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PUBLIC VERSION

October 19, 2022

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

RE: North Coast Railroad Authority – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, CA | AB 1305X

**California Coastal Commission and Friends of the Eel River’s Joint
Motion to Dismiss Mendocino Railway’s Offer of Financial Assistance
(PUBLIC)**

Dear Ms. Brown:

The California Coastal Commission and Friends of the Eel River jointly submit the attached Motion to Dismiss Mendocino Railway’s Offer of Financial Assistance. The attached version of the motion is the public version.

A separate version of the motion, which references materials designated by Mendocino Railway as “highly confidential” is also being filed concurrently but under seal. The “highly confidential” version of the motion is only being served on outside counsel who have executed, filed, and served the Exhibit B undertaking of the Surface Transportation Board’s October 13, 2022 Protective Order.

By my signature below, I certify service on October 19, 2022, upon all parties currently listed in the Surface Transportation Board’s docket list for this docket by e-mail attachment.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin J. Lee".

JUSTIN J. LEE
Deputy Attorney General
For California Coastal Commission

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**AB 1305X
NORTH COAST RAILROAD AUTHORITY –
ABANDONMENT EXEMPTION –
IN HUMBOLDT, TRINITY, AND MENDOCINO COUNTIES, CA**

**CALIFORNIA COASTAL COMMISSION AND
FRIENDS OF THE EEL RIVER'S
JOINT MOTION TO DISMISS
MENDOCINO RAILWAY'S OFFER OF FINANCIAL ASSISTANCE**

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INTRODUCTION

Mendocino Railway's Offer of Financial Assistance ("OFA") fails to demonstrate a public need for continued rail service. Mendocino Railway identifies *one* shipper, who proposes to use the line for commercial purposes. One of the multiple problems is that Mendocino Railway's sole shipper seeks to ship freight by rail from the subject line to Fort Bragg using Mendocino Railway's existing line. The viability of this through-service is highly speculative, as a collapsed tunnel on Mendocino Railway's line (which collapsed in 2015) currently prevents through service from Willits to Fort Bragg. The ability of Mendocino Railway to repair this tunnel rests on the approval of a federal loan, which to date, has not been approved and is not guaranteed.

Moreover, even if fully repaired, the subject line over which Mendocino Railway seeks to resume freight operations is operationally infeasible. The line passes through a geologically unstable canyon with a history of landslides and debris slides. This canyon simply is not a good place to run a freight rail line. Frequent slides, exacerbated by the sudden onslaught of vibrations from rail operations, will cause inevitable shipping delays and line closures. Further, such slides may impact water quality of the adjacent Outlet Creek, and imperil its inhabitants including known threatened species, leading to violations of the Clean Water Act and Endangered Species Act—violations of which will cause additional delays and closures.

The community overwhelmingly supports the establishment of the Great Redwood Trail, a public purpose that Mendocino Railway's OFA jeopardizes. The Surface Transportation Board ("Board") should grant this motion to dismiss, and reject Mendocino Railway's OFA.

STATEMENT OF THE CASE

On June 10, 2022, the Board found that Mendocino Railway made a preliminary showing of financial responsibility to purchase a 13-mile segment of the NCRA/GRTA Line ("OFA Segment") extending from Milepost 139.5 (Commercial Street in Willits) to Milepost 152.5. *North Coast Railroad Authority—Abandonment Exemption—in Mendocino, Trinity, and Humboldt Counties, Cal.*, AB 1305X (STB served Jun. 10, 2022).

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On October 15, 2022, Mendocino Railway filed its OFA. In support of its OFA, Mendocino Railway included only one letter of support from one prospective shipper. Mendocino Railway claims this shipper would use the OFA Segment and also has an interest in ultimately shipping to Fort Bragg. OFA at 18. Mendocino Railway has designated this three-page letter as “highly confidential.” Attachment A to Appendix 2 of OFA.

FACTUAL BACKGROUND

I. MENDOCINO RAILWAY’S RAIL OPERATIONS

Mendocino Railway owns a 40-mile rail line (“Mendocino Railway Line”) that extends from Fort Bragg to Willits. Mendocino Railway, Verified Reply in Opposition to North Coast Railroad Authority’s Petition for Exemption from 49 U.S.C. § 1094, AB-1305X, Filing No. 302860 (Aug. 16, 2021), at 4. The railway passes along the Pudding Creek estuary and through two tunnels: Tunnel No. 1 and Tunnel No. 2. Mendocino Railway owns the “Skunk Train,” which provides a tourist excursion experience on the Mendocino Railway Line. *Id.*

As Mendocino Railway therefore admits, the Mendocino Railway Line is an excursion line, and has been for its entire existence. Throughout these proceedings, Mendocino Railway has attempted to paint itself, instead, as a bona fide freight operator. Mendocino Railway claimed to have been in discussions with several companies (mostly based in Fort Bragg) to provide freight services, and Mendocino Railway suggested that it was developing the former Georgia-Pacific mill site to support such freight operations. Verified Reply in Opposition to North Coast Railroad Authority’s Petition for Exemption from 49 U.S.C. § 1094, AB-1305X, Filing No. 302860 (Aug. 16, 2021), at 14 (“Mendocino Railway is in the process of establishing operations at the 400-acre former Georgia-Pacific Site, which is being developed for industrial and mixed-use purposes.”) Mendocino Railway even used its eminent domain powers to obtain the former mill site in 2019, claiming that the property was being used for the “construction and maintenance of rail facilities related to [Mendocino Railway’s] ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto . . .” Exh. A, Order of Condemnation, ¶ 2.

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However, the overwhelming majority of Mendocino Railway's plans for the former Georgia-Pacific mill site appear to have nothing to do with constructing rail facilities.

Mendocino Railway describes its "vision" for the mill site as follows:

"[Mendocino Railway] envisions new residential properties at all levels of density, a restoration of part of the coastal spur of the rail line expanded public parking, a hostel, live/work units, storefront commercial space, a massive open space preservation, a restoration of our dry shed, an oceanfront hotel and condos, a Pomo education center, and more."

Exh B, The Little Stinker, 2. The restoration of rail facilities only encompasses further excursion services described as "restoring rail service to Glass Beach for passengers" and the addition of "an iconic train station there with a view of the ocean" and a dry shed. *Id.* at 3. Based on its own publications, it is clear that Mendocino Railway has no plans to develop any infrastructure that would facilitate freight operations at the former Georgia-Pacific mill site.

II. TUNNEL NO. 1

Tunnel No. 1 has had a long history of geologic instability. Earthquakes and landslides caused the tunnel to close in 1997 and 2006. Scully, Sean, *Tunnel slide jeopardizes Skunk Train from Fort Bragg to Willits*, The Press Democrat (May 17, 2013),

<https://www.pressdemocrat.com/article/news/tunnel-slide-jeopardizes-skunk-train-from-fort-bragg-to-willits/> (last accessed Oct. 18, 2022).

In April 2013, Tunnel No. 1 again collapsed and disrupted Mendocino Railway's operations between Fort Bragg and Willits. Exh. C, Verified Answer, 2:22-28. Apparently strapped for cash, Mendocino Railway launched an online crowd-funding campaign to raise the \$300,000 it needed to re-open the tunnel. See Pinoli, Robert Jason, *Rebuilding a Railroad Tunnel – Save Our Skunk Train*, Indiegogo, <https://www.indiegogo.com/projects/rebuilding-a-railroad-tunnel-save-our-skunk-train#/> (last accessed Oct. 18, 2022). The online campaign appears to have been unsuccessful. *Id.* However, on June 18, 2013, Save the Redwoods League made a deal with Mendocino Railway to pay its \$300,000 tunnel repair bill in exchange for an option to purchase a conservation easement to protect redwoods along Mendocino Railway's "Redwoods Route." Exh. C, Verified Answer, 2:26-3:3. Made possible only through the assistance of Save

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the Redwoods League, Mendocino Railway was able to open the tunnel in August 2013. *Id.* at 3:5-6.

In 2015, Tunnel No. 1 caved in yet again. According to Mendocino Railway, an El Niño event caused this cave-in. Exh. B, The Little Stinker, 4. Mendocino Railway estimates that it will cost \$5,000,000 to repair the tunnel. Exh. C, Verified Answer, 3:9-10. Shortly after the collapse, Mendocino Railway attempted to repair Tunnel No. 1 but ceased repair work due to a lack of funds. Exh. D, Cleanup and Abatement Order, 2. However, before ceasing its repair activities, Mendocino Railway failed to stabilize the steep hillslopes above and adjacent to the western portal of Tunnel No. 1. Mendocino Railway similarly failed to install erosion and sediment controls to prevent any discharge of sediment or other construction related pollutants into Pudding Creek, a tributary to the Pacific Ocean. *Id.* at 2, 7. Consequently, several sediment discharges into Pudding Creek occurred throughout 2016. *Id.* at 6, 7. On August 3, 2016, the North Coast Regional Water Quality Control Board issued a Cleanup and Abatement Order to Mendocino Railway to stabilize the site and prevent further discharges. *See generally id.* To date, Tunnel No. 1 remains unrepaired and closed.

Since the tunnel collapsed seven years ago, Mendocino Railway has made several unsuccessful attempts to secure federal funding to repair the tunnel. Mendocino Railway submitted applications to the United States Department of Transportation (“DOT”) for Better Utilizing Infrastructure to Leverage Development (“BUILD”) grants in 2018, 2019, and 2020. Mendocino Railway, Verified Reply in Opposition to North Coast Railroad Authority’s Petition for Exemption from 49 U.S.C. § 1094, AB-1305X, Filing No. 302860 (Aug. 16, 2021), 13, no. 21. DOT did not approve any of Mendocino Railway’s BUILD applications. *Id.*

Mendocino Railway applied to the DOT’s Build America Bureau for a Railroad Rehabilitation & Improvement Financing Express (“RRIF Express”) seeking a loan to, among other things, repair Tunnel No. 1. To date, the DOT has not approved Mendocino Railway’s RRIF Express loan application. *See* <https://www.transportation.gov/buildamerica/financing/rrif>

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(showing no executed loan agreements by Mendocino Railway or its parent company, Sierra Railroad) (last accessed Oct. 18, 2022).¹

III. OFA SEGMENT

Much of the OFA Segment runs parallel to Highway 101 and Outlet Creek, through a geologically unstable corridor with a history of landslides and debris slides. Exh. E; *see also* California Geological Survey, Landslide Inventory Map, <https://maps.conservation.ca.gov/cgs/lsi/> (last accessed Oct. 18, 2022). The OFA Segment ends near the junction of Highway 101 and Highway 162, after which the rail line runs parallel to Highway 162. *Id.* A 2018 landslide mapping report by the California Geologic Survey found: “Highway 162 runs at or near the base of moderately steep to very steep slopes, following the narrow canyon of Outlet Creek and it appears the corridor is susceptible to landslides on the slopes above the highway on both sides of the canyon.” Wills, C.J., et al., *Landslide Hazard Mapping for Selected California Highway Corridors, Phase 2*, California Geologic Survey (2018), at 62, https://www.conservation.ca.gov/cgs/Documents/Publications/Special-Reports/SR_243/SR_243-sans-Plates.pdf (last accessed Oct. 18, 2022). The report also concluded that “some types of landslides pose a risk to the safety of the traveling public”—a risk that cannot be eliminated in areas like the northern Coast Ranges (including the canyons in which the OFA Segment runs) “where landslides are common.” *Id.* at 64.

The OFA Segment contains 22 bridges including nine that cross Outlet Creek. Attachment F to GRTA, Certification of Filing and Service of Information Required Pursuant to 49 C.F.R. 1152.27(a), at 10. The OFA Segment also includes two tunnels—one of which (Tunnel No. 11) is currently collapsed and needs extensive repairs. *Id.* at 2.

¹ Moreover, the Coastal Commission requested that the DOT file a Consistency Determination with the Commission under the Coastal Zone Management Act, as a portion of Mendocino Railway’s proposed project is located within the California Coastal Zone. If Mendocino Railway’s proposed project remains within the California Coastal Zone, the DOT cannot approve Mendocino Railway’s RRIF Express application until it has complied with the Coastal Zone Management Act by filing a Consistency Determination, which, to date, DOT has not done.

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Outlet Creek is part of the Upper Main Eel River segment listed for sediment impairment under Section 303(d) of the Clean Water Act. *US EPA Final Upper Main Eel River and Tributaries (including Tomki Creek, Outlet Creek and Lake Pillsbury) Total Maximum Daily Loads for Temperature and Sediment*, 2004, https://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/eel_river_upper_main/pdf/uer-tmdl-final-12-28.pdf (last accessed Oct. 18, 2022). The California State Water Resources Control Board's 2020 California Integrated Report on water quality-impaired watercourses notes among the sources of the Upper Main Eel's sediment impairment many activities at least analogous to the impacts attendant to heavy freight rail construction, operation, and maintenance. These activities include: Construction/Land Development; Erosion/Siltation; Flow Alteration/Regulation/Modification; Highway/Road/Bridge Construction; Removal of Riparian Vegetation; and Streambank Modification/Destabilization. See 2020-22 California Integrated Report, https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2020_2022_integrated_report.html (last accessed Oct. 18, 2022).

Outlet Creek is home to species listed as threatened under the federal Endangered Species Act including the Southern Oregon/Northern California Coast coho salmon, the California Coast Chinook salmon, and the Northern California steelhead. Coho that spawn in the Outlet Creek watershed are important to the survival and recovery of the overall population of the Southern Oregon/Northern California Coast coho because (1) they are what remain of the Middle Mainstem Eel coho, and (2) the distance they travel from the Pacific Ocean to reach the relatively cool Little Lake Valley (Outlet Creek's headwaters) necessitates adaptations that help the larger population avoid extinction. NOAA Fisheries, *Final Recovery Plan for the Southern Oregon/Northern California Coast Evolutionarily Significant Unit of Coho Salmon* (2014), at 45-1 to 45-16, <https://repository.library.noaa.gov/view/noaa/15985> (last accessed Oct. 18, 2022). Current spawner and juvenile distribution is unknown but is expected to be limited to the Outlet Creek watershed. *Id.* at 45-5. A review of the literature found Coho salmon to be the salmonid

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species most vulnerable to sediment impacts on its early life stages. Jensen et al., *Impact of Fine Sediment on Egg-To-Fry Survival of Pacific Salmon: A Meta-Analysis of Published Studies*, REVIEWS IN FISHERIES SCIENCE, 17:3, 348-359 (2009), <https://coast.noaa.gov/data/czm/pollutioncontrol/media/Technical/D16%20-%20Jensen%202009%20Impact%20of%20Fine%20Sediment.pdf> (“[M]any studies have described and predicted the relationship between fine sediment deposited in spawning gravels and salmonid egg-to-fry survival ... (C)oho survival tended to decline more rapidly per unit sediment increase . . .”) (last accessed Oct. 18, 2022).

Chinook in the Outlet Creek watershed also comprise part of the Upper Eel River Population. The National Marine Fisheries Service assessed all of Outlet Creek as having “High Potential” as Chinook habitat. NOAA Fisheries, *Coastal Multispecies Plan, Vol. II, California Coastal Chinook Salmon* (2016) at 318, https://media.fisheries.noaa.gov/dam-migration/2016-multispecies-recovery_plan-vol2.pdf (last accessed Oct. 18, 2022). They continue to be observed annually in the Outlet Creek drainage and in small tributaries feeding Little Lake Valley. *Id.* at 31.

The National Marine Fisheries Service found most of the Outlet Creek mainstem to have high intrinsic potential as suitable habitat for steelhead. NOAA Fisheries, *Coastal Multispecies Plan, Vol. III, Northern California Steelhead* (2016) at 542, https://media.fisheries.noaa.gov/dam-migration/2016-multispecies-recovery_plan-vol3.pdf (last accessed Oct. 18, 2022). The greatest threats to the steelhead in this area include railroads. *Id.* at 38-39.

ARGUMENT

I. LEGAL STANDARD

To prevent abuse of the Board’s OFA process, the Board recently amended its governing regulations. 82 FR 30997, effective July 29, 2017 (adopting “rule pertaining to Offers of Financial Assistance to improve the process and protect it against abuse”). These amended regulations now require offerors to “[d]emonstrate that there is a *continued need* for rail service

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on the line, or portion of the line, in question.” 49 C.F.R. 1152.27(c)(1)(iv)(E) (emphasis added).

The regulation provides “[e]xamples of evidence to be provided [in an Offer of Financial Assistance] includ[ing]:

Evidence of a demonstrable commercial need for service (as reflected by support from shippers or receivers on the line or other evidence of an immediate and significant commercial need); evidence of community support for continued rail service; evidence that acquisition of freight operating rights would not interfere with current and planned transit services; and evidence that continued service is operationally feasible.

Id. As discussed below, Mendocino Railway’s OFA fails to demonstrate a continued need for rail service on the OFA Segment, much less an immediate and significant need; renewed operation is not operationally feasible (and operation is not currently existent, so it cannot be “continued”); and the community interests are in direct *opposition* to Mendocino Railway’s proposal.

II. MENDOCINO RAILWAY FAILS TO PRESENT EVIDENCE OF A DEMONSTRABLE COMMERCIAL NEED FOR SERVICE

OFA’s must include “[e]vidence of a demonstrable commercial need for service (as reflected by support from shippers or receivers *on the line* or other evidence of an *immediate and significant commercial need*).” 49 C.F.R. 1152.27(c)(1)(iv)(E) (emphasis added). When evaluating the sufficiency of an OFA, the Board may consider the likelihood of continued rail service. *Borough of Columbia v. Surface Transp. Bd.*, 342 F.3d 222, 230 (3d Cir. 2003). The Board may grant a motion to dismiss an OFA when an offeror fails to establish an actual need for freight services beyond mere speculation. *See* Exh. F, *The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—In King County, WA, In the Matter of an Offer of Financial Assistance*, AB-6 (Sub-No. 380X), slip. op., at 7-8 (STB Service on Aug. 5, 1998) (“*BNSF*”).

In *BNSF*, the Board rejected an OFA under circumstances similar to those here. There, the Board found it necessary to “carefully review . . . evidence of a public need for continued rail services, given the unusual circumstances” of the matter, which included “a record showing (1) BNSF embargoed the line for safety reasons in August 1996, (2) no traffic has moved on it

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since that time [for two years], (3) the cost of restoring the line would be substantial, and (4) [the Board] had no information to suggest that prospects for anything more than de minimis traffic on the line now or in the future exists—certainly not enough to cover rehabilitation, maintenance and operating costs.” *BNSF*, at 3. The Board explained that the OFA statute “envisions either an uninterrupted service or a continuation of service within a reasonable period of time . . . Those situations in which a purchaser of rail properties has no affirmative plans for continuation or resumption of service, but merely holds out the possibility of service at some unspecified future time, are not properly to be considered offers of financial assistance and do not fall within the scope of” the OFA statute. *Id.* at 4.

Here, Mendocino Railway’s OFA shows even less of a public need for continued rail services than the OFA in *BNSF*. First, like *BNSF*, there is an embargo on the OFA Segment. But unlike *BNSF*, the federal government, not the railroad, imposed this embargo, and the federal government did so for safety reasons. Second, like *BNSF*, no rail traffic has moved over the line since the embargo. But unlike *BNSF*, where rail traffic did not move over the line for two years, no rail traffic has moved on the OFA Segment for over two *decades*.

Third, like *BNSF*, the cost of restoring the line would be substantial. See Attachment F to GRTA’s Certification of Filing and Service of Information Required Pursuant to 49 C.F.R. 1152.27(a), Anderson, Dave, et al., *Railroad Rehabilitation Assessment: Willits MP 139.5 to Longvale MP 152.5* (Sep. 12, 2022). **[TEXT WITHHELD PURSUANT TO PROTECTIVE ORDER]**.

Fourth, like *BNSF*, Mendocino Railway has provided no information to “suggest that prospects for anything more than de minimis traffic on the line now or in the future exists—certainly not enough to cover rehabilitation, maintenance and operating costs.” *BNSF*, at 3. Mendocino Railway provided a letter of support from *one* shipper: **[TEXT WITHHELD PURSUANT TO PROTECTIVE ORDER]**.

