

**REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: May 19, 2021

SUBJECT: MOU & Budget Amendment for Ecusta Trail Bridge Loan

PRESENTERS: John Mitchell, Business and Community Development Director

ATTACHMENTS:

1. Memorandum of Understanding
2. Promissory Note
3. Letter from Wanda Austin, Division Engineer, NCDOT
4. Budget Amendment Spreadsheet

SUMMARY OF REQUEST:

On November 18, 2020, the Board voted to provide a bridge loan to Conserving Carolina for the acquisition of the Ecusta rail line corridor. The organization intends to close on the property by mid June. A County budget amendment is necessary to fund the acquisition.

The attached Memorandum of Understanding (MOU) defines the terms of the loan and is accompanied by a Promissory Note. The County will be reimbursed in full by Conserving Carolina upon receiving the Transportation Alternatives Program (TAP) grant from NCDOT, which was approved by the NCDOT Board of Transportation at their May 6th meeting. Additionally, Conserving Carolina agrees to enact a lease agreement for the County to pursue engineering and construction of the trail.

BOARD ACTION REQUESTED:

Formal action by the Board of Commissioners is necessary for staff to complete the budget transfer and execute the MOU.

Suggested Motion:

I move that the Board of Commissioners approve the Memorandum of Understanding and the County Budget Amendment.

MEMORANDUM OF UNDERSTANDING
BETWEEN HENDERSON COUNTY AND ECUSTA RAILS2TRAIL, LLC

I. Introduction

The purpose of this Memorandum of Understanding, (MOU) is to set forth the agreements and understandings which have been reached between Henderson County, (County) and Ecusta Rails2Trail, LLC (Organization) regarding the acquisition, development, and operation of approximately nineteen (19) miles of former rail corridor known as the Ecusta or “TR” Line. The property on which the trail will be located is presently owned by Blue Ridge Southern Railroad, LLC, a subsidiary of Watco Companies.

In August of 2019, the Organization entered into a grant agreement with the North Carolina Department of Transportation (NCDOT) for a Transportation Alternatives Program (TAP) grant for the acquisition of the corridor with the intent to federally railbank. On May 6, 2021, the North Carolina Board of Transportation voted to authorize the Organization to purchase the corridor and request reimbursement. Acquisition is expected to occur in late May or early June of 2021. The Organization will partner with the County to preserve the corridor for trail purposes and in creating trails for public use.

II. Description of the Property

The property subject to this MOU is described generally as approximately 19.1 miles of railroad situated between Milepost 0.7 (approximately 0.1 miles northeast of the Main Street Grade Crossing) at Hendersonville in Henderson County, and Milepost 19.8 (approximately at Lamb Creek) at Pisgah Forest near Brevard, in Transylvania County, all within North Carolina. The lease pertains solely to the portion of the corridor within Henderson County limits. A survey of the corridor was prepared by a licensed surveyor and will be recorded and referenced in the deed at closing. The trail lease referred to in this MOU, when executed, shall include and incorporate this MOU along with all of its exhibits.

III. Consideration

The Organization has acquired/will acquire the aforementioned Property from Blue Ridge Southern Railroad, LLC. The County will provide a bridge loan totaling \$7,760,000 to the Organization for the purchase. The County will be reimbursed at a one hundred percent (100%) rate by June 30, 2021 after receiving the NCDOT TAP grant funds. Additionally, the Organization will execute a corridor lease agreement with the County for the purposes contained in this document within ninety (90) days of acquisition. The lease may occur prior to the reimbursement.

IV. Obligations of the Organization

1. The Organization will convey by lease to the County the right to develop, operate, repair, and maintain the portion of the corridor that lies within Henderson County limits. The County accepts the property "as is" on the date of conveyance.
2. The Organization represents that it has no knowledge of hazardous waste, noxious waste, or any other condition of the land subject to this MOU exists that would inhibit the ability of the County to possess and improve the property as contemplated by this MOU.
3. The Organization will work with the County to prepare mutually agreed upon terms for lease. This lease shall be granted within ninety (90) days of acquisition.
4. The Organization shall allow Henderson County to create third-party agreements for the development, operation, and maintenance of the corridor as it relates to trail purposes within Henderson County limits.
5. The Organization will request reimbursement from the NCDOT TAP grant as soon as possible after closing to ensure repayment to the County by June 30, 2021.
6. The Organization shall grant the County a Deed of Trust as loan security. In addition, a Promissory Note will be executed to describe the terms and assurances for the bridge loan.

V. Obligations of the County

1. The County will provide a bridge loan to the Organization in the amount of \$7,760,000 on the condition that the Organization will convey a lease within ninety (90) days of closing and will reimburse the County 100% of the funds by June 30, 2021 after reimbursement from NCDOT.
2. Any contract between the County and a third party to perform duties authorized by this MOU must bind the third party to the County's obligations under this MOU.
3. The County will indemnify and hold harmless the Organization and its employees against all claims, damages, costs, and expenses, including reasonable attorney's fees, arising from the performance of this MOU by the County, its agents, contractors, servants, licensees, permittees, or employees. In case any action or proceeding is brought against the Organization or its employees by reason of any such claim, the County, upon notice from the Organization, will defend such action or proceeding.

VI. General

1. This MOU is subject to all applicable laws and regulations. The reimbursement of the bridge loan by the TAP grant is subject to approval by the North Carolina Board of Transportation.
2. This MOU may be revised or amended by mutual written agreement of the Organization and the County.

