

**From:** Jim Armstrong  
**Subject:** Enforcement Hearing / 4/19/18/ NCRA / Request and Comment  
**Date:** April 18, 2018 at 3:47 PM  
**To:** matthew.trujillo@bcdc.ca.gov, marc.zepetello@bcdc.ca.gov



Attn: Matthew Trujillo  
Marc Zeppetello  
SFBCDC

Re: Enforcement Hearing 4/19/18 / NCRA  
From: Beattie Trust

This letter is submitted in follow up to the recent receipt of the Meeting Notice scheduled for 4/19/18.

I am requesting that in connection with such, you review the previously submitted written correspondence and photographs listed as item 9...of your administrative record, Dated 3/25/16 submitted on behalf of Beattie trust to Marin County Public Works and also which was provided directly to BCDC. Said correspondence was also provided to NCRA and Smart Train at said time and the information was also discussed with David Anderson at a subsequent site visit.

In connection with this matter and the scheduled enforcement meeting and future mitigations the following comments are submitted.

While the enforcement action discusses a specific violation of 4 cubic yards illegally placed at this site location which is specific to your action, the reality is that the while under the supervision of NCRA and Smart, significantly more gravel fill has been placed in this location by said parties and the railroad interests which has been on going for many years. associated with their continual desire to build a road in this location. The true amount of filling needs to be accessed as such relates to the true impact on the marsh and drainage problems at this location. Said filling has altered the normal hydrology . Raising the grade levels at this location has disrupted the normal in and outflow of daily tidal action in this location and both negatively impacted the marsh ecology and hydrology causing damage and flooding to adjacent properties. The true scope of said impacts need to be determined.

Any mitigation need to address damage to neighboring properties and existing rpoad conditions along Beattie Ave / Hunters Club Road.

The Railroads property located at the end of Beattie / Hunters Club Road is a marsh....which has been filled numerous times in the past without proper authority in their effort to provide a road crossing the marsh . Any road use or parking use of this area by NCRA should not be allowed.

The previous letter outlines numerous areas that have been filled that exceed the 4 cubic yards.

All of the area on the RR property from from the end of Beattie Road extending the 75 ft to the RR tracks needs to be restored to the original natural grade, of the marsh allowing normal and proper daily tidal flow to the marsh.

The RR property includes an older culvert that represents the location for the marsh drainage and also daily tidal flow in and out of the marsh. This facility has been broken for years and has not been properly maintained by the current owners. it also is significantly undersized to handle the significant volume of water that enters the marsh and needs to enter the marsh for normal tidal action.

Thank you for your revies of this feedback.

Beattie Trust  
Jim Armstrong  
[REDACTED]

On 4/17/18, 10:17 PM, "Phil Peterson" wrote:

To Matthew Trujillo  
Enforcement Analyst  
BCDC

Thank you so much for the opportunity to speak with you today regarding the enforcement action that is underway pertaining to violations at Hunters Club Road in the Black Point community of Marin County. As I shared with you today, I contacted Ms Klein out of concern for the tidal marsh along Beattie Road, which has been adversely impacted from negligence by the rail operator who contracts with SMART to carry freight on this line. The access road that has washed out on several occasions, and is the focus of your enforcement action, lays atop a culvert which provides tidal connection from the Petaluma River into the extensive marsh between Beattie Road and the rail line. Frequent high tide events coupled with storm water runoff on the surrounding hillsides are more than the culvert can accommodate, the result being that the road is over-topped with both ingress and egress flows. As a resident of this neighborhood for close to 30 years, I can testify that this situation is on-going and urgently needs a long-term solution to avoid continuous and cumulative degrading of the marsh and the meandering slough that provides connection to the river and subsequently the greater San Pablo Bay.

After reviewing the supporting literature package provided by BCDC to Marin Audubon's president Barbara Salzman, I would urge the Commission to advocate for the removal of the railroad's gravel access road and its associated culvert, followed by restoration of the tidal slough that has been subjected to tons of washed out gravel and construction debris. My understanding is that this road was originally used for access by the bridge-tender to reach his residence located on the 75' railroad easement. Since the turn-bridge is now automated, the need for a bridge-tender is obsolete. While the former bridge-tender was a pleasant and colorful addition to the neighborhood, he has since passed away and any future need for the cabin will be moot. I would further suggest that this structure now be considered a good candidate for removal (as would the dilapidated boardwalk leading out to the river) to further mitigate for the years of negative impacts to the adjacent marsh that the rail operation has brought upon it.

In conclusion, I urge the Commission to impose fines for these unpermitted activities and to have NCRA consult with wetland biologists/hydrologists for the purpose of developing a remediation/restoration plan that addresses not only the immediate adverse impacts, but the long term health of this marsh. Thank you for your consideration on this matter.

Sincerely,  
Phil Peterson



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April 18, 2018

Marc A. Zeppetello  
Chief Counsel  
San Francisco Bay Conservation and  
Development Commission  
455 Golden Gate Ave., Suite 10600  
San Francisco, Ca. 94102

Re: April 19 Hearing- NCRA

Dear Mr. Zeppetello:

We are General Counsel to the North Coast Railroad Authority and I have been requested to contact you concerning the hearing tomorrow. Dave Anderson will be in attendance. He will request a 90 day continuance for the following reasons:

1. An amended draft of SB 1029 was introduced on April 16, 2018 which would dissolve the NCRA and require it to transfer its assets without transferring its liabilities effective January 1, 2019. The legislation is fluid at the moment, but NCRA cannot enter into any short term or long term commitments until there is clarity on this legislation. It may be that the State would assume any responsibilities of NCRA although the current draft would indicate that not to be the case as no provision is made for its obligations such as may flow from any order issued by the Commission.

2. We understand that the order is directed to the NCRA and not to NWPCO, partially on the concept that public agencies owing railroads are not entitled to preemptive effect of the ICCTA (see 49 U.S.C. § 10501 pursuant to Friends of the Eel River v. NCRA, (2017) 3 Cal. 5<sup>th</sup> 677 with the distinction that the common carrier is entitled to preemption, and the further complication that federal law conflicts with state law on this point as evidenced by STB Declaratory Order, Cal. High Speed Rail Auth. –Pet. for Declaratory Order, 2014 WL 7149612, (S.T.B. served Dec. 12, 2014), and Oregon Coast Railroad, LLC v. Oregon Department of State Lands, (2016) 841 F.3d 1069. This dynamic has always complicated the consideration of this matter. You should be aware that the U.S. Supreme Court will be taking up a Writ of Certiorari petition filed by the NCRA by the end of the current term, after asking the Friends of the Eel River to brief the matter which indicates some preliminary interest by several justices in taking

the matter up. . Greater clarity as to the status of this decision could be forthcoming by the end of the Court's term June, 30.

If you have any questions please feel free to contact me.

Yours very truly

A handwritten signature in blue ink, appearing to read "Chris Neary", with a long horizontal flourish extending to the right.

Christopher J. Neary

cc. Doug Bosco  
Mitch Stogner  
Dave Anderson