Fifth, **[TEXT WITHHELD PURSUANT TO PROTECTIVE ORDER]**.

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Sixth, in its public version of its OFA, Mendocino Railway admits that “this shipper ultimately would like [through] service from its facility to Fort Bragg.” OFA, at 18. The problem is that to make it even possible to ship freight from the OFA Segment to Fort Bragg, Mendocino Railway must open Tunnel No. 1. Mendocino Railway, Verified Reply in Opposition to North Coast Railroad Authority’s Petition for Exemption from 49 U.S.C. § 1094, AB-1305X, Filing No. 302860 (Aug. 16, 2021), at 4, n. 6 (The “collapsed tunnel . . . has temporarily suspended freight offerings from the Subject Line to Fort Bragg.”); *see also* Mendocino Railway, Reply in Opposition to North Coast Railroad Authority’s Objection and Motion to Reject Mendocino Railway’s Notice of Intent to File an Offer of Financial Assistance, AB-1305X, Filing No. 304726 (Jun. 8, 2022), at 8 (Mendocino Railway has “sought government funding, either in the form of grants and loans, for the repair of the tunnel. Those efforts are being done for the purpose of providing freight and expanded rail service.”); Calder, Chris, *Skunk Train’s millsite purchase still on hold*, Fort Bragg Advocate-News (Feb. 7, 2019), <https://www.advocate-news.com/2019/02/07/skunk-trains-millsite-purchase-still-on-hold/> (“But not having a through route to Willits halts efforts to revive freight service out of Fort Bragg, which [Mendocino Railway CEO] Pinoli said is key to the company’s growth as well as the local economy’s.”) (last accessed Oct. 18, 2022).

Mendocino Railway has repeatedly failed for seven years to obtain the funding to open Tunnel No. 1. And Mendocino Railway’s current RRIF Express loan application is apparently still pending before the DOT. Therefore, because the very possibility of Mendocino Railway being able to even offer, let alone actually provide, freight services between the OFA Segment to Fort Bragg rests on DOT’s approval of Mendocino Railway’s RRIF Express loan application, *which is not guaranteed*, any supposed “need” for freight services by the shipper is highly speculative. Mendocino Railway has not provided any information to suggest that it would be able to reopen Tunnel No. 1 without federal funding. **[TEXT WITHHELD PURSUANT TO PROTECTIVE ORDER].**

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Seventh, in its public version of its OFA, Mendocino Railway claims that “the shipper indicated it would benefit tremendously from preserving rail service over the GRTA/NCRA [Line] to Willits, California by rail.” OFA, at 18. **[TEXT WITHHELD PURSUANT TO PROTECTIVE ORDER]**. According to Mendocino Railway, the shipper seeks rail services because it is supposedly “less expensive [and] faster” than trucking. OFA, at 18. How shipping its freight by rail from its facility on the OFA Segment to Willits, then trucking it the remainder of the way to Fort Bragg would be less expensive and faster is unclear. It certainly would be less efficient. And it remains unclear whether Mendocino Railway even has the transloading capacity in Willits to facilitate this process.

Finally, **[TEXT WITHHELD PURSUANT TO PROTECTIVE ORDER]**.

Therefore, because Mendocino Railway fails to demonstrate a commercial need for service, beyond mere speculation, the Board should reject its OFA.

III. FREIGHT SERVICE ON THE OFA SEGMENT IS OPERATIONALLY INFEASIBLE

Even if there was a commercial need for rail service beyond speculation (there is not), shipping freight on the OFA Segment is operationally infeasible. First, much of the OFA Segment runs parallel to Highway 101 and Outlet Creek, through a geologically unstable corridor with a history of landslides and debris slides. Exh. E. The OFA Segment ends near the junction of Highway 101 and Highway 162, after which the rail line runs parallel to Highway 162. *Id.* A 2018 landslide mapping report by the California Geologic Survey found: “Highway 162 runs at or near the base of moderately steep to very steep slopes, following the narrow canyon of Outlet Creek and it appears the corridor is susceptible to landslides on the slopes above the highway on both sides of the canyon.” Wills, C.J., et al., *Landslide Hazard Mapping for Selected California Highway Corridors, Phase 2*, California Geologic Survey (2018), 62, https://www.conservation.ca.gov/cgs/Documents/Publications/Special-Reports/SR_243/SR_243-sans-Plates.pdf (last accessed Oct. 18, 2022). The report also concluded that “some types of landslides pose a risk to the safety of the traveling public”—a risk

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that cannot be eliminated in areas like the northern Coast Ranges (including the canyons in which the OFA Segment runs) “where landslides are common.” *Id.* at 64.

Because no rail traffic has existed on the OFA Segment for almost a quarter of a century, a sudden resumption of freight operations on the rail line would cause a significant increase in vibrations, affecting the stability of the already unstable canyon slopes. *See* Xu, Jiangbo, et al., *Monitoring of train-induced vibrations on rock slopes*, SAGE J. (Jan. 10, 2017) (“Vibrations from passing trains will lead to damage to the rock mass that will undoubtedly affect the stability of nearby slopes”); Ghadafi, Moamar A., et al., *Effect of Ground Vibration to Slope Stability, Case Study Landslide on the Mouth of Railway Tunnel, Gunung Gajah Village, Lahat District*, SRIWIJAYA J. ENV. (Jun. 2018) (“Ground vibration caused by railway traffic and earthquakes are correlated to the slope instability.”) The resulting increase in landslides and other geologic hazards will make freight operations unreliable due to frequent rail line closures. Delayed shipments and potential damage to freight and property will result. Economically, it would make more sense for shippers traveling through this corridor to simply use the adjacent, more reliable highway.

Second, causing an increase in slides so close to Outlet Creek will only invite violations of the Endangered Species Act and Clean Water Act, which would cause further closures of the line. Mendocino Railway has made it clear that it erroneously understands its status as a railroad to allow it to evade state environmental laws including the California Environmental Quality Act (“CEQA”) and the California Coastal Act based on federal preemption. Mendocino Railway even filed a meritless lawsuit against the Commission in federal court seeking declaratory relief finding as such. *See* Exh. G (federal complaint asking court to find that Mendocino Railway is not subject to state and local pre-clearance permitting under the Interstate Commerce Commission Termination Act). Mendocino Railway has also taken the position that the National Environmental Policy Act (“NEPA”) is not triggered by the OFA process. Mendocino Railway, Reply in Opposition to North Coast Railroad Authority’s Objection and Motion to Reject Mendocino Railway’s Notice of Intent to File an Offer of Financial Assistance, AB 1305X (Jun.

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8, 2022), at 10-11.² Accordingly, Mendocino Railway intends to proceed with rehabilitating and operating the OFA Segment without any pre-clearance permitting, which is designed to ensure the surrounding environment and wildlife are protected.

Without these environmental pre-clearance safeguards, Mendocino Railway risks violating environmental statutes including, but not limited to, the Endangered Species Act and Clean Water Act, by increasing the intensity of use of the OFA Segment (from no use to regular use). This increased activity will cause closures of the line until violations are abated. Outlet Creek is home to species listed as threatened under the Endangered Species Act including the Southern Oregon/Northern California Coast coho salmon, the California Coast Chinook salmon, and the Northern California steelhead. The OFA Segment includes two tunnels—one of which is currently collapsed and nine railroad bridges over Outlet Creek, with each crossing presenting a threat of impact to the creek, its water quality, and its habitat. Mendocino Railway's history of failing to keep Tunnel No. 1 on its own line open speaks volumes about its ability to successfully reopen and keep open Tunnel No. 11. Mendocino Railway has shown that, if left to its own devices, it cannot maintain railroad structures such as tunnels, without causing environmental damage. See Exh. D, Cleanup and Abatement Order, 2 (finding Mendocino Railway caused sedimentation of Pudding Creek because it failed to complete repair work on Tunnel No. 1 as a result of lack of funds). Further, the expected increase in slides as a result of suddenly resuming freight operations will further threaten the water quality of Outlet Creek. Thus, the expected violations of federal and state environmental laws will only result in unreasonable shipping delays, making the OFA Segment operationally infeasible.

Finally, further complicating the operational feasibility of freight services on the OFA Segment is Mendocino Railway's sole shipper's preference to ship freight to and from Fort Bragg. However, the unreliability of the Mendocino Railway Line, caused by the geological instability of Tunnel No. 1, makes such commercial use of the OFA Segment in this way

² The applicability of NEPA to the OFA process is briefed further below.

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operationally infeasible. The tunnel has a history of caving in. At least four cave-ins (occurring in 1997, 2006, 2013, and 2015) are known. These known incidents show that cave-ins are becoming more frequent—and apparently more expensive to repair. *Compare* Exh. C, Verified Answer, 2:26-3:3 (\$300,000 to repair tunnel in 2013) to Exh. C, Verified Answer, 3:9-10 (\$5 million to repair tunnel from 2015 collapse).

Presumably, the increase in rail traffic through Tunnel No. 1 from Mendocino Railway’s proposed freight operations would also cause an increase in vibrations within the already infamously unstable Tunnel No. 1, which may only trigger further cave-ins. *See generally* Sun, Xiaojing, et al., *Ground vibration from freight railway: environmental impact and potential mitigation measure at propagation path*, ENVIRON SCI. POLLUT. RES. INT. (Feb. 7, 2022) (“The freight train-induced vibrations and noise generate increasing environmental problems owing to its heavier axle loads and longer pass-by duration.”) The amplified risk of cave-ins would unjustifiably endanger passengers and freight. The history of cave-ins warns that a railroad tunnel piercing this geologically unstable hillside is at the very least an incredibly risky venture—one that makes shipping freight from a location on the OFA Segment to and from Fort Bragg operationally infeasible.

IV. THE COMMUNITY OVERWHELMINGLY SUPPORTS RAIL-BANKING OF THE ENTIRE NCRA/GRTA LINES AND OPPOSES RESUMING FREIGHT OPERATIONS

An offeror may demonstrate a public need for freight services by providing “evidence of community support for continued rail service.” 49 C.F.R. 1152.27(c)(1)(iv)(E). Mendocino Railway has not submitted *any* evidence of *community* support for freight rail service. To the contrary, there is overwhelming community support for the Great Redwood Trail. Both the California Legislature and Governor support the Great Redwood Trail, as evidenced by the recent passage of Senate Bill 69 (2021), Great Redwood Trail Act. That legislation transitions NCRA to the Great Redwood Trail Agency, which manages the Great Redwood Trail. *See* Cal. Senate Bill No. 69 (2021), Ch. 423. U.S. Congressman Jared Huffman, whose district includes the areas in which the NCRA/GRTA Line is located, also supports NCRA/GRTA’s efforts to

PUBLIC VERSION

rail-bank the NCRA/GRTA Line. See Letters to Surface Transportation Board by Congressman Jared Huffman, Filing Nos. 302782 and 302848, entered July 26, 2021 and August 13, 2021, respectively.

And importantly, several local California North Bay governing bodies have adopted resolutions opposing the resumption of freight rail service operations on the NCRA/GRTA Line including the Boards of Supervisors of Humboldt, Marin, Mendocino, and Sonoma Counties, the City Councils of Arcata, Novato, Ukiah, and Santa Rosa, and the Transportation Authority of Marin County. Exh. H.

V. MENDOCINO RAILWAY’S OFA CANNOT BE APPROVED WITHOUT COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT.

NEPA requires federal agencies to assess the environmental effects of proposed “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. 4332(2)(C). Generally, a federal action exists if the federal government can “exercise discretion over the outcome” and has “actual power to control the project.” *Sugarloaf Citizens Ass’n v. FERC*, 959 F.2d 508, 513-14 (4th Cir. 1992) (quoting *Md. Conserv. Council v. Gilchrist*, 808 F.2d 1039, 1042 (4th Cir. 1986) and *Sierra Club v. Hodel*, 848 F.2d 1068, 1089 (10th Cir. 1988)); *Ross v. Fed. Highway Admin.*, 162 F.3d 1046, 1051 (10th Cir. 1998). A federal agency’s ministerial actions are not actions under NEPA. *Sugarloaf Citizens Ass’n v. FERC*, 959 F.2d at 513.

In this proceeding, the Board’s Office of Environmental Analysis concluded that the OFA process is ministerial and therefore does not trigger environmental laws including NEPA. *North Coast Railroad Authority—Abandonment Exemption—in Mendocino, Trinity, and Humboldt Counties, Cal.*, Final Environmental Assessment, AB 1305X, slip op. at 2-3 (STB served June 21, 2022) (citing 49 C.F.R. 1105.5(c)(3).). However, in considering an OFA, the Board exercises significant discretion. The Board’s own regulations governing the OFA process allow the Board to weigh evidence to determine whether there is a continued need for rail service. The Board makes this determination by considering: “Evidence of a demonstrable commercial need for

PUBLIC VERSION

service (as reflected by support from shippers or receivers on the line or other evidence of an immediate and significant commercial need); evidence of community support for continued rail service; evidence that acquisition of freight operating rights would not interfere with current and planned transit services; and evidence that continued service is operationally feasible.” 49 C.F.R. 1152.27(c)(1)(iv)(E). If approving an OFA simply presented a matter of determining whether an offeror was financially responsible, this determination may be seen as being ministerial. But that is not the case here, where the Board’s regulations, as recently amended, allow the Board to exercise considerable discretion. Therefore, because the Board’s approval of an OFA is not a ministerial act, the Board must comply with NEPA before approving an OFA.

Moreover, the sensitivity of Outlet Creek warrants this Board analyzing the environmental impacts of resuming freight operations on the OFA Segment. This creek is home to three species listed as threatened under the Endangered Species Act, and the area in which the subject line runs has a history of geologic instability, making it very likely that regular commercial use of the line will impact water quality.

Therefore, because rail construction and operation on the OFA Segment would present significant environmental impacts, the Board should comply with NEPA before approving any OFA.

CONCLUSION

For the foregoing reasons, the Coastal Commission and Friends of the Eel River respectfully request that the Board reject Mendocino Railway’s Offer of Financial Assistance.

PUBLIC VERSION

Certificate of Service. I hereby certify service of the foregoing by e-mail attachment on October 19, 2022 on all parties of record in AB 1305X per the Surface Transportation Board's website service list as of said date.

Dated: October 19, 2022

Respectfully Submitted,

ROB BONTA
Attorney General of California
ANDREW M. VOGEL
Supervising Deputy Attorney General



JUSTIN J. LEE
Deputy Attorney General
Attorneys for
CALIFORNIA COASTAL COMMISSION

Dated: October 19, 2022

SHUTE, MIHALY & WEINBERGER, LLP



AMY J. BRICKER
Attorneys for FRIENDS OF THE EEL RIVER

EXHIBIT A

RECORDING REQUESTED BY
AND MAILED TO:

NAME: Glenn Block Esq

STREET: 3929 Ocean View Blvd.
FL

CITY: Glen Dale CA 91208

2022-00526

Recorded at the request of
GLENN L. BLOCK
01/11/2022 09:04 AM
Fee: \$127.00 Pgs: 1 of 14

OFFICIAL RECORDS
Katrina Bartolome - Clerk-Recorder
Mendocino County, CA



Final Order of Condemnation

(TITLE OF DOCUMENT)

This page added to provide adequate space for recording information
(Additional recording fee applies)

FILED

01/07/2022

GLENN L. BLOCK (SB#208017)
CALIFORNIA EMINENT DOMAIN LAW GROUP, A PC
 3429 Ocean View Blvd., Suite L
 Glendale, CA 91208
 Telephone: (818) 957-0477
 Facsimile: (818) 957-3477

KIM TURNER, CLERK OF THE COURT
 SUPERIOR COURT OF CALIFORNIA,
 COUNTY OF MENDOCINO

Delgado, Samuel
 DEPUTY CLERK

Attorneys for Plaintiff MENDOCINO RAILWAY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MENDOCINO

MENDOCINO RAILWAY,

Plaintiff,

v.

GEORGIA-PACIFIC LLC; NORTH
 AMERICAN TIMBER CORP.;
 HAWTHORNE TIMBER COMPANY,
 LLC; MENDOCINO COUNTY
 TREASURER-TAX COLLECTOR; All
 other persons unknown claiming an
 interest in the property; and DOES 1
 through 100, inclusive,

Defendants.

Case No. 21CV00595

[APN 018-430-21; 018-430-22; 018-040-61; 018-120-50;
 008-151-26; 008-020-17 (aka 008-020-19); 008-171-07;
 008-161-08; 008-070-31; 020-550-02; 020-550-08; 020-
 550-10; and 020-550-11]

**~~PROPOSED~~ FINAL ORDER OF
 CONDEMNATION**

Plaintiff Mendocino Railway (hereinafter "Mendocino Railway" or "Plaintiff") and
 Defendant Georgia-Pacific LLC, successor in title to Defendant North American Timber Corp.
 and Defendant Hawthorne Timber Company (hereinafter "Defendant Georgia-Pacific"), and
 Defendant Mendocino County Tax Collector ("Defendant Tax Collector") (Collectively
 "Defendants") (parties hereto may be individually referenced herein as "Party," or may be
 collectively referenced herein as "Parties") having previously stipulated to entry of the Final
 Judgment ("Final Judgment"), including a provision consenting to entry of the Final Order of
 Condemnation upon Plaintiff's payment of the Total compensation of One Million Two Hundred
 Thirty Thousand dollars (\$1,230,000.00); Plaintiff having paid the Total Compensation and the
 Satisfactions of Judgment of Defendant Georgia-Pacific and Defendant Tax Collector having

1 been duly entered by the Court; no other parties or persons having or claiming to have an interest
 2 in the property being acquired herein; and good cause appearing therefor:

3 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as
 4 follows:

5 1. The fee simple interest in and to the real property which has been assigned
 6 Assessor's Parcel Numbers 018-430-21; 018-430-22; 018-040-61; 018-120-50; 008-151-26; 008-
 7 020-17 (aka 008-020-19); 008-171-07; 008-161-08; 008-070-31; 020-550-02; 020-550-08; 020-
 8 550-10; and 020-550-11("Subject Property") which is more particularly described, together with
 9 maps, in Exhibits "A" and "B" hereto, is hereby condemned to Plaintiff for rail facilities and all
 10 uses necessary and convenient thereto.

11 2. The use for which the Subject Property is sought to be condemned, for
 12 construction and maintenance of rail facilities related to Plaintiff's ongoing and future freight
 13 and passenger rail operations and all uses necessary and convenient thereto, is authorized by law
 14 and is a public use, and the taking of the Subject Property by condemnation is necessary for that
 15 use.

16 3. The Total Compensation of \$1,230,000.00 constitutes the total amount of just
 17 compensation for the taking of the Subject Property and reflects the fair market value of the
 18 Subject Property in consideration of the Subject Property in its environmental and physical
 19 condition as of August 13, 2021, including without limitation the California Department of Toxic
 20 Substances Control Site Investigation and Remediation Order No. HAS-RAO 06-07-150, and
 21 subject to all encumbrances, easements, rights-of-way, servitudes, covenants or other matters of
 22 record as of said date (the date the Lis Pendens was recorded). Said Total Compensation
 23 constitutes full and final settlement and resolution of any and all claims and interests in
 24 connection with Plaintiff's acquisition of the Subject Property and this Eminent Domain Action,
 25 including without limitation compensation for: real property, severance damages, improvements
 26 pertaining to realty, fixtures and equipment, personal property, business goodwill, relocation
 27 benefits, precondemnation damages, pre-judgment interest, and post-judgment interest, any and
 28 all other compensation, damages, litigation expenses and costs.

1 4. Pursuant to the Final Judgment, Plaintiff was authorized and empowered to take
2 possession and use of the Subject Property and remove from it all persons, obstacles,
3 improvements or structures thereon on November 15, 2021.

4 2. Upon recordation of a certified copy of this Final Order of Condemnation in the
5 office of the Recorder of the County of Mendocino, State of California, the fee simple title in and
6 to the above-described real property together with any and all improvements thereon shall vest in
7 the Plaintiff, its successors and assigns effective as of November 15, 2021; and, pursuant to
8 Section 1268.410 et seq. of the Code of Civil Procedure, the property taxes on the Subject
9 Property shall be prorated through November 14, 2021. Property taxes, if any, on the Subject
10 Property for the period starting November 15, 2021 shall be payable by Plaintiff.