3. The Organization must approve, and has sole discretion over, all land transactions, crossings, and easements for the Property. The County will be the first point of contact for inquiries from the public and/or private entities regarding these matters within Henderson County limits. Guidelines relating to easements for driveway and road crossings will be provided to the County. If a request conforms to the guidelines, it will be referred to the Organization. If a request does not conform to Organization guidelines, the County will deny the request. The Organization retains the right to issue other non-conflicting easements, leases, or permits but shall not enter into agreements that would physically alter the Trail or its uses. The Organization shall remain in compliance with the Federal Surface Transportation Board for the railbanking of the line.
4. This MOU does not create an employment or agency relationship between the Organization and the County, any employees or agents of the County, or any third parties.

IN WITNESS WHEREOF, Organization and the County have caused this instrument to be executed in their respective names by their respective duly authorized representatives.

HENDERSON COUNTY

By: _____ Date _____
Steve Wyatt, County Manager

ECUSTA RAILS2TRAILS, LLC

By: _____ Date _____
Kieran Roe, Executive Director

SATISFACTION: The debt evidenced by this
Note has been satisfied in full this _____ day of _____, 20____
Signed: _____

PROMISSORY NOTE

\$7,760,000
Hendersonville, North Carolina
May ____, 2021

FOR VALUE RECEIVED the undersigned, **Ecusta Rails2Trail, LLC** (“Borrower”) jointly and severally, promises to pay to the order of **Henderson County** (“Payee” or “Holder”), located at 1 Historic Courthouse Square Hendersonville NC 28792, or at such other place or to such other party or parties as the holder of this Promissory Note may designate, the principal sum of \$7,760,000 dollars, an amount payable in lawful money of the United States of America, at the office of **Henderson County** or at such place as the legal holder hereof may designate in writing. The principal shall be due and payable as follows:

If not sooner paid, the entire amount including principal shall become due and payable on June 30, 2021.

Unless otherwise provided, this Note may be prepaid in full or in part at any time without penalty or premium.

This Note is given for money loaned and is secured by a Deed of Trust which is a first lien on the property therein described.

All parties to this Promissory Note, including maker and any sureties, endorsers, or guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal due under this Promissory Note notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Promissory Note or by way of any extension or extensions of time for the payment of principal; and all such parties waive

Upon default the holder of this Promissory Note may employ an attorney to enforce the holder’s rights and remedies and the maker, principal, surety, guarantor and endorsers of this Promissory Note hereby agree to pay to the holder reasonable attorney fees plus all other reasonable expenses incurred by the holder in exercising any of the holder’s rights and remedies upon default. The rights and remedies of the holder as provided in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property or any other funds, property or security held by the holder for payment or security, in the sole discretion of the holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

This Promissory Note shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of North Carolina.

Whenever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Promissory Note or a portion thereto shall be prohibited by or invalidated under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Promissory Note.

IN WITNESS WHEREOF, the Borrower has caused this instrument to be signed and sealed the day and year first above written.

ECUSTA RAILS2TRAIL, LLC (Borrower)

By: _____
Kieran Roe, Executive Director

Date



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

J. ERIC BOYETTE
SECRETARY

May 12, 2021

John Mitchell
Henderson County
1 Historic Courthouse Sq., Suite 2
Hendersonville, NC 28792

RE: Execution of Agreement ID #8904 and #9668 for EB-6037B

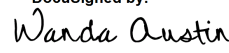
Dear Mr. Mitchell:

This letter is to inform you that the above referenced agreements between the North Carolina Department of Transportation (NCDOT) and Conserving Carolina Foundation, and its wholly owned subsidiary, Ecusta Rails2Trail, LLC, are binding agreements that the NCDOT intends to fulfill in accordance with the General Statutes of North Carolina (NCGS).

These agreements were made under the authority granted to NCDOT by the North Carolina General Assembly including, but not limited to, the following applicable legislation: NCGS Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3, and Section 20-169, to participate in the planning, construction and/or implementation of the above referenced project as approved by the Board of Transportation.

Upon receipt of the fully executed Right of Way verification form from Ecusta Rails2Trail, LLC, NCDOT will process reimbursement according to the above referenced agreements and NC general statutes.

Sincerely,

DocuSigned by:

B88f18F1E31C453...
Wanda Austin, PE
Division Engineer

cc:

Attachments

Mailing Address:
NC DEPARTMENT OF TRANSPORTATION
HIGHWAY DIVISION 14
253 WEBSTER ROAD
SYLVA, NC 28779

Telephone: (828) 586-2141
Fax: (828) 586-4043
Customer Service: 1-877-368-4968

Website: www.ncdot.gov

Location:
253 WEBSTER ROAD
SYLVA, NC 28779

**LINE-ITEM TRANSFER REQUEST
HENDERSON COUNTY**



Department: FINANCE

Please make the following line-item transfers:

What expense line-item is to be increased?

Account	Line-Item Description	Amount
<u>115498-563000</u>	<u>ECON DEV - PAYMENTS TO OTHER AGENCIES</u>	<u>\$7,760,000</u>
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<u> </u>	<u> </u>	<u>\$7,760,000</u>

What expense line-item is to be decreased? Or what additional revenue is now expected?

Account	Line-Item Description	Amount
<u>114230-421000</u>	<u>ARTICLE 39 - ONE CENT</u>	<u>\$7,760,000</u>
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<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u>\$7,760,000</u>

Justification: Please provide a brief justification for this line-item transfer request.
TO BUDGET FOR BRIDGE LOAN FOR RAILS TO TRAILS PROGRAM. PAYBACK IS EXPECTED FROM CONSERVING CAROLINA ONCE NCDOT REIMBURSEMENT IS RECEIVED FROM THE NCDOT. BOARD APPROVED 5.3.2021.

Authorized by Department Head _____ Date

Authorized by Budget Office _____ Date

Authorized by County Manager _____ Date

For Budget Use Only

Batch # _____

BA # _____

Batch Date _____