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August 12, 2008

Mitch Stogner
NCRA
419 Talmage Road, Ste. M
Ukiah, CA 95482

Dear Mr. Stogner,

On the agenda for NCRA's August 13, 2008 Board meeting for approval is a matter entitled Consideration and Possible Action Regarding NCRA Trail Guidelines. In adopting these proposed Guidelines, NCRA would be overstepping the easement rights granted by SMART's predecessor, NWPRA, to NCRA for the NWP Lombard to Healdsburg segment ("Easement Premises"). By this letter, I am informing you of SMART's objections to the approval of these proposed Trail Guidelines as applied to the Easement Premises and I am requesting that certain revisions be made to the proposed Trail Guidelines.

As you are well aware, SMART's enabling statute and its proposed passenger rail project definition have always included a 70-mile bicycle/pedestrian pathway connecting all 14 passenger rail stations, from Cloverdale to Larkspur. Our concern is that NCRA or NWPCo is attempting to impose these Guidelines on SMART's right of way, which would be legally incorrect. The purported rationale for imposing these new Trail Guidelines appears to be based on the assumption that Federal Railroad Administration and California Public Utilities Commission (CPUC) regulations require a 100 foot set back from center line. That is not the case.

NCRA's easements over the rail line owned by SMART south of Healdsburg provide that freight operations shall be subordinate to regularly scheduled passenger commute operations (Grant of Easement Agreement (NCRA Freight – Sonoma County), Grant of Easement Agreement (NCRA Freight – Marin County), April 1996). The relationship between SMART and NCRA in regard to the easements is further delineated in an Operating Agreement, dated August 19th, 1996. Pursuant to the Operating Agreement, section 1.02(e), SMART, as successor in interest to NWPRA, has the exclusive right to approve or deny any and all future easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the easement premises. NCRA's proposed Trail Guidelines infringe upon SMART's rights pursuant to both the grant deed easements and the Operating Agreement.

Section 1.2 of the proposed NCRA Trail Guidelines states that the Guidelines are to apply to rights of way owned and "used" by NCRA and NWP Co. Further, section 2.2.1 requires that licenses or easements for Trails-on-Rail projects must be obtained from NCRA or NWPCo. Based on the easements for the Easement Premises and the Operating Agreement, NCRA does not have the authority to impose such restrictions or requirements on SMART's right of way. Accordingly, demand is

hereby made that section 1.2 of the proposed NCRA Guidelines be revised to limit its scope to rights of way owned by NCRA only.

Additionally, the Definitions section of the proposed Trail Guidelines also needs revision. "Public Agency" is defined as including a "city and county district." It is unclear what the Guidelines are referring to under this phrase. We are assuming that the definition for "Public Agency" does not include SMART, since SMART is defined later and because there are other provisions within the Trail Guidelines which require that the Public Agency contact SMART (i.e., see sections 3.1 and 4.6.3).

Sincerely,

A handwritten signature in cursive script, appearing to read "Lillian Hames", is written over a horizontal line.

Lillian Hames, General Manager

cc: NCRA Board Members
SMART Board Members
Gregory T. Dion, SMART Legal Counsel