11
12 DATED: 1/4/2022

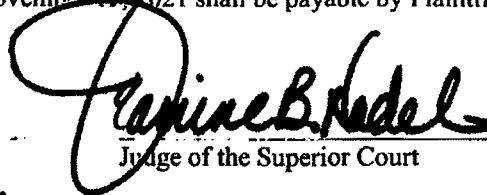
13 
14 Judge of the Superior Court
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EXHIBIT A

EXHIBIT "A"

All that certain real property situated in the County of Mendocino, State of California, more particularly described as follows:

Tract One:

A parcel of land located in the City of Fort Bragg, County of Mendocino, State of California and being a portion of the West half of the Northwest quarter of the Northwest quarter of Section 18, Township 18 North, Range 17 West, Mount Diablo Base and Meridian, lying Westerly of California State Highway One, more particularly described as follows:

Beginning at the Northwest corner of said Section 18; thence South 88° 17' 08" East, 283.93 feet along the Northerly line of said Section 18 to a point on the Westerly boundary of said Highway One; said point is on a 5,949.72 foot (Record 5,950 foot) radius curve to the right, a tangent at said point bears South 06° 06' 14" West, proceeding along the arc of said curve for a distance of 295.88 feet through an angle of 2° 50' 58" along said Highway boundary to a 6" x 6" concrete right-of-way monument, a tangent at this point bears South 8° 57' 12" West; thence South 54° 55' 00" West, 55.87 feet (Record South 53° 32' 50" West, 55.85 feet) to a 6" x 6" concrete right-of-way monument; thence North 56° 24' 33" West, 18.69 feet to 3/4" rebar with a plastic cap stamped L.S. 5940 at the Westerly end of cyclone fence to 3/4" rebar with a plastic cap stamped L.S. 5940 on the Westerly boundary of said Section 18; thence North 1° 18' 05" East, 194.66 feet along said Westerly boundary of Section 18 to the point of beginning.

Basis of bearings are in terms of California State Grid Zone 2. All distances are horizontal ground distances.

Excepting therefrom that portion described in the deed to the City of Fort Bragg recorded January 5, 2010 as Instrument No. 2010-00114, Mendocino County Records.

APN: 018-120-50

Tract Two:

A parcel of land located in the City of Fort Bragg, County of Mendocino, State of California and being a portion of the West half of the Southwest quarter of Section 7, Township 18 North, Range 17 West, Mount Diablo Base and Meridian, lying Westerly of California State Highway One, more particularly described as follows:

Beginning at the Southwest corner of said Section 7; thence South 88° 17' 06" East, 283.93 feet along the Southerly line of said Section 7 to a point on the Westerly boundary of said Highway One; said point is on a 5,949.72 foot (Record 5,950 foot) radius curve to the left, a tangent at said point bears North 06° 06' 14" East, proceeding along the arc of said curve for a distance of 333.09 feet through an angle of 3° 12' 27" along said Highway boundary to a 6" x 6" concrete right-of-way monument; thence continuing along said Highway boundary North 2° 54' 12" East, 356.23 feet to a line that is an extension of the Southerly line of Cypress Street projected Westerly, thence along said projected line North 88° 41' 01" West, 312.49 feet to the West boundary of said Section 7; thence South 01° 18' 01" West, 686.66 feet along said West boundary of Section 7 to the point of beginning.

Basis of bearings of the hereinabove description are in terms of California State Grid, Zone 2. All distances are horizontal ground distances.

APN: 018-040-52

Tract Three:

Parcel One:

All that real property situate in Sections 12 and 13, Township 18 North, Range 18 West, Mount Diablo Base and Meridian, County of Mendocino, California, more particularly described as follows:

All of Lots 1, 2, 3, 4, and the East half of the East half of said Section 12, and that portion of Lot 1 of said Section 13 described as follows:

Beginning at the northeast corner of said Section 13, said corner marked by a 3/4" rebar with plastic cap stamped L.S. 5940; thence North 88° 51' 40" West, 342.41 feet along the section line common to said Sections 12 and 13 to a 3/4" rebar with plastic cap stamped L.S. 5940 in a cyclone fence; thence South 56° 18' 42" East 65.93 feet along said fence to a 3/4" rebar with plastic cap stamped L.S. 5940 at another fence corner; thence North 04° 05' 36" East, 23.80 feet along said fence to a 3/4" rebar with plastic cap stamped L.S. 5940 at another fence corner; thence South 55° 34' 22" East, 306.82 feet along said fence to a 3/4" rebar with plastic cap stamped L.S. 5940 on the East boundary of said Section 13; thence North 01° 18' 05" East, 194.66 feet along said East boundary of Section 13 to the point of beginning.

EXCEPTING from Lots 2 and 3 that part thereof conveyed to Charles Russell Johnson and Peter Lowe by Joint Tenancy Deed dated December 27, 1945, recorded November 15, 1946 in Volume 206 of Official Records, Page 51 et seq., Mendocino County Records.

ALSO EXCEPTING from Lot 2 that part thereof as described in the Deed executed by Boise Cascade Corporation to Fort Bragg Municipal Improvement District Number One, dated November 3, 1970, recorded December 18, 1970 in Book 834 Official Records, Page 517, Mendocino County Records.

ALSO EXCEPTING from the Northeast quarter of Section 12 that portion thereof deeded to Mendocino Coast Railways, Inc. recorded in Book 1656 Official Records, Page 378, Mendocino County Records.

ALSO EXCEPTING THEREFROM that portion described in the Deed to the City of Fort Bragg, recorded January 5, 2010 as Instrument No. 2010-00114, Mendocino County Records.

ALSO EXCEPTING those portions described in the Deeds to the City of Fort Bragg, recorded November 21, 2011 as Instrument No. 2011-16313 and recorded November 24, 2015 as Instrument No. 2015-15977, Official Records of Mendocino County.

ALSO EXCEPTING all that portion described as follows:

Commencing at the section corner common to Sections 6 and 7, Township 18 North, Range 17 West, and Sections 1 and 12, Township 18 North, Range 18 West, Mount Diablo Meridian; thence South 01°18'24" West along the range line, a distance of 460.05 feet to the POINT OF BEGINNING; thence continuing South 01°18'24" West along the range line, a distance of 237.38 feet; thence leaving said range line North 88°58'07" West, a distance of 29.03 feet; thence North 1° 18'24" East, a distance of 237.53 feet; thence South 88°41' 11" East, a distance of 29.03 feet to the POINT OF BEGINNING.

Parcel Two:

That portion of the West half of the Northwest Quarter of Section 7, Township 18 North, Range 17 West, Mount Diablo Base and Meridian, described as follows:

Beginning at the corner to Sections 1 and 12, Township 18 North, Range 18 West, and Sections 6 and 7, Township 18 North, Range 17 West, Mount Diablo Base and Meridian; and running thence South along the Range line 2640 feet to a point in the City Limit on the South side of Fort Bragg, according to the "Map of the City of Fort Bragg, showing the Town Lots" filed February 15, 1910 in Map Case 1, Drawer 3, Page 44, Mendocino County Records; thence East along said City Limit 380 feet to a point in the West line of Main Street; thence North along said West line 1260 feet to a point in the South line of Oak Avenue; thence West along said South line 200 feet; thence North 980 feet to a point in the North line of Redwood Avenue; thence East along the North line of Redwood Avenue 200 feet to the West line of Main Street; thence North along said West line 119.50 feet to the Northeast corner of a strip of land described in a Deed from Coast National Bank in Fort Bragg to Union Lumber Company, dated November 9, 1955, recorded in Book 413 of Official Records, Page 502, Mendocino County Records; thence West along said North line 121 feet to a point in the West line of a parcel of land described in a Deed from Union Lumber Company to Coast National Bank of Fort Bragg, dated November 3, 1955, recorded in Book 413 of

Official Records, Page 500, Mendocino County Records; thence North along the West line of said parcel 38.50 feet to the Northwest corner thereof; thence East 121 feet to a point on the West line of Main Street and being the Northeast corner of a parcel of land described in a Deed from Union Lumber Company to the Bank of Fort Bragg, dated June 3, 1904, recorded in Book 97 of Deeds, Page 354, Mendocino County Records; thence North along the West line of Main Street 161.5 feet to the Southeast corner of a parcel of land described in a Deed from Union Lumber Company to the City of Fort Bragg, dated October 31, 1912, recorded in Book 133 of Deeds, Page 421, Mendocino County Records; thence West along the South line of said last mentioned Parcel 56 feet to its Southwest corner; thence North along its West line 42.5 feet to a point in the South line of a parcel of land described in a Deed from Union Lumber Company to Fort Bragg Commercial Bank, dated May 11, 1912, recorded in Book 131 of Deeds, Page 33, Mendocino County Records; thence West along the South line of said last mentioned Parcel 44 feet to its Southwest corner; thence North along its West line 35 feet to its Northwest corner; thence West 280 feet to the point of beginning.

EXCEPTING THEREFROM the following:

1. That portion described in the Deed to City of Fort Bragg, recorded January 9, 1985, in Book 1489, Page 317, Mendocino County Records.
2. That portion described in the Deed to California Western Railroad recorded November 19, 1987, in Book 1656 Official Records, Page 374, Mendocino County Records.
3. That portion described in the Deed to Mendocino Coast Railway recorded November 19, 1987, in Book 1656 Official Records, Page 378, Mendocino County Records.
4. Those portions described in the Deeds to Joe H. Mayfield, et ux, recorded October 31, 1984 in Book 1480 Official Records, Page 252 and recorded June 27, 1986 in Book 1566 Official Records, Page 363, Mendocino County Records.
5. Parcel 1 as shown on that certain Parcel Map of Division No. 3-84 filed October 23, 1984 in Map Case 2, Drawer 42, Page 23, Mendocino County Records.
6. Parcels 1, 2 and 3 as numbered and designated on the certain Parcel Map of Division 4-01 filed September 23, 2005 in Drawer 72 of Maps, Page 79, Mendocino County Records.
7. Those portions described in the Deeds to the State of California recorded February 19, 1999 as Serial #1999-03294 and Serial #1999-03295, Mendocino County Records.

8. All that portion as described as follows:

That certain real property situated in the City of Fort Bragg, County of Mendocino, State of California, and being a portion of the West one-half of the Northwest one-quarter of Section 7, Township 18 North, Range 17 West, Mount Diablo Meridian, more particularly described as follows:

The bearings used in this description are in terms of the California State Grid, Zone 2.

Beginning at a point where the West line of Main Street intersects the South line of Oak Avenue extended Westerly in the City of Fort Bragg, said point of beginning being 1380 feet South and 380 feet East of the section corner common to Sections 6 and 7, Township 18 North, Range 17 West, and Section 1 and 12, Township 18 North, Range 18 West, Mount Diablo Meridian: thence from said point of beginning and along the exterior boundary lines of the parcel of land to be described as follows:

South 01° 37' 54" West (Record= South) along the West line of said Main Street, 145.88 feet; thence leaving said street side line, North 85° 10' 18" West, 100.15; thence North 01° 37' 54" East (Record= North) and Parallel with the West line of said Main Street, 139.83 feet to a point in the South line of said Oak Avenue extended Westerly; thence South 88° 38' 00" East (Record =East) along said Oak Avenue side line, 100.00 feet to the point of beginning.

9. All that portion described as follows:

Commencing at the section corner common to Sections 6 and 7, Township 18 North, Range 17 West, and Sections 1 and 12, Township 18 North, Range 18 West, Mount Diablo Meridian; thence South 01°18'24" West along the range line, a distance of 460.05 feet to the POINT OF BEGINNING; thence leaving said range line, South 88°41'11" East, a distance of 179.92 feet; thence South 01°21'03" West, a distance of 229.27 feet; thence North 87°51'29" West, a distance of 12.77 feet; thence South 00°17'51" West, a distance of 21.09 feet; thence North 89°10'25" West, a distance of 74.38 feet; thence North 00°41'57" East, a distance of 9.95 feet; thence North 88°17'22" West, a distance of 10.04 feet; thence North 60°27'42" West, a distance of 7.99 feet; thence North 88°58'07" West, a distance of 75.78 feet to the range line; thence North 01°18'24" East along the range line, a distance of 237.38 feet to the POINT OF BEGINNING.

Basis of Bearings: that certain Record of Survey filed in Drawer 72 of Maps at Pages 58-64, Mendocino County Records.

EXCEPTING FROM PARCELS ONE AND TWO ALL THAT LAND LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SECTION CORNER COMMON TO SECTIONS 6 AND 7, TOWNSHIP 18 NORTH, RANGE 17 WEST, AND SECTIONS 1 AND 12, TOWNSHIP 18 NORTH, RANGE 18 WEST, MOUNT DIABLO MERIDIAN; THENCE SOUTH 13°42'42" EAST, A DISTANCE OF 414.22 FEET TO THE SOUTHWEST CORNER OF PARCEL ONE AS SHOWN ON "PARCEL MAP OF DIVISION NO. 5-84" FILED IN MAP CASE 2, DRAWER 42, PAGE 59 MENDOCINO COUNTY RECORDS AND BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 88°41'11" WEST, A DISTANCE OF 1,809.58 FEET MORE OR LESS TO A POINT ON THE WEST BOUNDARY OF THE LANDS OF GEORGIA-PACIFIC CORPORATION.

Basis of Bearings: That certain Record of Survey filed in Drawer 72 of Maps at Pages 58-64, Mendocino County Records.

APN(s): 008-151-26, 008-161-08 and 008-171-07, 008-020-19, 008-430-21 and 008-430-22

**GP Acquisition Parcels**

Prepared for:

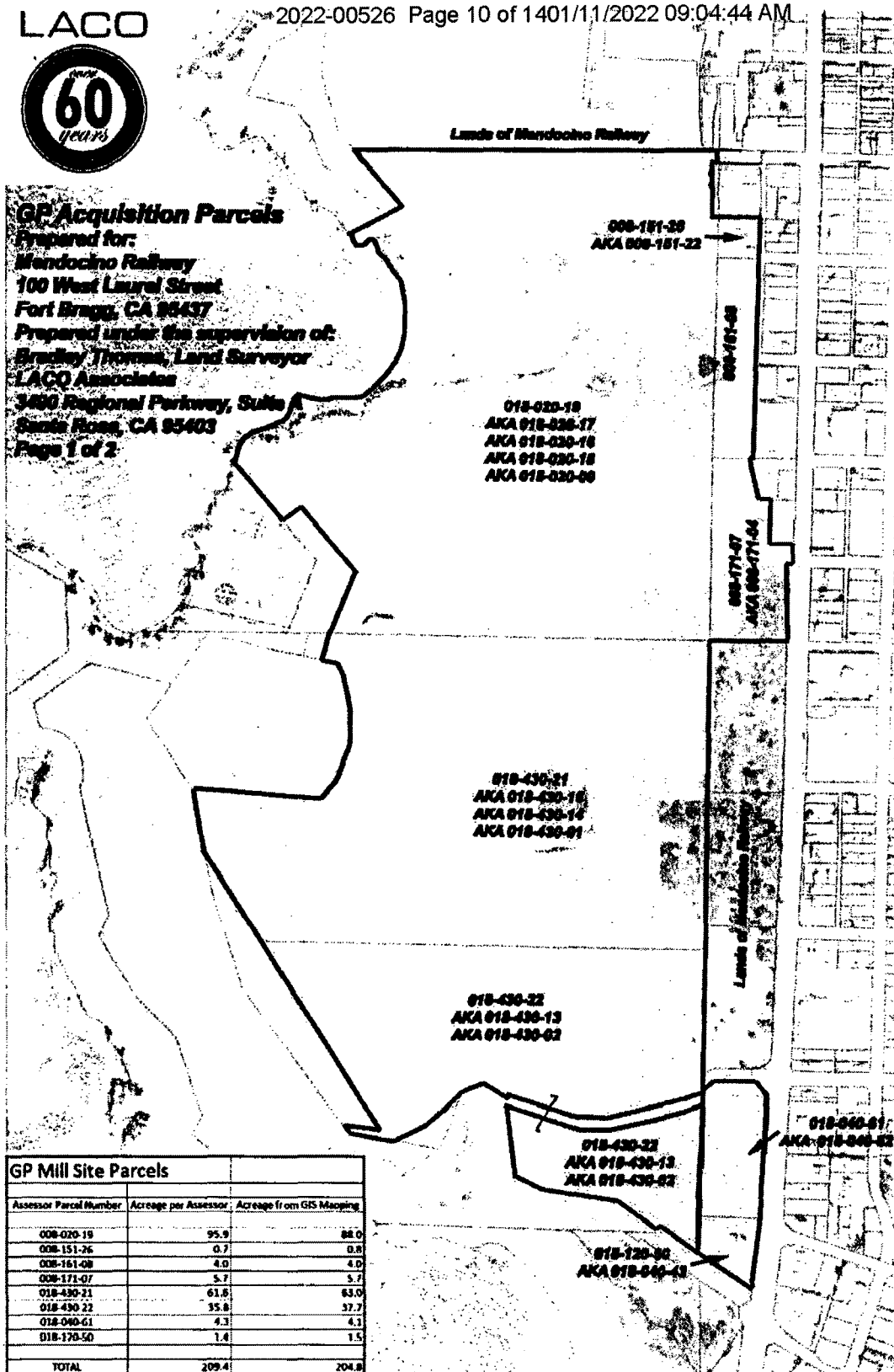
Mendocino Railway
100 West Laurel Street
Fort Bragg, CA 94437

Prepared under the supervision of:

Bradley Thomas, Land Surveyor
LACO Associates

3400 Regional Parkway, Suite A
Santa Rosa, CA 95403

Page 1 of 2



The Parcel Areas were derived from Mendocino County Assessor Records and GIS mapping calculations. These Parcel Areas are to be considered approximate. A boundary line survey would be required for accurate Parcel Area determinations.

EXHIBIT B

EXHIBIT "B"

All that certain real property situated in the County of Mendocino, State of California, more particularly described as follows:

Tract One:

All that certain real property more particularly described in Exhibit B of the Grant Deed executed by Boise Cascade Corporation to Georgia-Pacific Corporation, under the heading of "Fort Bragg Properties, Township 18 North, Range 17 West, M.D.M., Section 6" in Parcel One, Parcel Two, Parcel Three and Parcel Eight, which deed recorded March 25, 1974 in Book 957 of Official Records, Page 108, Mendocino County Records, excepting therefrom that portion described in the Grant Deed executed by Georgia-Pacific Corporation to Michael S. Bennett, et al recorded November 29, 1989 in Book 1792 of Official Records, Page 432, Mendocino County Records.

