Information / Environmental & property damage Stop Work Request / Project and Environmental Permits Required"
10	3/29/2016	BCDC Violation Investigation Report Form
11	4/11/2016	Handwritten notes of phone call between Adrienne Klein, BCDC Chief of Enforcement, and Gregg Jennings, SMART Engineer
12	4/11/2016, 4/12/2016, 4/14/2016	E-mail exchange between Adrienne Klein and Gregg Jennings entitled, "Apparently unauthorized road repair in a tidal channel connected to the Petaluma River next to the Back [sic] Point Bridge"
13	4/25/2016	E-mail exchange between Adrienne Klein and Gregg Jennings entitled, "Blackpoint Bridge Automation Project"
14	5/23/2016	Letter from Adrienne Klein to Mitch Stogner, NCRA Executive Director, and Gregg Jennings entitled, "Unauthorized reconstruction of a washed out road in the Petaluma River, in SF Bay, located west of the Black Point Bridge and east of Grandview Avenue (which intersects with Beattie Avenue and Harbor Drive) in Novato, Marin County (Enforcement File No. ER2016.017)"
15	5/28/2016, 5/31/2016	E-mail exchange between David Anderson and Adrienne Klein entitled, "Harbor Drive Emergency Repair"
16	5/31/2016	Handwritten notes of phone call between Adrienne Klein and David Anderson, NCRA's Representative, entitled, "NCRA/SMART"
17	6/24/2016	Site photographs and typed site visit notes entitled, "NCRA Site Visit on Friday, June 24, 2016 by Adrienne Klein"
18	6/28/2016	Letter from John Riley to Adrienne Klein entitled, "Enforcement File No. ER2016.017"

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19	7/12/2016	Letter from Adrienne Klein to David Anderson entitled, "Violation 1 - Unauthorized reconstruction of a washed out road and Violation 2 - Unauthorized installation of bridge authentication equipment, in the Petaluma River, in SF Bay , located west of the Black Point Bridge and east of Grandview Avenue (which intersects with Beattie Avenue and Harbor Drive) in Novato, Marin County (Enforcement File No. ER2016.017)"
20	7/27/2016, 8/22/2016, 2/20/2017, 3/28/2017, 3/29/2017, 4/19/2017, 5/15/2017, 5/16/2017	E-mail exchanges between David Anderson, Douglas Bosco, NWPR Counsel, and Adrienne Klein entitled "BCDC Enforcement Case No. ER2016.017 NCRA at Black Point Bridge, Novato, Marin County"
21	1/13/2017	Handwritten notes of phone call between Adrienne Klein and David Anderson
22	5/15/2017	Site Survey by ARE Corporation entitled, "Hunters Club Drive Repair NCRA"
23	6/16/2017, 6/18/2017	E-mail exchange between Matthew Trujillo, BCDC Enforcement Analyst, and David Anderson entitled, "Phone Call Follow-Up"
24	6/28/2017	Letter from Matthew Trujillo to NCRA, c/o David Anderson, entitled, "Termination of Standardized Fine Process to Resolve Violations of the McAteer-Petris Act; BCDC Enforcement File No. ER2016.017"
25	7/6/2017	RealQuest.com Property Detail Report for Property Located at 3026 Hunters Club Road, Novato, Marin County, accessed July 6, 2017
26	7/14/2017	Site photographs taken by Matthew Trujillo
27	8/18/2017	History of the North Coast Railroad Authority - www.northcoastrailroad.org/history.html , accessed August 18, 2017
28	9/5/2017	BCDC Violation Report/Complaint for the Imposition of Administrative Civil Penalties
29	10/5/2017, 10/16/2017	E-mail exchange between Matthew Trujillo, John Bowers, BCDC Staff Counsel, and Respondent entitled, "Violation Report/Complaint Served on 2017-09-05 for BCDC Enforcement File No. ER2016.017"
30	10/6/2017	Statement of Defense of the Sonoma Marin Area Rail Transit District, received by BCDC staff on October 6, 2017
31	10/16/2017	E-mail by John Bowers entitled, "NCRA's Request to Extend the Deadline to Submit a Statement of Defense for Enforcement Proceeding No. 2016.017"
32	11/22/2017	NCRA's proposed mitigation plan
33	1/9/2018	E-mail by Matthew Trujillo entitled, "Notice of Site Visit - BCDC Enforcement File No. ER2016.017"

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34	1/11/2018	Site photographs taken by BCDC staff
35	1/19/2018	E-mail by Matthew Trujillo entitled, "Response to Your Implementation Plan and Rescheduling of the BCDC Enforcement Committee Hearing"
36	1/22/2018	E-mail by Mitch Stogner entitled, "Response to Your Implementation Plan and Rescheduling of the BCDC Enforcement Committee Hearing"
37	1/29/2018	Record of Observations and Notes by Adrienne Klein, Matthew Trujillo, Rafael Montes, BCDC Staff Engineer, and Walt Deppe, BCDC Permit Analyst, entitled, "Thursday, January 11, 2018 Site Visit to NCRA Roadway"
38	2/27/2018	E-mail by Matthew Trujillo entitled, "Please see the attached and let me know your availability to meet next week"
39	3/29/2018	E-mail by Matthew Trujillo entitled, "BCDC-NCRA Stipulated Cease and Desist and Civil Penalty Order"
40	4/2/2018	Draft proposed "Commission Cease and Desist and Civil Penalty Order No. CDO 2018.02," annotated by David Anderson, submitted to BCDC staff on April 2, 2018
ADDITIONAL DOCUMENTS ADDED TO THE ADMINISTRATIVE RECORD AFTER THE ENFORCEMENT COMMITTEE HEARING ON APRIL 19, 2018		
41	3/27/2018	<i>North Coast Railroad Authority Financial Statements for the Year Ended June 30, 2017</i> , prepared by Presenti & Brinker, LLP, dated March 27, 2018, submitted to BCDC staff on April 23, 2018
42	4/19/2018	Transcript of the April 19, 2018 Enforcement Committee meeting.