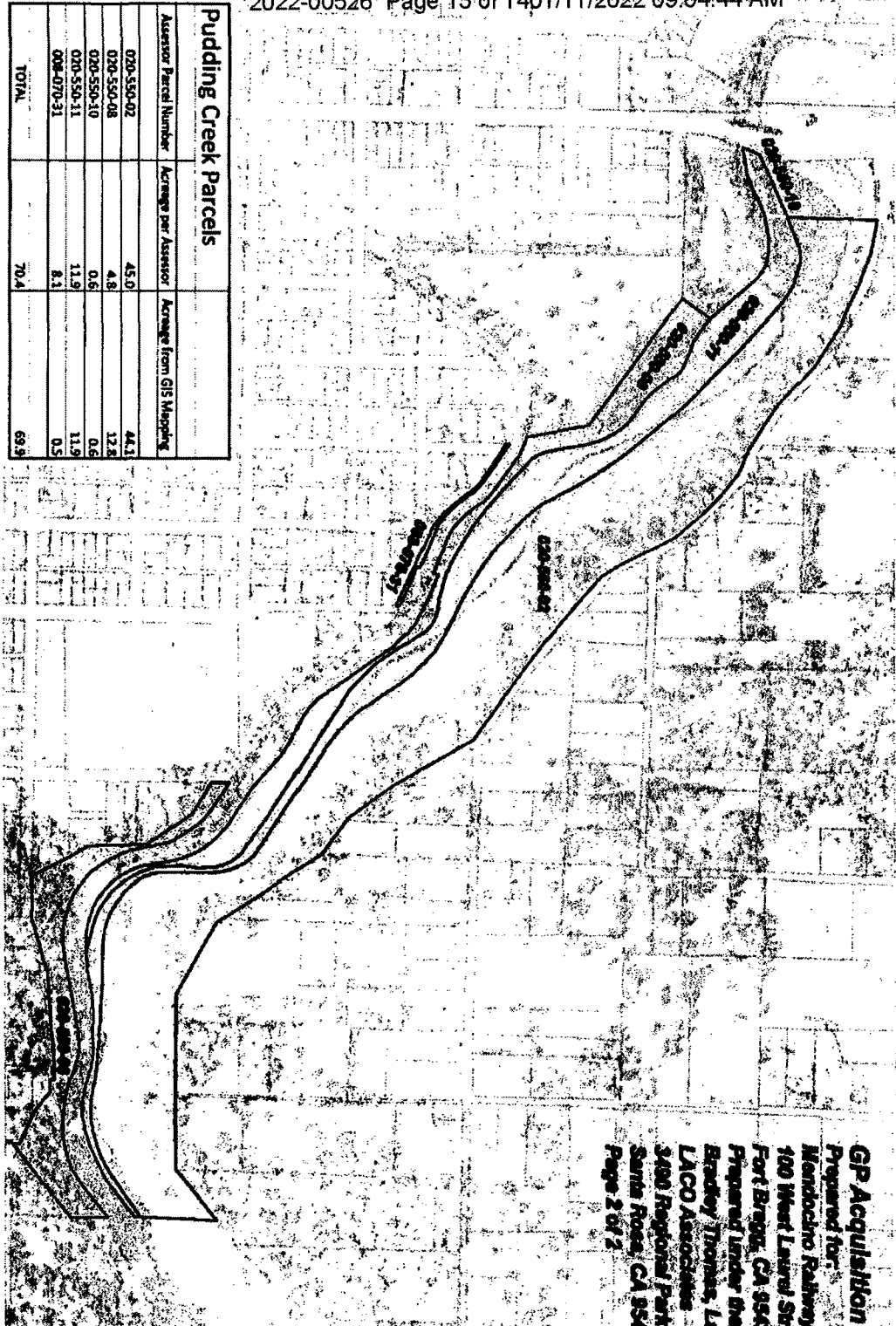
APN: 020-550-02, 020-550-10, 020-550-11 and 020-550-x08

Tract Two:

All that certain real property more particularly described in Exhibit B of the Grant Deed executed by Boise Cascade Corporation to Georgia-Pacific Corporation, under the heading of "Fort Bragg Properties, Township 18 North, Range 17 West, M.D.M., Section 6" in Parcel Four and Parcel Six, which deed recorded March 25, 1974 in Book 957 of Official Records, Page 108, Mendocino County Records.

APN: 020-550-x08

Pudding Creek Parcels		
Assessor Parcel Number	Acres per Assessor	Acres from GIS Mapping
020-550-02	45.0	44.1
020-550-08	4.8	12.8
020-550-10	0.6	0.6
020-550-11	11.9	11.9
008-070-31	8.1	0.5
TOTAL	70.4	69.9



GP Acquisition Parcels
 Prepared for:
 Mendocino Railway
 100 West Laurel Street
 Fort Bragg, CA 95437
 Prepared under the supervision of:
 Bradley Thomas, Land Surveyor
 LACO Associates
 3400 Regional Parkway, Suite A
 Santa Rosa, CA 95403
 Page 2 of 2

The Parcel Areas were derived from Mendocino County Assessor Records and GIS mapping calculations. These Parcel Areas are to be considered approximate. A boundary line survey would be required for accurate Parcel Area determinations.





THE FOREGOING INSTRUMENT IS A
CORRECT COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.

DATED JAN 10 2022

ATTEST:

KIM TURNER
CLERK/ADMINISTRATOR SUPERIOR COURT
COUNTY OF MENDOCINO, STATE OF CALIFORNIA
BY [Signature]
DEPUTY COURT CLERK

THE FOREGOING INSTRUMENT IS A
CORRECT COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE
DATE JUL 18 2022



ATTEST:
CLERK OF SUPERIOR COURT
COUNTY OF MENDOCINO, STATE OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

The within Document is a correct copy of
the record in this office, if it bears this
stamp imprinted in purple ink and an
original signature.
ATTEST:

JUL 18 2022
KATRINA BARTOLOMIE
County Recorder in and for Mendocino
County State of California.
By [Signature] Deputy Recorder

EXHIBIT B



FALL 2021 | VOLUME 1 | ISSUE 1

Big News and Fun Stuff from One of America's Oldest Railroads

Big Plans for the Mill Site

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Continuing a legacy of environmental stewardship

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RAILBIKES ON THE NOYO



An entirely new journey along the Noyo River, extending the Railbike line by 12.5 miles. Read more about this unique experience on Page 6.

Photo by Brendan McGuigan

Navigating COVID-19 as a Railroad

This has been a year unlike any other, both here at The Skunk and in the world at large. Our incredible staff has been working tirelessly to ensure the safety of our guests, workers, and community throughout the Covid-19 pandemic. We have implemented safety protocols across the board, deep cleaning surfaces and spaces, switching over to mask usage on all of our trips and back-of-house operations, limiting travel among our workers, and being some of the first in line to ensure our team received vaccines. Although this

time is not yet over, along with the rest of the world we are eagerly anticipating a return to normalcy and are thrilled to welcome guests back on to our rides. As a common carrier we are under Federal Railroad Administration & Transportation Security Administration regulations, and as such are currently looking forward to relaxing restrictions in late January, 2022. Whatever the timeline we are proud of our crew members who have done everything to ensure guests have a space in which to experience the glory of the redwoods.

Visitor Survey

Every year we perform a visitor survey to determine the impact we have on our local community. Our 2020 survey once again demonstrated that the Skunk Train is an integral part of the Mendocino County community and one of the strongest economic drivers in the region. Of our riders, 70% were visiting the Skunk Train for the first time – and 32% were visiting Mendocino County for the first time. 42% planned their trip to the area specifically to ride the Skunk Train, and 80% stayed overnight.

The average stay was 2.7 nights, generating a whopping 73,000 room nights. Our average rider spent \$800 on their trip, excluding tickets, generating over \$27 million for the local economy. Not bad for a 136-year-old Skunk!



skunktrain.com

What's In A Name?

The nickname "Skunk" originated in 1925, when motorcars were introduced. The combination of fumes created a very pungent odor. Old timers living along the line said these motorcars were like skunks: "You could smell them before you could see them."

BIG PICTURE

Reinvigorating
a Town

Taking ownership of a large portion of the historic coastal Mill Site, the Skunk Train will work with experts to develop a world-class destination, breathing new life into this unique stretch of coastline.



A visionary reimagining of the defunct Fort Bragg Mill Site to meet the needs of a new millennium

Concept imagery from the broadly approved Mill Site Land Use Plan, developed by Hornberger+Worstell

After years of planning and hard work with an incredible team of experts, the Skunk Train is excited to unveil its land use plan for the Fort Bragg Mill Site. This is a once-in-a-generation project, completely reimagining one of the California Coast's most striking stretches of oceanfront land. The vision and scope of the new Mill Site is staggering, incorporating tiered housing, an oceanfront hotel, sprawling open space preserves, the central Railroad Square, an oceanfront rail expansion, a flagship restaurant, commercial space, and an educational historic park.

Since the day the Mill Site

closed, its future has been an open question for the residents of the Mendocino Coast. Numerous plans are proposed.

The most successful of these plans to date is certainly the City-led Coastal Trail. It first opened in a limited capacity in 2015, since then seeing further expansion, including the construction of the **Noyo Center for Marine Science's** Crow's Nest.

We at the Skunk have also been involved in the planning – taking stewardship of some of our legacy property and reimagining it as a cornerstone of the Fort Bragg economy in the post-Mill era. Working



with **Hornberger + Worstell**, we developed a Master Plan to preserve and develop hundreds of acres that we will purchase from **Georgia-Pacific**.

This plan is the culmination of years of community and government collaboration, expert input, and a genuine love

and appreciation of Fort Bragg and this historic site. Our broadly-approved plan reflects local citizens' community plan, and is sweeping in scope. It envisions new residential properties at all levels of density, a restoration of part of the coastal spur of the rail line, expanded public

parking, a hostel, live/work units, storefront commercial space, a massive open space preservation, a restoration of our dry shed, an oceanfront hotel and condos, a Pomo education center, and more. We have purchased 77 acres from Georgia-Pacific, and are finalizing the purchase of the balance of the site.

We are excited to continue sharing our vision and our progress as we work with the community and local government. We will ensure this space adds meaningfully to the economic prosperity and lifestyle of the Mendocino Coast.

(continued on page 3)

A Storied Legacy

For over a century the Fort Bragg Mill Site stood as the absolute geographic landmark and economic driver for the City of Fort Bragg. In many ways, it was the origin of Fort Bragg. After the short-lived military fort was abandoned, the majority of the land sat unused. When our founder, C.R. Johnson, started his lumber operations on the Mendocino Coast, the primary mill was located at Newport, just south of Westport.

The Union Lumber Company's blossoming timber operations soon outstripped Mill Creek's capacity. C.R. Johnson turned his gaze south, where the sprawling site of the army base offered plenty of flat land for growth and deep coastal waters for log-carrying ships. On November 16, 1885, Mill #1 commenced operations capable of producing more than 80,000 board feet per 12-hour shift. Mill No. 1 remained in use for nearly 111 years. At its peak it produced more than 500,000 board feet per shift before finally closing its doors on June 21, 1996.

Thus began the decline of the Mill Site, then owned by Georgia-Pacific. The mill was finally shuttered for good in 2002.

Throughout its long history the Mill Site contributed massively to Fort Bragg. C.R. Johnson laid out the original plan for the city after opening the mill, and became its first mayor in 1889.

We look forward to shepherding this incredible stretch of coastline as it enters its next chapter.

Who Owns the Skunk Train?

Mendocino Railway operates The Skunk, and also operates Sacramento, California's River Fox (riverfoxtrain.com). Mendocino Railway is a subsidiary of Northern California's **Sierra Railroad Company**, which purchased and reopened The Skunk in

2003 after the closure of the GP mill. It also provides freight railroad services through **Sierra Northern Railway** (sierranorthern.com) and renewable zero-emission energy and fuels through **Sierra Energy** (sierraenergy.com).



Model Railroad Barn

Discover History In Motion!

Located just west of the Fort Bragg depot, the Model Railroad Barn showcases the history of rail in Mendocino County, highlighting the 1900-1940 period, presented in G-Scale over 1,800 feet of working track. Admission is free with a Skunk Train ticket.



Two Phases of Development

Phase One of the proposed development will create 500 units, as well as extensive open space to retain the beauty of the area. Phase Two adds a beautiful southern park and a connection point to the Noyo Headlands Coastal Trail.

BIG PICTURE

The future begins with rethinking our depot area – an expansion into a newly-revitalized Railroad Square, with green walking space and structures, a large indoor space to host farmer’s markets and other events, our depot, and the model rail museum. We have also retained the Dry Shed – a 70,000 square foot building – the only remaining original building on the site.

We are also restoring train service to Glass Beach for passengers and will be adding an iconic train station there with a view of the ocean, built in the style of a historic lighthouse.

Housing takes place in multiple areas of the plan, all modern and comfortable, ranging from medium density to small-unit high density, helping to alleviate some of the housing pressure the coast is currently experiencing.

The southern portion of the plan envisions a beautiful modern hotel, with condos attached. This will offer economic opportunities for our local community, as well as helping to cement Fort Bragg as a scenic destination for visitors.

The western portion of the property will be devoted to public parks and open space, building on the success of the existing Coastal Trail.

In the north we hope to work with the Sherwood Band of Pomo Indians to provide a space for cultural education. We hope this can help give visitors an experience that can shed light on some of the historic injustices this site represents, and we will defer to the tribe on how this can best be achieved – here we are making space, but come to it with an open mind, not wishing to put our own values on the final product.

Although this project is still in its relatively early phases, we see the Mill Site as the most important project of this century for the Mendocino Coast! We look forward to working with local leaders to help ensure it adds to all of our economic prosperity and lifestyle.



An ambitious redevelopment to reimagine one of the most-stunning stretches of the California coastline.

LOCAL SPECIAL

Mendocino County residents can use code **MendoFall21** for deeply discounted trips!

Pudding Creek Express	\$41.95	\$32
Wolf Tree Turn	\$49.95	\$30
Pudding Creek Railbikes	\$250.00	\$100
Railbikes on the Noyo	\$495.00	\$150
Fort Bragg Pumpkin Express	\$47.95	\$30
Fort Bragg Christmas Train	\$49.95	\$32
Willits Pumpkin Express	\$52.95	\$35
Willits Christmas Train	\$52.95	\$35

ID must be presented at time of ride to prove residency.
No early pickup of tickets.

Now Hiring!

Team Skunk is hiring for all positions!

Executive / Administration, Mechanical, General Labor – Track Maintenance Worker, Retail, Construction, Train Crew – Brakeman / Conductor!

Join a team of dedicated, passionate, hard-working people to help this 136-year-old institution continue to thrive!

Call 707.964.6371 For More Info!

UPDATES

Tunnel No. 1 Reopening Plan With the tunnel settled after its collapse, primary survey work can now begin, with the goal of reopening the full Redwood Route within the next year.

TUNNEL NO. 1 UPDATE

THE LIGHT AT THE END OF THE TUNNEL

Plans are in progress to reconstruct Tunnel No. 1 for the next century, restoring access to the full Redwood Route

More than any other single issue, we receive regular correspondence inquiring as to the status of our Tunnel No. 1 – the artery that connects the short western side of our line from Fort Bragg to The Glen with the majority of our rail, terminating in Willits.

Tunnel No. 1 is a 1,112 foot bore, completed in 1893 by the California Western Railroad and was a critical step toward connecting the mill town of Fort Bragg to the extensive redwood holdings east of the tunnel in the Noyo River Basin. It was built by skilled Chinese laborers, without whose hard work the Skunk Train as we know it simply would not exist.

In 2013 Tunnel No. 1 suffered a massive cave-in sometime between April 12 and 13. Although there had been other cave-ins, this was on a scale not

seen before. Forty feet of the tunnel collapsed down, with thousands of tons of rock sealing off a huge portion of the bore. With large-scale community involvement and an incredible partnership with the Save the Redwoods League, the Skunk Train worked with an outside

“The steel rails that connect Fort Bragg to Willits will once again do so as we commence work in Q1 of 2022.”

contractor to repair the damage. Work on the tunnel by an outside contractor led to the collapse of the tunnel and their insurance company declined coverage.

An El Nino event in 2015-2016 meant a huge amount of water fell on the tunnel in a short period of time, and the consequences of the shoddy workmanship became apparent with a second collapse. This was more extensive –

affecting nearly 200 feet of the tunnel, and destabilizing the area.

For six years we have undertaken the work of shoring up the tunnel collapse to prevent further sliding, and have invested over a million dollars in stabilization efforts securing and terracing the hillside

and making it ready for the restoration of the tunnel.

We are now at the point where enough settling has occurred that these engineers can begin drafting a formal plan. We hope to have the tunnel reopened in late 2022. The tunnel was nearly completely rebuilt in 1976 when freight train crews brought an excess height boxcar through the Tunnel creating a massive cave in whereby we had to exhume most



A wooden pedestrian bridge currently crosses Pudding Creek from The Glen to the closed Tunnel No. 1 before continuing on to a scenic trail through stands of ancient redwoods.

of it and rebuild it. The work we plan to do will further modernize it ensuring that it will not only survive the next El Nino event or earthquake, but that it will be in a good position to remain open for the coming decades and century.

Tunnel No. 1 is located only three miles from the Western terminus of our line, and its closure limits not only our ability to run through service for scenic trains, but also our ability to undertake new operations on the line. We

are looking at a resumption of freight service, talking to local businesses about being able to use the trains as a low-carbon way to transport their goods to and from Fort Bragg. In the future it may even be possible to connect at Willits with other lines, relinking Fort Bragg to the greater web of railways throughout the United States.

This tunnel is a critical part of our history and our future, and we are excited to do the necessary work

to ensure that it reopens. We know many of you have a deep connection to our fully-connected journey, and we want to assure you that we feel equally passionate about the issue. We know it has been a long time coming – unfortunately these things take time. We are finally at a point where we can see the light at the end of the tunnel – and we will share, in these pages and in other public forums, our progress as this important moment draws nearer.



The Historic Redwood Route

Spanning 40 miles, the full Redwood Route passes through ancient redwood groves, alongside two stunning rivers, and over more than thirty trestle bridges. Our current excursions run from Fort Bragg to The Glen (Pudding Creek Express and Pudding Creek Railbikes), from Willits to Headwaters (Wolf Tree Turn), and from the east side of Tunnel #1 to Camp Noyo (Railbikes on the Noyo).

Restoring
Natural Habitat

Working paw-in-hand with Trout Unlimited, the Skunk is doing his part to ensure that vital salmon habitat is restored and maintained for the next generation.

ECOLOGY

ECOLOGICAL STEWARDSHIP

SKUNK SAVES SALMON!

Working Paw in Fin with Trout Unlimited to restore vital waterways to Mendocino County

Environmental stewardship has always been a part of the Skunk Train’s mission. Our founder, C.R. Johnson, was a visionary conservationist, who set aside massive stands of old growth redwoods in the middle of his holdings to preserve them for generations to come. That forward-looking attitude helped make the Skunk the incredible destination it is – without untouched redwoods along our line the trip would not be the once-in-a-lifetime visit it is.

So we are always looking for ways to continue this legacy of preservation and restoration, and are excited to announce two major restoration projects along the Noyo River and our line.

These projects would not have been possible without the amazing partnership of **Trout Unlimited**, the **Mendocino Land Trust**, the **California Fish Passage Forum**, the **National Fish and Wildlife Foundation**, **NOAA Fisheries**, the **California Department of Fish and Wildlife**, the **Nature Conservancy**, the **Salmonid Restoration Project**, **Michael Love and Associates**, **Granite Construction**, and **AECOM**. Together the project costs \$3.5 million, and we are grateful to the many funders Trout Unlimited brought to make it a reality.

The first site is located at the Upper Noyo – just east of Burbeck, and the first place the railroad tracks cross the Noyo River after salmon spawn at the headwaters. Originally the Upper Noyo location had an open flow streambed at its base, but in the 1990s this was replaced with a large (and we do mean large) culvert. This was to the long-term detriment of the fish habitat, and it was our desire to restore that flow to encourage fish spawning and travel. We exhumed old infrastructure in its entirety, and the soil atop it, before replacing it with modern, fish-friendly infrastructure and restoring the soil. The result is a free-flowing waterway that salmon and other fish can once again utilize.



The newly-restored streambed and state-of-the-art culvert system allows for fish to return to the waterways to spawn and live

The second site, Gulch C, is in and surrounding Shake City. The existing infrastructure here was historic and beautiful, but once again was not conducive to fish habitat. The exterior was a typical concrete construction, and the interior was redwood. Here we also replaced the infrastructure to restore the natural streambed. At the personal direction of Mike Hart, Gulch C has been permanently renamed **‘Pinoli Gulch’** in recognition of the years of work that Mendocino Railway CEO Robert Pinoli has invested in this project!

Both of these projects have been incredibly gratifying to all of us here at the Skunk. We love our history, and love the beauty that comes along with many of our older infrastructure pieces (our wooden trestle bridges are some of the most popular spots along our route). With this history comes a need to recognize when pieces have outlived their usefulness. These two culverts represent just such a situation – engineered originally with the best of intentions, but as our understanding of habitat has evolved, so too have our needs.

The potential impact of these modernizations cannot be over-emphasized, and we are incredibly grateful to Trout Unlimited to lending their expertise throughout the process. The Noyo River houses one of the most stable California coho populations in the state – but even that is in danger, ranked as a moderate to high extinction risk. Coho salmon are vanishing shockingly quickly across the state, and without recovery projects on key watersheds throughout the state, the species will vanish. Together, these restoration projects reopen spawning access to nearly two miles of critical waterway – both for California coho and steelhead. We couldn’t be happier.

The project has attracted national attention as well – just this March, Trout Unlimited called out this specific project while testifying before the **House Natural Resources Committee** (on which sits our very own Congressman Jared Huffman).

SNAPSHOT

Railbikes on the Noyo This incredible 25-mile roundtrip journey takes you through some of the most scenic stands of redwoods along the Redwood Route, culminating in a picnic at fabulous Camp Noyo before returning to Tunnel No. 1



A brand-new excursion from the Skunk Train, redefining the railbike experience with a half-day luxury experience

AT A GLANCE

DEPARTURE POINT:
Sherwood Rd. Fort Bragg

TURNAROUND:
Camp Noyo

LENGTH:
25 Miles Roundtrip

DURATION:
Four Hours

RIDERS PER BIKE:
Two

PRICE:
\$495 Per Bike

INCLUDED:
**Bike Rental
Group Guide
Picnic
Beverage**

A Tale of Two Stops

Although we are offering a number of exciting new rides for your enjoyment, the core of the Skunk has been, and will always be, our train trips. Currently we're offering two trips: the 7-mile roundtrip Pudding Creek Express out of Fort Bragg, and the 16-mile roundtrip Wolf Tree Turn out of Willits. These trips take you to two of the historic stops along the Redwood Route, and are great fun for the whole family.



Surveyor's camp at Crowley

The Glen

The Pudding Creek Express disembarkment is at **The Glen**, 3.5 miles in from the coast. This was the junction point that spurred off to the town of **Glen Blair** – also known as **Glenela**. The **Glen Blair Lumber Company** founded this site, producing some of the finest redwood timber in the world, until the **Union Lumber Company** acquired it in 1891. Until Tunnel #1 was completed, Glen Blair was the end of the line – and flourished until the 1920s, when it was abandoned and eventually overgrown by redwoods.

Newly developed, The Glen features a large platform deck for easy disembarkment a scenic hiking loop trail through the redwoods, and a longer trail leading back to the Fort Bragg depot. This stunning locale is where **Little Valley Creek** meets **Pudding Creek**, and is the perfect setting for a stop.

Headwaters

The Wolf Tree Turn trip ends at the historic station of **Crowley**, now **Headwaters**, which we've developed into a comfortable place to hike around or enjoy a picnic.

Historically this was a minor logging camp – but not without its quirks. The Frenchman who owned the camp reputedly had a deep love of tennis, and he actually had special clay brought in to construct his own court on the site. The lumber camp here lasted in a dormant state well into the modern era, with the foreman's house, a mess hall, and five worker bunkhouses remaining intact until recently.

A REVOLUTIONARY NEW JOURNEY

RAILBIKES ON THE NOYO

Railbike lovers take note! The Skunk continues to innovate with this exciting new half-day ride through some stunning redwood groves along our line – getting you back into the **Noyo Canyon** for the first time in a long time!

Building on the success of our highly popular Pudding Creek Railbikes experience departing from the **Fort Bragg Depot**, we're thrilled to announce an entirely new experience. This very special trip has required the reopening of this section of the railroad for just a handful of riders, and we're excited to unveil our new Noyo Experience. This trip departs from the far side of Tunnel No. 1, opening up miles of open track to our railbikes.

You'll arrive at our property on **Sherwood Road**, just a few minutes from the main depot. From there a short hike on a beautiful new trail takes you through the redwoods to the Noyo River.

From there you'll ride 25 miles roundtrip – an extensive ride that takes you past some of the most



The railbikes stop at Camp Noyo for relaxation, exploration, and a light picnic

Majestic views with an old timey nostalgia... definitely be bringing more friends and family this way!
- Liz W.



iconic spots along the Redwood Route, over beautiful historic trestle bridges, and alongside and over the winding Noyo River, stunningly scenic in any season. We're staggering these trips by a few minutes, so the trip is tranquil, and you can enjoy the solitude of the redwoods.

The first leg of the trip ends at **Camp Noyo**, where you'll disembark and have an hour to spend resting, hiking, and chatting. A picnic is provided, so you can recharge a bit before getting back on the bikes for the return trip.

Our railbikes are electric-powered, so you can make the ride as strenuous or easy as you wish – pedal yourself or sit back and relax and enjoy the ride. We've gone through multiple iterations of our custom-built bikes, and are very proud of what we've created. We look forward to sharing the experience with you and your loved ones.

Don't forget to ask about our local specials!

136 Years of History

With over a century of history to draw from, we have deep archives of incredible photographs of bygone eras – we'll try to share some of our favorites in every issue.

HISTORY



A historic bridge on Stage Road, with an early car that reminds us of our very own Railbikes; date unknown



Skunk employee, 1960s



Our gas-powered, self-propelled M-100 railcar (a 'Skunk') in the 1960s



Year-Round Events

AUG. 20TH & 21ST

SEPT. 10TH & 11TH

Cinema in the Redwoods

AUG. 6TH, 13TH, & 14TH

SEPT. 10TH, 11TH, 17TH, & 18TH

Music in the Redwoods

WEEKENDS THROUGHOUT OCTOBER

The Pumpkin Express

SELECT DATES IN DECEMBER

Magical Christmas Train



Skunk Train Season Passes

A Year of Memories for One Low Price

Can't get enough of the Skunk? Have a die-hard train lover in your life? We've got the solution! Our new Annual Pass gives you the opportunity to enjoy the Skunk Train all year long! One price gets you access to **all four of our major trips**: The Pudding Creek Express, Wolf Tree Turn, Pumpkin Express, and the Magical Christmas Train. Plus a 15% discount on any other special event trains throughout the year, and a 10% discount on all retail merchandise.

Priced at just **\$149.95** for an adult pass, **\$89.95** for a child pass, or **\$29.95** for an infant or pet pass, it's an affordable way to make sure you never miss out on a little bit of train time right when you need it.

From Mild to Wild on the Mendocino Coast

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Kayak Rentals, Tours, Lessons, and Adventures

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In the Next Issue

In our next issue learn the story behind our iconic Art Car, our plans to re-roof the Roundhouse to return it to service, more about our exciting new hiking trail from The Glen to Fort Bragg, the new Sierra Railroad Locomotives (now the lowest-emission fleet in the state, and coming soon to the Skunk), and much more!

Be sure to subscribe to receive the most up-to-date information about everything we have coming, from expansions, new projects, maintenance and the return of old equipment, events, historical tidbits, and interviews with staff old and new.

Subscribe

Receive the Little Stinker quarterly in your mailbox and stay up to date on everything Skunk related!

Call 707.964.6371 or write littlestinker@skunktrain.com

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EXHIBIT C

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MENDOCINO**

CITY OF FORT BRAGG, a California
municipal corporation

Case No.: 21CV00850

[Assigned to the Hon. Clayton Brennan]

Plaintiff,

**VERIFIED ANSWER OF DEFENDANT
MENDOCINO RAILWAY**

v.
MENDOCINO RAILWAY and DOES 1-10,
inclusive,

Defendants.

Complaint Filed: October 28, 2021

Defendant MENDOCINO RAILWAY hereby answers the Complaint as follows:

Responding to the introductory paragraph at page 1, lines 19-22, Defendant admits that Plaintiff has “file[d] this action seeking judicial declaration regarding the validity of the Mendocino Railway’s status as a public utility,” under the purported authority of Code of Civil Procedure section 1060, “and/or injunctive relief.” Except as specifically admitted, Defendant denies the allegations of the introductory paragraph.

1. Responding to paragraph 1, Defendant denies each and every other allegation contained therein.

2. Responding to paragraph 2, Defendant answers that the allegations are conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations.

3. Responding to paragraph 3, Defendant admits that it is currently listed as a class III railroad by the California Public Utilities Commission (“CPUC”), and as such is subject to CPUC jurisdiction and

1 has all the legal rights of a public utility. Defendant further admits that, among other operations and
2 services it provides to the public, it owns and operates the Skunk Train, which operates in part in the City
3 of Fort Bragg. Defendant further admits that some of its real property is located in the City of Fort Bragg.
4 Except as specifically admitted, Defendant denies each and every other allegation contained in paragraph
5 3.
6 4. Responding to paragraph 4, Defendant lacks sufficient information and belief to respond
7 to the allegations and on that basis denies them.

8 5. Responding to paragraph 5, Defendant admits that it has a long and storied history of
9 operations between Fort Bragg and Willits. Except as specifically admitted, Defendant denies each and
10 every other allegation contained in paragraph 5.

11 6. Responding to paragraph 6, Defendant admits that, in 1998, the Public Utilities
12 Commission issued at least two decisions of which Defendant is aware, concerning applications made by
13 the Skunk Train's then-owner and operator, California Western Railroad. Except as specially admitted,
14 Defendant denies each and every other purported fact allegation contained in paragraph 6. The remaining
15 allegations are conclusions of law to which no response is required. To the extent a response is required,
16 Defendant denies the allegations.

17 7. Responding to paragraph 7, Defendant admits that Mendocino Railway did have, and
18 continues to have, the capacity to carry freight and passengers. Except as specifically admitted, Defendant
19 denies each and every other purported fact allegation contained in paragraph 7. The remaining allegations
20 are conclusions of law to which no response is required. To the extent a response is required, Defendant
21 denies the allegations.

22 8. Responding to paragraph 8, Defendant answers as follows: As to the first sentence,
23 Defendant admits that, on or about April 11, 2013, its operations were disrupted following the partial
24 collapse of Tunnel No. 1, which buried nearly 50 feet of its 1,122 feet of track under rocks and soil.
25 Defendant lacks sufficient information and belief to respond to the remaining allegation in the first
26 sentence and, on that basis, denies it. As to the second sentence, Defendant admits that the collapse of
27 Tunnel No. 1 temporarily eliminated the ability of its rail operations between Fort Bragg and Willits to
28 continue. As to the third sentence, Defendant admits that, on or about June 18, 2013, Save The Redwoods

1 League announced that it had reached an agreement with Defendant to pay \$300,000 for an option to
2 purchase a conservation easement for the protection of redwoods along Defendant's "Redwoods Route,"
3 and that Defendant applied said \$300,000 to the total cost for repair of Tunnel No. 1. Except as specifically
4 admitted, Defendant denies all other allegations contained in the third sentence. As to the fourth sentence,
5 Defendant admits that the \$300,000 payment from Save the Redwoods League assisted Defendant in
6 resuming all services on the entire line in August 2013. Except as specifically admitted, Defendant denies
7 all other allegations contained in paragraph 8.

8 9. Responding to paragraph 9, Defendant denies the allegations contained therein.

9 10. Responding to paragraph 10, Defendant admits that it is estimated to cost around \$5 million
10 to repair and reopen Tunnel No. 1. Except as specifically admitted, Defendant denies each and every other
11 allegation contained in paragraph 10.

12 11. Responding to paragraph 11, Defendant admits that among other services provided to the
13 public in various geographic areas, including freight, passenger, and other excursion services, it operates
14 a 3.5 mile excursion from Fort Bragg to Glenn Blair Junction, and a 16-mile excursion from Willits to
15 Crowley. Except as specifically admitted, Defendant denies each and every other allegation contained in
16 paragraph 11.

17 12. Responding to paragraph 12, Defendant answers as follows: As to the first sentence,
18 Defendant lacks sufficient information and belief to respond to the allegations and on that basis denies
19 them. As to the second sentence, Defendant denies the allegations contained therein. As to the third
20 sentence, Defendant admits that it refused Plaintiff's attempts to trespass onto its rail property for permit-
21 related inspections of its rail facilities, on the grounds of state and federal preemption law, given
22 Defendant's status as a public-utility railroad exclusively regulated as such by the CPUC and the STB.
23 Except as specifically admitted, Defendant denies each and every other allegation contained in the third
24 sentence. As to the fourth sentence, Defendant admits that when Plaintiff unlawfully posted a "Stop Work
25 Order" for failure to obtain a building permit for work on Defendant's storage shed on rail property,
26 Defendant removed the unlawful order and proceeded with the work. Except as specifically admitted,
27 Defendant denies each and every allegation contained in the fourth sentence. As to the fifth sentence,
28 Defendant admits that in August 2021, Plaintiff emailed Defendant a "Limited Term Application," on the

1 purported grounds that “[t]he Police Dept. notified [Plaintiff] that [Defendant] will be having evening
2 events that potentially can cause noise issues.” Except as specifically admitted, Defendant denies each
3 and every other allegation contained in the fifth sentence. As to the sixth sentence, Defendant admits that
4 Defendant responded to said email by stating, in relevant part: “these events to the extent they exist are
5 outside the city’s jurisdictional boundaries and are thus not subject to a permit.” Except as specifically
6 admitted, Defendant denies each and every other allegation contained in the sixth sentence.

7 13. Responding to paragraph 13, Defendant answers that the allegations constitute conclusions
8 of law to which no response is required. To the extent a response is required, Defendant denies the
9 allegations.

10 14. Responding to paragraph 14, Defendant restates and incorporates herein by reference each
11 and every answer contained in the paragraphs above.

12 15. Responding to paragraph 15, Defendant answers as follows: the first and second sentences
13 consist of allegations that are conclusions of law, to which no response is required. To the extent a response
14 is required, Defendant denies the allegations. As to the third sentence, Defendant admits that it is
15 Defendant’s position that its status as (a) a CPUC-regulated public-utility railroad and (b) a railroad within
16 the jurisdiction of the federal Surface Transportation Board (“STB”) broadly preempt environmental pre-
17 clearance review and land-use permitting of Defendant’s rail activities by Plaintiff, under both state and
18 federal preemption. As to the fourth sentence, Defendant admits that Plaintiff disagrees with Defendant’s
19 position. Except as specifically admitted, Defendant denies each and every other allegation contained in
20 the fourth sentence. As to the fifth sentence, Defendant denies each and every allegation contained therein.

21 16. Responding to paragraph 16, Defendant denies each and every allegation contained therein.

22 17. Responding to paragraph 17, Defendant denies each and every allegation contained therein.

23 18. Responding to paragraph 18, Defendant denies each and every allegation contained therein.

24 19. Responding to paragraph 19, Defendant admits that Plaintiff seeks injunctive relief against
25 Defendant under the purported authority of California Civil Code section 526. Defendant further admits
26 that Plaintiff seeks to require Defendant to submit fully to Plaintiff’s jurisdiction and authority without
27 regard to its status as a CPUC-regulated public utility and STB-regulated federal railroad. Except as
28 specifically admitted, Defendant denies each and every other allegation contained in paragraph 19.

20. Responding to paragraph 20, Defendant denies each and every allegation contained therein.

21. Responding to paragraph 21, Defendant denies each and every allegation contained therein.

Responding to all paragraphs under Plaintiff’s “Prayer,” Defendant admits that Plaintiff unlawfully seeks a declaration that Defendant is no longer a public utility because it purportedly does not qualify as a common carrier providing “transportation.” Further, Defendant admits that Plaintiff unlawfully seeks injunctive relief “commanding the Mendocino Railway to comply with all City ordinances, regulations, and lawfully adopted codes, jurisdiction and authority.” Further, Defendant admits that Plaintiff unlawfully seeks costs of the suit, and “such other and further relief” as the Court deems just and proper. Except as specifically admitted, Defendant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint states insufficient facts to state a cause of action because Defendant is and remains a common-carrier, public-utility railroad.

SECOND AFFIRMATIVE DEFENSE

The Superior Court lacks subject matter jurisdiction to adjudicate Plaintiff’s cause of action under section 1759(a) of the Public Utilities Code.

THIRD AFFIRMATIVE DEFENSE

Plaintiff’s cause of action is barred by the statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

The declaratory and injunctive relief sought by Plaintiff are barred by state and federal preemption, as embodied in statutory and constitutional law, because Defendant is a CPUC-regulated public utility and a railroad within the jurisdiction of the STB. *See, e.g.*, 49 U.S.C. §§ 10102, 10501(b); Pub. Util Code § 1759(a); U.S. Const. art. VI, ¶ 2.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff’s cause of action is barred by the equitable doctrines of estoppel, unclean hands, and/or waiver.

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SIXTH AFFIRMATIVE DEFENSE

Plaintiff's cause of action is barred for failure to name and join indispensable and necessary parties, including without limitation the California Public Utilities Commission.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's cause of action is barred by the doctrine of laches, including without limitation because the City has unreasonably delayed in challenging Defendant's current status as a CPUC-regulated public utility.

EIGHTH AFFIRMATIVE DEFENSE

Defendant does not presently have sufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses. Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates that they would be appropriate.

WHEREFORE, Defendant prays as follows that:

1. Plaintiff take nothing by this action and the Complaint be dismissed with prejudice;
2. Defendant be awarded costs and reasonable attorneys' fees; and
3. The Court award such other and further relief as it deems just and proper.

DATED: June 24, 2022

/s/ Paul Beard II

Attorneys for Defendant MENDOCINO RAILWAY

VERIFICATION

I, Robert Pinoli, am President of Defendant Mendocino Railway. I have read the foregoing answer and know the contents thereof. The same is true of my own personal knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true. If called upon to testify, I would and could testify thereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed in Mendocino County, California, on this 24th day of June, 2022.



ROBERT PINOLI

PROOF OF SERVICE

I, Paul Beard II, declare:

My business address is: FisherBroyles LLP, 4470 W. Sunset Blvd., Suite 93165, Los Angeles, CA 90027. I am over the age of 18 and not a party to this action.

On June 24, 2022, I served **DEFENDANT'S VERIFIED ANSWER** on the following counsel for Respondent:

KRISTA MACNEVIN JEE

JONES MAYER

kmj@jones-mayer.com

Counsel for Plaintiff

BY ELECTRONIC TRANSMISSION—ONE LEGAL. When electronically filing the above entitled document with One Legal, I simultaneously opted for electronic service of the same on Ms. Jee at the email above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: June 24, 2022 /s/ Paul Beard II

EXHIBIT D

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

CLEANUP AND ABATEMENT AND 13267 ORDER NO. R1-2016-0036

FOR

MENDOCINO RAILWAY
SKUNK TRAIN
West Portal of Tunnel No. 1
39.4468°, -123.7629°

MENDOCINO COUNTY

This Order is issued to Robert Jason Pinoli, Owner and Operator of the Skunk Train (hereinafter referred to as Discharger) based on provisions of Water Code¹ section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order (Order).

The Assistant Executive Officer finds, with respect to the Discharger's acts, or failure to act, the following:

1. **Purpose of the Order:** This Order requires the Discharger clean up and abate the effects of the discharges of sediment and earthen material into Pudding Creek and to eliminate the threat of future discharges. The Discharger's actions associated with construction repair activities at the collapsed western portal of the Discharger's railway tunnel, Tunnel No. 1 (hereinafter referred as Site), have resulted in the unauthorized discharge of sediment and other pollutants and have created, and threaten to create, a condition of pollution and/or nuisance by unreasonably affecting the beneficial uses of waters of the state. Continuing discharges, from unprotected stockpiles, unstabilized slopes, inadequately sized and maintained sediment basins, and lack of effective erosion and sediment controls, violate provisions of the Basin Plan, the Porter-Cologne Water Quality Control Act, and the Federal Clean Water Act (33 U.S.C. § 1251 et seq.). These conditions threaten to continue unless the discharge or threatened discharge is permanently cleaned up and abated.
2. **Responsible Parties:** The Discharger, as the owner and operator and/or persons discharging or creating a threat of discharge, is the responsible party for purposes of this Order.

¹ Unless otherwise indicated, all references to the "Water Code" refer to the California Water Code.

3. **Site Location and Description:** The Skunk Train is a scenic historic passenger railway that runs approximately 40 miles between Fort Bragg and Willits. The railway passes along the Pudding Creek estuary and through two tunnels: Tunnel No.1 and Tunnel No. 2. The Site is located on the western portal of Tunnel No. 1. The approximate map coordinates of the Site are latitude 39.4468° north and longitude 123.7629° west, approximately 2.5 miles east of Fort Bragg.
4. **Site History:** The hillside surrounding the western portal of the Skunk Train's Tunnel No. 1 is reportedly unstable, and in February 2015, the portal collapsed. Subsequent to the collapse, the Discharger began efforts to repair the damaged tunnel. The Discharger ceased repair work sometime in June, reportedly as a result of lack of funds. The total acreage of land disturbance associated with the repair work is about 1.7 acres.
5. **Case Background:**
 - A. On October 23, 2015, Regional Water Board staff (Staff) received a complaint which included photographic documentation depicting conditions at the Site. The photographs revealed exposed soil stockpiles and hillslopes abutting both banks of Pudding Creek without any erosion or sediment controls.
 - B. On October 28, 2015, Staff inspected the Site. During the inspection, Staff observed the conditions noted below, which have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and the United States and creates, or threatens to create, a condition of nuisance and pollution.
 1. Unstabilized earthen materials on steep hillslopes above, and adjacent to, the western portal of Tunnel No. 1.
 2. Evidence of equipment tracking and terracing on the slopes associated with construction activities.
 3. Exposed stockpiles of bare soil/spoils generated during construction activities on the west and east banks of Pudding Creek.
 4. Uncontained bags of Quikrete Shotcrete that had ripped and spilled concrete onto exposed soil on the east bank of Pudding Creek.
 5. A lack of erosion and sediment controls to prevent discharge to Pudding Creek.
 - C. At the conclusion of the October 28, 2015, inspection, Staff verbally requested that the Discharger submit a short-term erosion control plan and implementation schedule.
 - D. On November 4, 2015, the Discharger submitted a document titled "Temporary Erosion Control Plan" to the Regional Water Board. The document was determined to be inadequate by Staff due to the lack of detail of best

- management practice (BMP) implementation and maintenance, and an implementation schedule.
- E. On November 13, 2015, the Regional Water Board issued a Requirement for Information Pursuant to California Water Code 13267 to the Discharger requiring the submission of the following information:
1. By November 20, 2015, the Discharger shall submit an emergency short-term erosion control plan.
 2. By December 11, 2015, the Discharger shall submit a long-term erosion control plan.
 3. Starting on November 30, 2015, the Discharger shall submit monthly progress reports. To date, the Discharger's compliance with the monthly progress report requirement is as follows:
 - a. November 2015 report: Not submitted
 - b. December 2015 report: Received January 4, 2016, four (4) days late.
 - c. January 2016 report: Received February 2, 2016, two (2) days late.
 - d. February 2016 report: Received February 29, 2016, on time.
 - e. March 2016 report: Received March 31, 2016, on time.
 - f. April 2016 report: Received April 29, 2016, on time.
 - g. May 2016 report: Received May 31, 2016, on time.
 - h. June 2016 report: Received June 30, 2016, on time.
- F. On November 13, 2015, the Discharger submitted an erosion control plan titled "Construction Erosion Control Plan" (CECP), which was determined to be inadequate by Staff, as documented in a Notice of Violation (NOV) dated February 1, 2016. For example, section 3.1 of the CECP states that BMPs "[g]enerally will be deployed whenever excavation and grading expose soils. BMPs shall be modified, as necessary, and maintained throughout the duration of construction activities. Modification of the BMPs should be based on the phases of construction." While this section mentions a general implementation plan, it does not discuss the controls that will be implemented, as required by Requirement A.4 of the November 13, 2015, 13267 Order.
- G. On December 16, 2015, the Regional Water Board issued a Notice of Noncompliance (NNC) to the Discharger for failure to obtain Construction Storm Water General Permit (CGP) coverage. Pursuant to California Water Code section 13399.30 (a), the NNC required the Discharger to submit a Notice of Intent (NOI) to obtain CGP coverage within 30 days from the date of the NNC.
- H. On December 17, 2015, Staff inspected the Site. During the inspection, Staff observed conditions, which have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and the United States and creates, or threatens to create, a condition of nuisance and pollution.

- I. On December 18, 2015, the Discharger created a Storm Water Multiple Application and Report Tracking System (SMARTS) account to obtain coverage under the CGP, but did not submit any of the required Permit Registration Documents (i.e., NOI, Storm Water Pollution Prevention Plan [SWPPP], Site Map, a Risk Assessment, an Annual Fee, and a Signed Certification Statement).
- J. On January 14, 2016, pursuant to California Water Code section 13399.30 (b), the Regional Water Board issued a Second Notice of Noncompliance (Second NNC) for failure to obtain CGP coverage within the 30-day deadline set forth in the NNC.
- K. On February 1, 2016, Staff conducted a joint-inspection of the Site with State Water Resources Control Board (State Water Board) staff and California Department of Fish and Wildlife staff. During the inspection, Staff observed conditions which have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and the United States and creates, or threatens to create, a condition of nuisance and pollution.
- L. On February 16, 2016, 60 days from the date the Regional Water Board issued the NNC, Staff verified that the Discharger had not submitted an NOI to obtain coverage under the CGP.
- M. On February 19, 2016, the Regional Water Board issued an NOV for unauthorized discharges to Pudding Creek on December 17, 2015, and February 1, 2016, and for failure to submit reports required by the November 13, 2015, Requirement for Information Pursuant to California Water Code 13267. The NOV required the Discharger to take the following actions:
 - 1. Submit a revised short-term erosion control plan that addresses the deficiencies summarized in the NOV.
 - 2. Submit the long-term erosion control plan that was required by the November 13, 2015, Requirement for Information Pursuant to California Water Code 13267.
 - 3. Submit monthly progress reports in accordance to the revised requirements set forth in the NOV and in a timely manner.
 - 4. Submit an update on the status of the Site's enrollment for coverage under the CGP and the implementation of a SWPPP.
- N. On May 6, 2016, the Discharger submitted an NOI to obtain CGP coverage, 112 days past the deadline January 15, 2016 in the NNC.

6. Current Water Quality Threats:

On February 1, 2016, Staff inspected the Site and observed the conditions noted below, which have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and the United States and creates, or threatens to create, a condition of nuisance and pollution. To date, these conditions remain water quality threats.

- A. The collapsed and disturbed hillside area, estimated to be around 70 feet long and 23 feet wide, remains unstable and continues to slump downslope towards the sediment basins and Pudding Creek.
- B. On the southern slope of the bank of Pudding Creek, sediment deposits and flattened and eroded vegetation on the water line indicate recent discharges of sediment. The discharge passed through the straw bale "barrier" and silt fence intended to contain sediment-laden runoff from the Site (see Photos 20 and 21 of the Seidner and Elder February 1, 2016, Inspection Report, pp.18-19). This indicates that straw bales are not an effective BMP to prevent discharges of sediment to Pudding Creek. To date, the straw bales are implemented as sediment control.
- C. Plastic sheeting applied to the disturbed hillside areas was not installed to specification and requires maintenance, rendering it ineffective to control erosion (see Seidner and Elder February 1, 2016 Inspection Report, p. 12). Additionally, coverage of the slopes with sheeting is incomplete when compared to the CECP, which required complete coverage. Partial installation of plastic sheeting on slopes in this area has concentrated runoff, increasing its velocity, and funneling it into the downslope portions not covered by sheeting, which are the most heavily eroded and steepest portions of the Site.
- D. BMPs located at the toe areas or perimeters of the soil stockpiles are improperly installed and inadequate to contain the stockpiled soil and prevent sediment discharges or threatened discharges. Staff observed sediment deposits beyond the perimeter BMPs demonstrating evidence of sediment-laden runoff discharges around, under or through BMPs and down the banks into Pudding Creek (see Photos 19-25 of Seidner and Elder February 1, 2016, Inspection Report, pp. 17-20).
- E. Staff observed a surface sheen on pooled water at the Site, warranting evaluation for other potential pollutants, and additional BMPs (see Photo 13 of Seidner and Elder February 1, 2016, Inspection Report, p. 12).

- F. Three sediment basins were installed on the south bank of Pudding Creek. The largest sediment basin extended into the collapsed tunnel to an unknown distance; the approximate volume of the basin was estimated at 136,000 gallons. The intermediate and smallest sediment basins were estimated at 32,000 gallons and 3,000 gallons, respectively. Staff noted in the February 1, 2016, Inspection Report that the sediment basins were at or near capacity and threaten to discharge sediment if not properly managed.

7. Unauthorized Discharges Reported in Monthly Progress Reports:

Inadequate sediment basin design, ineffective BMPs, and lack of BMP maintenance on the Site have continued to result in unauthorized discharges of sediment to Pudding Creek, a water of the state and the United States, in violation of Basin Plan prohibitions. The monthly progress reports include a summary of activities on the Site, photographs, and inspection forms from Site inspections. Photographs depict that water samples were taken, but there is no indication that water quality testing was conducted to verify the effectiveness of the BMPs at sediment control, the quality of the discharge, or the impacts to Pudding Creek. The following unauthorized discharges were reported by Ms. Teri Jo Barber, the Discharger's appointed Qualified Storm Water Practitioner (QSP), in the monthly progress reports required by the November 13, 2015, 13267 Order.

A. January Monthly Report

1. On January 7, 2016, a discharge from the Site to Pudding Creek occurred. The discharge seeped through the geotextile-lined sediment basin to underneath the bridge and into the creek (p. 9).
2. On January 14, 2016, a sediment plume in Pudding Creek was photo-documented. The discharge was a result of seepage through the sediment basins (p.10).
3. Ms. Barber included two photos from her January 21, 2016, inspection that indicate recent discharges of sediment to Pudding Creek from the Site. Evidence of sediment discharging to the Pudding Creek from the south bank of the creek was documented in both of the photos (pp. 14-15).

B. February Monthly Report

1. On February 8, 2016, spring water seeped through BMPs and discharged to Pudding Creek (page 33).
2. On February 16, 2016, evidence of a discharge from the primary and secondary sediment basins to Pudding Creek was documented (page 36).

C. March Monthly Report

1. On March 3, 2016, a discharge occurred from the northwestern corner of the secondary sediment basin to Pudding Creek (page 13).
2. On March 5, 2016, a discharge occurred from the Site to Pudding Creek. The collapsed area of the tunnel was the source of the plume of sediment underneath the bridge (pages 16, 17, and 21).
3. On March 6, 2016, the Site was inundated by Pudding Creek during a large rain event, resulting in the discharge of sediment from the southern and northern stockpiles (page 24).
4. On March 8, 2016, a discharge occurred from the primary and secondary basins to Pudding Creek. Water seeped through the straw bale barrier, through an opening in the geotextile material, and discharged to the creek (page 26).
5. On March 10, 2016, the primary sediment basin overflowed, but that the water was successfully routed to the secondary sediment basin. However, a photo depicts discharge located beyond the secondary sediment basin on the bridge and adjacent to Pudding Creek, indicating that a discharge likely occurred (page 35).
6. On March 15, 2016, a discharge occurred from the primary sediment basin to Pudding Creek (page 68).
7. On March 22, 2016, material from the southern stockpile seeped through the straw bale barrier. Photos depict deposited sediment and standing sediment-laden water that had penetrated the straw bale barrier, providing evidence of a previous discharge (page 53).

- 5. Factual Basis of Order:** As noted above, the Discharger owns and operates the Skunk Train and its railway. The Discharger's construction repair activities and/or the conditions revealed at the Site through investigations, and as detailed above, have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into Pudding Creek and creates, or threatens to create, a condition of nuisance and pollution by unreasonably impacting water quality and the beneficial uses of Pudding Creek. Pudding Creek is tributary to the Pacific Ocean; both are waters of the state and the United States. (References hereinafter to waters of the United States are inclusive of waters of the state.)² The construction activities at the Site have discharged sediment-

² The Regional Water Board administers and enforces the Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those waters as "waters of the United States." Waters of the United States have been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters
(footnote continued on next page)

laden storm water into Pudding Creek and continue and/or threaten to discharge sediment-laden storm water thereby creating a condition of nuisance and pollution to the beneficial uses of Pudding Creek in violation of section 301 of the federal Clean Water Act, section 13376 of the California Water Code, and the Basin Plan.

- 6. Beneficial Uses and Water Quality Objectives:** The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference, plans and policies adopted by the State Water Resources Control Board (State Water Board).
- A.** The existing and potential beneficial uses of waters of the North Coast Region are outlined in Table 2-1 of the Basin Plan. Pudding Creek is within the Noyo River Hydrologic Area (HA). The existing beneficial uses of the Noyo River HA are: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Groundwater Recharge (GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Water Contact Recreation (REC-1); Non –Contact Water Recreation (REC2); Commercial and Sport Fishing (COMM); Cold Freshwater Habitat (COLD); Wildlife Habitat (WILD); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); Estuarine Habitat (EST); and Aquaculture (AQUA). The sole potential beneficial use is Industrial Process Supply (PRO).
- B.** The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan’s Action Plan for Logging, Construction and Associated Activities (Action Plan) includes two prohibitions (page 4-29.00) as follows:
- Prohibition 1:*** *The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.*
- Prohibition 2:*** *The placing or disposal of soil, silt, bark, slash, sawdust or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.*

(footnote continued from previous page)

and their tributaries. (40 C.F.R. 122.2) The Porter-Cologne Water Quality Control Act (Porter Cologne) provides the Regional Water Board additional authority to regulate discharges of waste into “waters of the state.” (Water Code § 13260.) The term “water of the state” is defined as “any surface water or groundwater, including saline waters, within the boundaries of the state.” (Water Code § 13050(3).) All waters of the United States that are within the boundaries of California are also waters of the state for purposes of Porter-Cologne.

- C. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives that staff believes are of particular importance in protecting the beneficial uses from unreasonable effects due to waste discharges from construction activities include, but are not limited to, the following:
1. Color: "Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses."
 2. Suspended Material: "Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses."
 3. Settleable Material: "Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses."
 4. Sediment: "The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses."
 5. Turbidity: "Turbidity shall not be increased more than 20 percent above naturally occurring back ground levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof."
 6. Biostimulatory Substances: "Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect the beneficial uses."
 7. Oil and Grease: "Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in visible film or coating on the surface of water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses."
 8. Floating Material: "Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses."
- D. The State Water Board has adopted Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution No. 92-49). Resolution No. 92-49 sets forth the policies and procedures for investigation and cleanup and abatement of discharges under Water Code section 13304, and requires that cleanup levels be consistent with State Water Board Resolution No. 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California* (Resolution No. 68-16), which is included as Appendix 6 of the Basin Plan. Thus, Resolution No. 92-49 requires the

waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board.

7. Legal Authority to Require Cleanup and Abatement:

A. Water Code section 13304, subdivision (a) states, in relevant part:

A person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts...Upon failure of a person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

B. "Waste" is defined by Water Code section 13050, subdivision (d) as,

Sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

C. Sediment, when discharged to waters of the state, is deemed a "waste" as defined in Water Code section 13050. The Discharger caused or permitted waste to be discharged or deposited where it will be, or has the potential to be, discharged to surface waters draining to Pudding Creek, a water of the state.

D. "Pollution" is defined by Water Code section 13050, subdivision (l)(1) as,

An alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

- i. The waters for beneficial uses;*
- ii. Facilities which serve these beneficial uses*

E. "Nuisance" is defined by Water Code section 13050, subdivision (m) as,

- i. *Injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;*
- ii. *Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal;*
- iii. *Occurs during, or as a result of, the treatment or disposal of wastes.*

8. Cleanup and Abatement Action Necessary: Cleanup and abatement action is necessary to ensure that, any current discharges and associated pollution and/or nuisance to Pudding Creek is cleaned up and abated and that any threatened unauthorized discharges of waste to Pudding Creek are prevented, and any impacts to beneficial uses are mitigated. Issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with policies of the Regional Water Board and necessary for the protection of water quality.

9. Technical Reports Required: Water Code section 13267(a) provides that the Regional Water Board may investigate the quality of any water of the State within its region in connection with any action relating to the Basin Plan. Water Code section 13267(b) provides that the Regional Water Board, in conducting an investigation, may require a Discharger to furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained. *Id.* The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the United States. The technical reports are further necessary to demonstrate that appropriate methods will be used to clean up waste discharged to surface waters and surface water drainage courses and to ensure that cleanup complies with Basin Plan requirements. Some of the technical reports required by this Order are also necessary to evaluate the appropriate erosion and sediment control measures to control construction storm water runoff from the Site. In accordance with Water Code section 13267(b), the findings in this Order provide the Discharger with a written explanation with regard to the need for the reports and identify the evidence that supports the requirement to implement cleanup and abatement activities. The Discharger named in this Order owns the site from which waste was discharged, and thus is appropriately responsible for providing the reports.

10. California Environmental Quality Act: Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and as such is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061 (b) (3), 15306, 15307, 15308, and 15321. This Order generally requires the Discharger to submit plans for Executive Officer review and approval prior to implementation of cleanup and

restoration activities at the site. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. To the extent that the Order requires earth disturbing and revegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to approval of the applicable plan. The Discharger will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13304 and 13267, the Discharger shall eliminate the threat of future discharges, and clean up and abate the effects of any past discharges, of sediment and miscellaneous debris into Pudding Creek. The Discharger shall clean up and abate the impacts to water quality in accordance with the scope and schedule set forth below, and implement the actions herein. The Discharger shall obtain all necessary permits for the activities required in this Order.

1. In addition to the Risk Level III CGP *Rain Event Action Plan* (REAP) requirements, the Discharger is required to submit all REAPs whenever they are developed pursuant to CGP requirements (page 8 of Attachment E) to SMARTS and include the additional information as follows:
 - a. A map depicting the locations of active and inactive construction sites and BMPs at each of the locations.
 - b. A summary describing the function of each BMP, including whether it is a stand-alone control, or is dependent on the effectiveness of other controls to function properly.
 - c. A summary describing the condition of each BMP, including the date that it was last maintained, its current condition, and whether it requires maintenance to function properly.
 - d. A summary of how any equipment onsite will be protected to ensure that it will not be exposed to precipitation.
2. The Discharger is required to submit all visual inspection-related records pursuant to CGP requirements (page 12, I.3.h of Attachment E), including, but not limited to, weekly inspection reports, visual inspection reports from pre-, during, and post-rain events,

and inspection checklists, within 72 hours of the visual inspections conducted to SMARTS.

3. **Immediately** ensure that discharges from the Site to Pudding Creek are in compliance with the CGP Risk Level III requirements³.
4. **Immediately** ensure that stockpiles are contained and maintained in compliance with CGP Risk Level III Requirements³. The stockpiles must be protected and/or located⁴ such that discharges to Pudding Creek are eliminated. It is recommended that any waste material that will not be used in the project be removed from the Site by September 1, 2016.
5. **By no later than August 22, 2016**, submit all previously conducted water quality sampling test results.
6. **By no later than August 22, 2016**, submit volume estimates for all previous discharges reported in monthly progress reports. For future monthly progress reports, the Discharger is required to include a volume estimate of any discharges from the Site.
7. **By no later than September 16, 2016**, identify and implement source control measures to stabilize the collapsed hillside area.
8. **By no later than September 16, 2016**, sediment basins must be re-designed and configured so that they are in compliance with CGP Risk Level III, Requirement E, Sediment Controls⁵.
9. **By no later than October 14, 2016**, submit a *long-term stabilization plan*⁶. This plan must be reviewed and approved by the AEO and shall include an implementation schedule and:
 - A. Maps and figures at 1:12000 scale or larger (e.g., 1:6000)
 1. A map of the site including areas of operations, roads, water bodies, all cleared areas, water diversions and/or sediment traps or storage features, all structures, water crossings, and general drainage patterns and directions. This map will be used as the Base Map.

³ For CGP Risk Level III requirements, refer to Attachment 1, *CGP Attachment E- Risk Level III Requirements*, link on page 17.

⁴ Prior to disturbance of any riparian vegetation or dredge and fill activities in waters of the state, consultation with the Regional Water Board is required to determine if any additional permits are necessary.

⁵ For CGP risk Level III sediment basin requirements, refer to Attachment 2, *CASQA Excerpt Fact Sheet SE-2, Sediment Basin*, link on page 17.

⁶ This *long-term stabilization plan* supersedes the *long-term erosion control plan* required by the November 13, 2015, 13267 Order, except for enforcement purposes as the *long-term erosion control plan* has not yet been submitted.

2. Site figure using the Base Map showing locations of rubbish, waste, fuel storage and other pollutants including equipment stored, piled, or placed at locations on the Site where the materials or their contents are exposed to rainfall and/or runoff, or where they can enter or leach into surface water or groundwater. Identify locations where soil or water pollution is apparent based on site observations (visual and/or odor).
 3. Site figure using the Base Map showing locations or areas with a potential for slope instability, erosion and sediment delivery into surface waters. These may include but are not necessarily limited to roads at stream crossings, fill prisms located in or adjacent to watercourses, and cleared or disturbed, erodible soil areas that drain into surface waters.
- B. Design drawings that delineate existing site conditions including existing surface waters, projected restored hillslopes, spoil disposal sites, equipment storage sites, water diversion pipes, permanent hillslope stabilization features, replanting areas, photo monitoring points for construction and post-construction monitoring, and any other features or site construction details to complete the scopes of work; design and construction standards for stabilization and for replanting of exposed soils with native vegetation; design and construction standards for each of the three sediment basins; and erosion and sediment control methods and standards for unanticipated precipitation during remediation.
 - C. An inventory and assessment of constructed features or placed material (such as earthen dams or sediment traps, fill material piled on the stream bank or stockpiled material, or other erosion control features near or in watercourses or other surface waters) that will remain in place or be removed and provide an appropriate plan to stabilize or remove those features.
 - D. Design details and schedule to stabilize hillslopes, streamside areas or areas that have been disturbed. List all permits (e.g., Water Quality Certification, Lake and Streambed Alteration Agreement) required and/or obtained for this work.
10. **By no later than October 14, 2016**, submit a *bioassessment monitoring and reporting work plan* and implementation schedule for review and approval by the Executive Officer of the Regional Water Board. Bioassessment Monitoring is required to assess the effect of the discharges from the Site on the biological integrity of Pudding Creek: The bioassessment shall include the collection and reporting of specified instream biological data and physical habitat data upstream and downstream of the Site using the Surface Water Ambient Monitoring Program (SWAMP) protocol⁷.

⁷ For SWAMP protocol, refer to Attachment 3, *Standard Operating Procedures (SOP) for the Collection of Field Data for Bioassessments of California Wadeable Streams: Benthic Macroinvertebrates, Algae, and Physical Habitat* on page 17 and Attachment 4, *Supplemental Guidance for the SWAMP Bioassessment Field Protocol*, on page 18.

GENERAL REQUIREMENTS AND NOTICES

1. Duty to Use Qualified Professionals: The Discharger shall provide documentation that plans, and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Discharger shall include a statement of qualification and registration numbers, if applicable, of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp, as applicable, to the report, plan, or document.

2. Signatory Requirements: All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his or her knowledge, the report is true, complete, and accurate. The Discharger shall also state if he agrees with any recommendations/proposals and whether he approves implementation of said proposals. Any person signing a document submitted under this Order shall make the following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

3. Notice of Change in Ownership or Occupancy: The Discharger shall file a written report on any changes in the site's ownership or occupancy. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.

4. Submissions: All monitoring reports, sampling reports, technical reports or notices required under this Order shall be submitted to Shin-Roei Lee, the Assistant Executive Officer, and Devon Jorgenson, Engineering Geologist for the Construction Storm Water Program, either by email or mail:

Shin-Roei Lee, Assistant Executive Officer
Shin-Roei.Lee@waterboards.ca.gov

Devon Jorgenson, Engineering Geologist
Devon.Jorgenson@waterboards.ca.gov

By email to: NorthCoast@waterboards.ca.gov (preferred)

By mail to: NCRWQCB, 5550 Skylane Blvd. Suite A, Santa Rosa, CA 95403

- 5. Other Regulatory Requirements:** The Discharger shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work.
- 6. Cost Recovery:** Pursuant to Water Code section 13304, the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
- 7. Delayed Compliance:** If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer.
- 8. Potential Liability:** If the Discharger fails to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of administrative civil liability up to the following maximum liability amounts: \$1,000 per violation per day pursuant to Water Code section 13268, \$5,000 per violation per day pursuant to Water Code section 13350, and/or \$10,000 per violation per day pursuant to Water Code section 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including but not limited to, violation of the terms and condition of this Order.
- 9. No Limitation of Water Board Authority.** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the site consistent with the Water Code. This Order may be revised as additional information becomes available.
- 10. Modifications.** Any modification to this Order shall be in writing and approved by the Executive Officer of the Regional Water Board, including any potential extension requests.
- 11. Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and Title 23, California Code of Regulations, section 2050 et al. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

This Order is effective upon the date of signature.

Matthias
St. John
Water Boards

Digitally signed by
Matthias St. John
Date: 2016.08.03
09:31:26 -07'00'

Matthias St. John
Executive Officer

16_0036_Skunk_Train_CAO

Referenced Documents: 1. CGP Attachment E- Risk Level III Requirements:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_att_e.pdf

2. CASQA Excerpt Fact Sheet SE-2, Sediment Basin:

https://www.casqa.org/sites/default/files/downloads/fact_sheet_se-02_rev2.pdf

3. Standard Operating Procedures (SOP) for the Collection of Field Data for Bioassessments of California Wadeable Streams: Benthic Macroinvertebrates, Algae, and Physical Habitat

http://www.waterboards.ca.gov/water_issues/programs/swamp/bioassessment/docs/combined_sop_2016.pdf

4. Supplemental Guidance for the SWAMP Bioassessment Field Protocol

http://www.waterboards.ca.gov/water_issues/programs/swamp/bioassessment/docs/guidance_doc_v4_0516.pdf

5. Seidner and Elder February 1, 2016, Inspection Report

Certified Return Receipt Requested

cc:

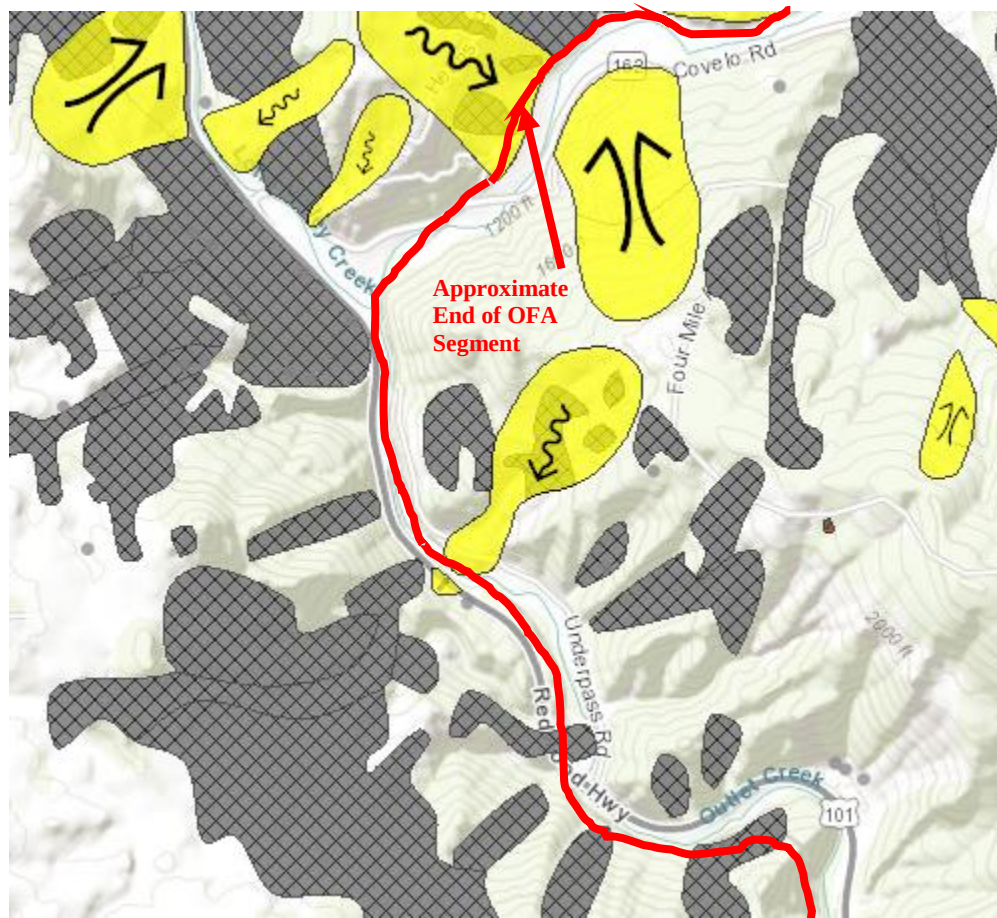
Angela Liebenberg
California Department of Fish and Wildlife
Angela.Liebenberg@wildlife.ca.gov
Vanessa Young
State Water Resources Control Board
Vanessa.Young@waterboards.ca.gov

EXHIBIT E

<https://maps.conservation.ca.gov/cgs/lsi/>

*Red line depicts approximately location of the OFA Segment

*Arrow depicts the end of the OFA Segment



Landslide Types

Applies to CGS Mapped, Current Standard Deposit, Source, and Single Features
[Click for more information](#)

Deposits:

- ▼ ▶ Debris Flow
- ⇓ Debris Slide, Soil Slide, or Soil Topple
- ⋈ Earth Flow
- ↓ Rock Fall, Rock Topple, or Soil Fall
- ↘ Rock Slide
- ↔ Rock Spread
- ▶ ▲ Debris Fan

Landslide Activity

Applies to CGS Mapped, Current Standard Deposit and Single Features
[Click for more information](#)

- Active/Historic
- Dormant Young
- Dormant Mature
- Dormant Old/Relict
- Dormant Age Not Specified

EXHIBIT F

3 S.T.B. 634, 1998 WL 452837

SURFACE TRANSPORTATION BOARD (S.T.B.)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN KING COUNTY, WA IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: August 4, 1998

Service Date: Late Release August 5, 1998

SURFACE TRANSPORTATION BOARD DECISION

STB Docket No. AB-6 (Sub-No. 380X)¹

*1 By the Board, Chairman Morgan and Vice Chairman Owen.

This decision rejects an offer of financial assistance (OFA) filed by Redmond-Issaquah Railroad Preservation Association (RIRPA) and defers action on trail use requests filed by King County, WA, and The Land Conservancy of Seattle and King County (TLC).

BACKGROUND

This proceeding concerns the disposition of a line of railroad (the Lake Sammamish line or the line) extending between milepost 7.3, near Redmond, and milepost 19.75, at Issaquah, a distance of 12.45 miles in King County. The line runs along Lake Sammamish, several miles to the east of Seattle, WA. No scheduled train operations have been conducted on the line since BNSF embargoed it for safety reasons on August 8, 1996.

On April 15, 1997, TLC, a noncarrier, filed a notice of exemption under 49 CFR 1150.31 to acquire and operate the Redmond-Issaquah line. The exemption became effective on April 22, 1997, and BNSF and TLC consummated the transaction on that date.² Then, on June 11, 1997, less than 3 months later, TLC filed a petition for exemption to abandon the line. TLC's petition included a request for exemption from the provisions of 49 U.S.C. 10904, which provide any financially responsible person the opportunity to buy or subsidize a line authorized for abandonment at a price set by the Board. The petition also included a request for the issuance of a notice of interim trail use or abandonment (NITU) under 16 U.S.C. 1247(d).

In a decision served September 26, 1997,³ we concluded that TLC never had any intention of reinstituting rail service on the line, and that, instead, TLC had put into effect a plan to convert the line to trail use as soon as possible after acquisition of the line. We also concluded that TLC's actions constituted a misuse of our procedures, which envision that a party that acquires a nonabandoned rail line under 49 U.S.C. 10904 does so to continue to provide rail service.

To protect the integrity of our processes, we revoked our authority for the acquisition and ordered TLC to reconvey the Redmond-Issaquah line to BNSF.⁴ We noted that BNSF itself might pursue abandonment, and that interested persons, such as King County, might seek trail use/railbanking conditions or make an offer of financial assistance to provide for continued operations at that point.

In a separate decision served September 29, 1997, the Board dismissed TLC's petition to abandon the line. By petitions filed October 7 and 17, 1997, respectively, TLC and BNSF sought reconsideration of the decision revoking the acquisition. On October 9, 1997, TLC petitioned for reinstatement of its abandonment proceeding. As pertinent, in the acquisition exemption proceeding, RIRPA intervened and replied to the petitions. The National Association of Reversionary Property Owners (NARPO) also replied to the petitions.

*2 In a decision served May 13, 1998, we concluded that TLC and BNSF had failed to establish any basis for reconsideration of the prior decision revoking the acquisition exemption, and thus we denied their petitions seeking such relief.⁵ We also found that title to the line had never appropriately passed to TLC, but we continued to hold in abeyance the requirement that TLC reconvey the line to BNSF. We noted that the record showed that no traffic had moved over the line for nearly 2 years, that there was little, if any, demand for future service over the line, that BNSF wanted to dispose of the line, which required substantial rehabilitation, and that King County wanted to acquire it for trail use. In view of these facts, we determined that the best way to accommodate the public interest was to reinstate the abandonment proceeding initiated by TLC, substitute BNSF for TLC (because title had never properly passed), and determine whether the criteria for an abandonment exemption had been met.⁶ We found that the criteria had been met and granted BNSF an exemption to abandon the Redmond-Issaquah line, subject to labor protection and environmental conditions. We directed BNSF to advise us by May 26, 1998, whether the railroad was going to exercise its abandonment authority.

In the May 1998 decision, we noted (at pp. 13-14) that, if BNSF decided to exercise the abandonment exemption authority, any person desiring rail service to be continued would have the opportunity to file an OFA. We advised, however, that the facts that caused us to find in the acquisition proceeding that TLC never had any intention of providing rail service on the line made it highly unlikely that any future acquisition proceeding involving the line, whether under 49 U.S.C. 10902 (acquisition by Class II and Class III rail carrier) or 49 U.S.C. 10904 (offers of financial assistance), would survive review by us.

We emphasized that the OFA process envisions that a party that acquires a rail line under section 10904 will continue to provide rail service. Where that is not the case, we noted, we will not allow our jurisdiction to shield a railroad, or any other party seeking relief before us, from the legitimate processes of Federal, state, or local law.⁷ Given our concern about the potential for further misuse or abuse of our processes in this matter, at p. 14 of our decision we indicated our intentions regarding any OFAs that might be filed:

Given the circumstances surrounding this case, we advise the public and all the parties that have participated in these proceedings that we intend to carefully review the substance as well as the form of any OFA that should be filed involving this line. Specifically, because the information now before us shows that this line is not currently being used for rail service and that there is no apparent demand for rail service, any entity filing an OFA should be prepared to submit not only evidence of its financial responsibility, but also evidence of a public need for continued rail service. Similarly, anyone challenging an OFA should be prepared to address why the OFA is not bona fide. We will not tolerate abuse of the OFA procedures by either proponents or opponents of an OFA.

*3 On May 26, 1998, BNSF filed a letter stating that it had not yet determined whether it will abandon the Redmond-Issaquah line. BNSF also stated, however, that it intends to take whatever steps are necessary to be relieved of its common carrier status with respect to the subject line.

On June 2, 1998, RIRPA filed an OFA to acquire the line.⁸ On June 5, 1998, BNSF filed a petition to reject the OFA.⁹ Also on June 5, Darigold, Inc., the sole shipper to use the line in recent years,¹⁰ filed a letter supporting railbanking of the line and dismissal of the OFA. On June 8, 1998, TLC filed a motion to dismiss the OFA. Also on that date, King County filed objections to an OFA proceeding, renewed its request for issuance of a NITU, and reaffirmed its “statement of willingness” with respect to the subject line.¹¹ Also filing a statement of willingness in this proceeding was TLC itself, on June 1, 1998.

In its OFA, RIRPA offered to buy the line for \$997,260. The offeror provided evidence to demonstrate that it had assets of \$1.9 million, enough, RIRPA maintained, to finance the acquisition plus start-up costs of \$52,477 and \$77,110 needed to bring the line up to Federal Railroad Administration (FRA) “excepted” track standards.¹² Noting that BNSF had estimated the line to be worth \$16,197,000, RIRPA offered an explanation of the discrepancy between the railroad's valuation and RIRPA's offer by stating that BNSF possessed only an easement interest for 23 of the 30 parcels comprising the line. RIRPA supported its valuation by verified statements of individuals allegedly qualified to assess rail real estate and to value scrap track material.

DISCUSSION AND CONCLUSIONS

Generally where an OFA is filed, the Director of the Office of Proceedings, exercising delegated authority, would determine if the offeror possessed the wherewithal to make good on the offer, and, in so doing, consider whether the offeror had explained any discrepancy between the offer and the carrier's estimate of the value of the line. But as we specifically explained in our May 1998 decision, it is appropriate for us to require, and carefully review before instituting an OFA proceeding, evidence of a public need for continued rail services, given the unusual circumstances surrounding this case (i.e., a record showing that (1) BNSF embargoed the line for safety reasons in August 1996, (2) no traffic has moved on it since that time, (3) the cost of restoring the line would be substantial, and (4) we had no information to suggest that prospects for anything more than de minimis traffic on the line now or in the future exists--certainly not enough to cover rehabilitation, maintenance and operating costs).

In implementing [section 10904](#) of the ICC Termination Act, formerly section 10905 of the Interstate Commerce Act, we must be mindful that Congress enacted the OFA provisions to provide for continued rail service. The “aim of [former section 10905] is not simply the maintenance of rail lines but the continuation of rail service.” [Conrail v. ICC](#), 29 F.3d 706, 712 (D.C. Cir. 1994). In implementing former section 10905, our predecessor agency, the Interstate Commerce Commission, concluded that

*4 [The statute] envisions either an uninterrupted service or a continuation of service within a reasonable period of time Those situations in which a purchaser of rail properties has no affirmative plans for continuation or resumption of service, but merely holds out the possibility of service at some unspecified future time, are not properly to be considered offers of financial assistance and do not fall within the scope of [the statute].

[Abandonment of R. Lines & Discontinuance of Serv.](#), 365 I.C.C. 249, 260 (1981).

While the ICC Termination Act streamlined the language in former section 10905, now [section 10904](#), language remaining in the statute clearly reaffirms the fundamental purpose of [section 10904](#) to continue rail service. For example, [section 10904\(b\)\(1\)](#) refers to “an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation.” Section 10904Co(3) requires a rail carrier to provide certain data “which would be required to continue rail transportation over that part of the railroad line.” [Section 10904\(f\)\(1\)\(B\)](#) provides for the Board to set terms and conditions at not less than fair market value for the line, “including... all facilities on the line or portion necessary to provide effective transportation services.” [Section 10904\(f\)\(4\)\(A\)](#) provides that no offeror may “transfer or discontinue service” for 2 years and shall not transfer the line to anyone other than the previous rail carrier for 5 years.

Accordingly, this agency's (and its predecessor's) long-standing precedent that an offer must contemplate continued rail service reflects current law as well as the prior statute. See, e.g., [Owensville Term. Co.--Aband. Exemption-- In Gibson and Posey Counties, OFA](#), Docket No. AB-477 (Sub-No. 2X) (STB served Dec. 16, 1997); [Union Pac. R. Co.--Aband. Exemption--In Lancaster County, NE. In the Matter of a Request to Set Terms and Conditions](#), Docket No. AB-33 (Sub-No. 71X) (ICC served Sept. 28, 1992); [Norfolk and Western Ry. Co.--Aband. Exemption--Between Bowyer Creek Junction and Burma, VA](#), Docket No. AB-290 (Sub-No. 43X) (ICC served Dec. 5, 1988); [Conrail Aband. of W. 30th Street in New York](#), Docket No. AB-167 (Sub-No. 493N) (ICC served Jan. 13, 1987).

The first provision aimed at allowing shippers or other interested parties to preserve lines approved for abandonment by purchasing the line or subsidizing the carriers was enacted as 49 U.S.C. 1a (6), (7), and (11) by sections 802 and 809(c) of the

Railroad Revitalization and Regulatory Reform Act of 1976, [Public Law 94-210](#). Sections 1a (6), (7), and (11) of the Interstate Commerce Act were recodified as section 10905 by the Revised Interstate Commerce Act, [Public Law 95-473](#), approved Oct. 17, 1978. In reviewing these provisions as part of proposed legislation (the Railroad Transportation Policy Act of 1979, which became the Staggers Rail Act of 1980, or the Staggers Act), the Senate Commerce Committee noted,¹³

*5 Present law ([section 10905 of title 49 of the U.S. Code](#)) sets up a procedure where rail lines approved for abandonment may be purchased or subsidized in order to continue rail service (emphasis added).

Subsequently, in the Conference Report on the Staggers Act, the Conferees noted that they had adopted the Senate bill, section 202, which was designed to assist shippers who are sincerely interested in improving rail service, while at the same time protecting carriers from protracted legal proceedings....

H.R. Rep. No. 1430, 96th Cong., 2d Sess. 125 (1980) (emphasis added). In short, the legislative history of the Staggers Act makes clear that the financial assistance provisions were to be invoked only when those offering financial assistance did so because they were “sincerely interested in improving rail service”. See [Hayfield Northern R. v. Chicago & N.W. Transp.](#), 467 U.S. 622, 630 & n.8 (1984).

Here, after considering all the evidence presented by RIRPA and the other parties, we conclude that the record does not permit us to conclude that the offer is motivated by a desire to provide continued rail service. Nor can we find that continued rail service is likely to result from the offer. That being the case, it would be an abuse of our processes to permit the section 10904 process to go forward.¹⁴ Accordingly, RIRPA's OFA will be rejected.

RIRPA is an association of individuals, most of whom live along the shore of Lake Sammamish adjacent to the railroad right of way. In motions asking us to dismiss the OFA, TLC, King County, and the BNSF (herein collectively, the opponents) say that RIRPA's only interest is to frustrate the development of a trail on the right of way and to thereby preserve the privacy of RIRPA members. The opponents offer correspondence by RIRPA about the project to substantiate this claim.¹⁵

This evidence is relevant but is not, by itself, dispositive. Nothing prohibits landowners adjacent to a right of way from filing an OFA. That their primary motivation might be to defeat interim trail use would by itself not condemn an offer, as long as they were intending to provide rail service and there existed a real need for that service. Indeed, correspondence prepared at a time when this line was still in service envisioned continuing service to the last remaining shipper on the line.¹⁶

But that shipper, Darigold, stopped using the line for shipping butter following the BNSF embargo for safety reasons and has made clear that it does not oppose abandonment and has no desire to use this line for rail service again.¹⁷ In response to the request in our May 1998 decision that any offeror submit evidence of a public need for rail service in its OFA, RIRPA submitted verified statements from four shippers. However, RIRPA's statements provide no basis for us to conclude that future traffic on the line is other than highly speculative.

None of the companies that submitted verified statements has ever shipped or received traffic over this line. Indeed, it does not appear that any has ever used rail service at all. Two of the companies ship manufactured goods--boats, wood stoves, saunas, and hot tubs--that rarely move by rail. Both use truck exclusively and make no commitment to use the line. The perfunctory support statements from these companies indicate only that they would consider using rail service if rates were reasonable and competitive with alternative modes of transportation. Neither company has any agreement with RIRPA on what such a rate might be. As neither has a rail siding, each would need to have any rail shipment transloaded onto truck, a costly, time consuming process which poses the threat of damage, especially with a commodity such as boats.

*6 A third statement of support was submitted by Schrod-Mar, Inc. (SMI), which supplies sand and gravel to asphalt and concrete production facilities at Redmond, WA. SMI says it would be interested in shipping gravel from Palmer, WA, to a siding on the line for transloading onto truck for delivery to SMI's facilities. SMI currently uses truck but expresses concern about traffic congestion and possible weight limits on a part its routing, which would necessitate circuitous movements. SMI states that it has requested RIRPA to advise it of "when and under what terms SMI can begin to use RIRPA's rail service." Apparently neither has made any commitment to the other.

SMI's statement does not show a public need for continued rail service on this line. As BNSF points out in its comments, SMI does not say it is served by rail at origin, and it does not appear to be. Thus, gravel would have to be trucked from origin to the railhead, loaded into freight cars, transported to the Lake Sammamish line, transloaded onto trucks, and hauled to the destination. The shipment would have to move over two carriers, BNSF and RIRPA. The entire haul is only slightly in excess of 100 miles, a very short haul for a truck-rail-truck move involving two rail carriers. SMI has no transloading facility at origin and apparently would have to build one, which would require a significant investment. BNSF would charge the rate at origin, and there is no indication that that carrier could or would quote a rate that would compete with existing trucking service. SMI has made no commitment to volumes and has not sought a rate quote from either BNSF or RIRPA.

The fourth statement is from Lakeside Industries (Lakeside), which ships rock. Lakeside operates a gravel pit and rock crushing facility on the Lake Sammamish line at Issaquah, and it states that the reserves of rock there have been almost depleted. Lakeside states that it needs rail service to bring rock from Centralia, WA, 90 miles away, to Issaquah, so that Lakeside could crush the rock there and ship it to Lakeside customers. Lakeside does not explain why it must employ this seemingly circuitous procedure rather than crushing rock at origin in Centralia the way it does now at Issaquah.

The movement from Centralia would originate on a short line, the Puget Sound and Pacific Railroad, then move over BNSF and RIRPA, a three-line haul. This would seem to be an inefficient and expensive movement requiring extensive switching on a very short line haul. The entire movement here is only slightly more than 200 miles.

Lakeside sought a rate quote from BNSF. That carrier quoted a rate of \$1,361 per car, which Lakeside has rejected as unreasonably high. That being the case, Lakeside does not appear to offer any potential as a source of business of the RIRPA. Lakeside speaks of challenging the BNSF rate if RIRPA acquires the line. But inasmuch as Lakeside has shipped by truck over this route for years, it would be extremely unlikely that the Board would have jurisdiction over the reasonableness of such a rate.¹⁸

*7 The record here and in the earlier proceedings before us involving this line contain ample evidence that the Lake Sammamish line would require extensive rehabilitation in order to make the line operable. TLC claims that the cost of rehabilitating the line to carry traffic at 10 miles per hour under FRA Class 1 standards will amount to almost \$1,000,000, and it has submitted a detailed analysis to support its argument.¹⁹ TLC has claimed in its abandonment petition that it would cost in excess of \$650,000 to rehabilitate the line and, in light of the recent washout of a bridge, TLC states that it would now cost \$971,000 to bring the line up to either FRA Class I standards or to FRA "excepted" standards.

RIRPA claims that it would only cost \$77,1102²⁰ to rehabilitate the line to FRA "excepted" track standards, and submits a verified statement in support of the claim. However, the one-page statement is not a contract to perform the work for the amount stated and is not supported by any real analysis.

This track has been in excepted status--less than FRA Class 1 status--for more than 4 years. The track was embargoed for safety reasons in August 1996 and no traffic has moved over it since that time. The inspection conducted for TLC by R.L. Banks identifies significant deficiencies in the track, which is hardly surprising in view of the history of the line in recent years. Thus, even if the appraisal conducted by TIC may be somewhat high, the record leaves no doubt that substantial rehabilitation would have to be undertaken to again make the line operable.

The record indicates that no traffic has moved over the line in almost 2 years, that any prospect for future traffic is highly speculative, and that the cost to rehabilitate the line is substantial. In short, given all the circumstances, it is not reasonable to believe that the offeror would make the substantial investments required to rehabilitate the track (including the replacement of a bridge) in order to pursue rail traffic that ceased long ago and that, based on the shipper statements submitted by RIRPA itself, does not show any real likelihood of returning. This is particularly true where, as here, the offeror is not an entrepreneur with a track record of running short lines and a sound business plan to attract new shippers, but rather is an association consisting mostly of landowners who live along the line. RIRPA's expression of willingness to haul traffic that seems unlikely to materialize does not provide a sufficient basis for invoking section 10904.

In support of its OFA, RIRPA relies on an ICC decision allowing an offeror, over the objections of the abandoning railroad, to subsidize a rail line that had been out of service. Illinois Central Railroad Company--Abandonment Exemption--In Perry County, IL, Docket No. AB-43 (Sub No. 164X) (ICC served Nov. 8, 1994 and Jan. 12, 1995) (Perry County). RIRPA specifically cites language in the November 8 decision in Perry County, stating, at 3,

*8 The Commission has never required there to be recent actual service for transportation availability to be continued through an OFA. Rather, it has viewed its task under 49 U.S.C. 10905 [now 10904] as preserving the potential for transportation.

RIRPA's reliance on Perry County is misplaced. There, the owner of an inactive coal mine was willing to make payments to the railroad to preserve a line from which the mine owner received no immediate benefit whatever. The offeror's willingness to do so manifested a strong intent to use the line for rail service in the future if the mine were again to become active. No other reason existed for the mine's owner to make the payments. Here, there is no evidence to suggest that RIRPA has a similar interest in acquiring the line to preserve the line for future rail service. The issue is not whether service is currently being provided, but whether the circumstances in their entirety indicate that the financial assistance is being offered for rail service. The evidence in Perry County indicated that the answer was yes. The evidence here indicates that the answer is no.

Given all of these circumstances, we cannot conclude that the offer of financial assistance filed by RIRPA is for continued rail service. That being the case, we will not institute a proceeding under section 10904, and, accordingly, we need not determine whether RIRPA is a financially responsible person.

King County and TLC have requested that interim trail use/railbanking be imposed under 16 U.S.C. 1247(d). They have also submitted statements of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service, as required under 49 CFR 1152.29. The requests comply with the requirements for interim trail use/railbanking.

As noted, however, BNSF has not notified the Board whether it is going to exercise its abandonment exemption authority. Therefore, we will defer action on the trail use requests of King County and TLC pending BNSF's notifying us whether it is going to exercise its abandonment exemption authority and, if so, whether it is willing to negotiate for trails use.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The offer of financial assistance submitted by RIRPA is rejected.
2. Action on the trail use requests of King County and TLC is deferred.
3. This decision is effective on its service date.

Vernon A. Williams

Secretary

1 This proceeding previously was handled on a consolidated record with [The Land Conservancy of Seattle and King County--Acquisition and Operation Exemption--The Burlington Northern and Santa Fe Railway Company](#), STB Finance Docket No. 33389 (TLC Acquisition), and [The Land Conservancy of Seattle and King County--Abandonment Exemption--In King Colt, WA](#), STB Docket No. AB-508X (TLC Abandonment).

Footnotes

- 2 The notice of exemption was published on April 29, 1997 ([62 FR 23291](#)) and served on April 30, 1997.
- 3 The decision was issued in [TLC Acquisition](#) and was prompted by a petition to revoke filed by the United Transportation Union, which withdrew its opposition after the decision was issued.
- 4 In a subsequent decision served October 22, 1997, the Chairman ordered the reconveyance requirement held in abeyance pending resolution of petitions to reconsider the September 26 decision.
- 5 Petitions for review of the May 13, 1998 decision, are pending in [The Land Conservancy of Seattle and King County v. STB](#), No. 98-70776 (9th Cir. filed July 10, 1998) and in [Burlington Northern v. STB](#), No. 98-60432 (5th Cir. filed July 10, 1998).
- 6 We also gave the BNSF proceeding the new docket number and title shown in the heading of this decision.
- 7 See [Modem Handcraft, Inc.--Aban.](#), 363 I.C.C. 969 (1981); [Kansas City Pub. Ser. Frgt. Operation--Exempt.--Aban.](#), 7 I.C.C.2d 216, 224-226 (1990); and [Chelsea Property Owners--Aban.--The Consol. R. Corp.](#), 8 I.C.C.2d 773, 778 (1992), *aff'd sub nom. Consolidated Rail Corp. v. ICC*, 29 F.3d 706 (D.C. Cir. 1994); and [Norfolk and W. Ry.--Aband. Exemption--In Cincinnati](#), Hamilton County, OH, STB Docket No. AB-290 (Sub-No. 184X) (STB served May 13, 1998).
- 8 On June 12, 1998, RIRPA filed an objection to interrogatories propounded by BNSF and received by RIRPA on May 27, 1998. On June 24, 1998, RIRPA asked that the Board grant an exemption from [49 U.S.C. 10904\(e\)](#) to provide for at least 25 days after any alternative Board finding under [49 U.S.C. 10904\(d\)\(2\)](#) for RIRPA to request the Board to set terms and conditions for financial assistance, rather than 30 days after the OFA was made as required under [section 10904\(e\)](#). On July 2, 1998, RIRPA asked the Board to set terms and conditions for financial assistance. BNSF and TLC replied to RIRPA's request. Subsequently, several additional pleadings relating to the request and replies were filed. In light of our action here, we need not act on these pleadings.
- 9 On June 26, 1998, BNSF filed a motion to compel RIRPA to respond expeditiously to certain specified interrogatories so that the railroad may respond fully to the Board's May 13 directive that any opponents of an OFA "be prepared to address why the OFA is not bona fide". In view of our rejection of the OFA here, we need not act on this motion.
- 10 Another entity received 7 carloads in 1994 and 1995 but none in 1996.
- 11 King County's pleading was submitted by the County's Department of Parks and Recreation. For simplicity, we will continue to refer to the entity as "King County."
- 12 The FRA has adopted standards governing track safety. See 49 CFR Part 213. Class 1 standards require that track be maintained at levels that permit operating speeds of up to 10 m.p.h.; Class 2 standards require maintenance that will permit 25 m.p.h. speeds; and so on. In certain limited circumstances where their track quality will not even permit

maximum train speeds of 10 m.p.h., track owners may seek to be “excepted” from class I standards. FRA is currently considering changes to its regulations concerning “excepted” track.

- 13 Hearings before the Committee on Commerce, Science and Transportation, United States Senate, 96th Congress, First Session in S.1946, “To Reform the Economic Regulation of Railroads, And For Other Purposes”, at 47.
- 14 BNSF has declined to indicate whether it will exercise the abandonment authority granted. If BNSF declines to consummate the abandonment authority, the OFA would be moot. But we will issue a decision on this OFA here to resolve the unique issues which it raises.
- 15 See TLC Motion to Dismiss, Appendices I, J, K, and L; King County Objections, Enclosure C; and BNSF's Petition to Reject, Exhibit A.
- 16 TLC Motion to Dismiss, Exhibit I, August 26, 1996 letter of the East Sammamish Property Owners Association, p. 3: “After acquisition we would then contract out with a company that specializes in running short line railroads. As long as Darigold still ships butter, we should be able to break even running the line and recoup our money when and if we later abandon the line when Darigold stops shipping.”
- 17 Letter from Douglass C. Marshall, Vice President Public Affairs, Darigold, June 4, 1998.
- 18 The Board has jurisdiction over rate complaints only if the complainant demonstrates that the carrier is “market dominant,” [49 U.S.C. 10707](#), a showing that cannot be made if the rail carrier faces effective intermodal competition, i.e., competition from trucks. Here, of course, Lakeside uses truck extensively and exclusively, and there is nothing in the record to suggest that it could not continue to do so.
- 19 BNSF also indicates that the cost of restoring the line is substantial and unjustifiable.
- 20 The estimate notes that it does not include the construction of track that would be needed to interchange cars. This construction would cost \$39,477, according to RIRPA's witness. The witness states that the construction would not be necessary if the BNSF made its facilities available for that purpose. But apparently, BNSF has not agreed to such an arrangement.

3 S.T.B. 634, 1998 WL 452837

EXHIBIT G

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7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
EUREKA DIVISION

10 MENDOCINO RAILWAY, a California
11 corporation,

12 Plaintiff

13 v.

14 JACK AINSWORTH, in his official capacity as
Executive Director of the California Coastal
15 Commission; CITY OF FORT BRAGG, a
California municipal corporation; and DOES 1
16 through 20, inclusive,

17 Defendants.

Case No.: _____

**COMPLAINT FOR DECLARATORY
JUDGMENT**

INTRODUCTION

1
2 1. This case is about state and local authorities’ illegal efforts to impose land-use permitting
3 and preclearance requirements on a federal railroad’s land-use activities, in blatant violation of federal
4 preemption principles.

5 2. Plaintiff Mendocino Railway is a Class III, common-carrier railroad with facilities,
6 equipment and operations located partly in California’s coastal zone, including in the City of Fort Bragg.
7 Mendocino Railway has been and continues to be under the exclusive jurisdiction of the federal State
8 Transportation Board (“STB”), as mandated by the Interstate Commerce Commission Termination Act
9 (“ICCTA”), 49 U.S.C. § 10501(b). Consequently, Mendocino Railway’s rail-related work and operations
10 are not subject to state and local land-use permitting and preclearance regulation.

11 3. The California Coastal Commission (“Commission”)—a state agency that preclears land-
12 use projects in the coastal zone pursuant to state law—has demanded that Mendocino Railway apply for
13 a state land-use permit before performing any rail-related work on its railroad property located within the
14 coastal zone. As a federally regulated railroad with preemption rights, Mendocino Railway has refused to
15 submit to the Commission’s demands as to its rail-related activities. But the constant threat of enforcement
16 action by the Commission, including stop-work orders and prohibitively expensive penalties and fines,
17 for rail activities undertaken without that agency’s pre-approval has rendered Mendocino Railway unable
18 to proceed with its railroad projects as planned.

19 4. The City of Fort Bragg (“City”) has joined with the Commission in demanding that
20 Mendocino Railway submit to its plenary land-use authority over, and preclearance review of, rail-related
21 activities occurring within the City’s boundaries. The City has gone so far as to file a state-court action to
22 compel Mendocino Railway to apply for permits for any and all work on its railroad property and facilities
23 within City boundaries. As a federally regulated railroad with preemption rights, Mendocino Railway has
24 refused to submit to the City’s permit jurisdiction, as well.

25 5. This action seeks to resolve this ongoing controversy between Mendocino Railway on the
26 one hand, and state and local authorities on the other. To avoid the unlawful enforcement of federally-
27 preempted regulation, the concomitant disruption of its railroad operations and projects, and the
28 uncertainty generated by this dispute, Mendocino Railway seeks a declaration that the actions of the

Commission and the City to regulate Mendocino Railway's operations, practices and facilities are preempted under 49 U.S.C. §10501(b) and that Mendocino Railways activities are subject to the STB's exclusive jurisdiction. Therefore, Mendocino Railway has the right under the ICCTA to undertake any and all rail-related activities within the coastal zone, including within the City's boundaries, without preclearance or approval from the Commission or the City.

JURISDICTION AND VENUE

6. Jurisdiction is proper under 28 U.S.C. § 1331 because this action arises under the laws of the United States, and this Court has the power to grant the declaratory judgment requested herein under Fed. R. Civ. P. 57 and 28 U.S.C. § 2201.

7. Under 28 U.S.C § 1391(b), venue is proper in the Northern District, where Defendants are located and a substantial part of the events or omissions giving rise to Plaintiff's claim occurred here.

DIVISIONAL ASSIGNMENT

8. Assignment of this case to the Eureka division is appropriate under L.R. 3-2, because all actions, events or omissions giving rise to Plaintiff's claim occurred in Mendocino County.

PARTIES

9. Mendocino Railway is a railroad corporation organized under the laws of the State of California. It owns real property, rail facilities and rail equipment in various regions of the State, including but not limited to the coastal zone and the City of Fort Bragg in Mendocino County. It is a Class III railroad subject to the STB's jurisdiction.

10. Defendant Jack Ainsworth is the Executive Director of the California Coastal Commission, is charged with the day-to-day enforcement of the California Coastal Act, and is sued in his official capacity. Under the Coastal Act, development on land in the coastal zone generally requires a land-use permit (known as a "Coastal Development Permit" or "CDP"). The Executive Director has the authority to, among other things, directly issue disruptive cease-and-desist orders to stop work he believes has been performed without a CDP. Pub. Res. Code § 30809. He also has the authority to pursue other enforcement orders against landowners, including severe penalties, through recommendations made to the Commission at a public hearing. *See, e.g.*, Pub. Res. Code §§ 30811 (authorizing issuing of restoration orders requiring landowner to restore property to condition before allegedly unlawful development occurred), 30821.3

(authorizing penalties of up to \$11,500 *per day* per violation for any Coastal Act violation, including development without a CDP). Through his staff, the Executive Director has made clear its view that Mendocino Railway’s rail-related projects in the coastal zone require a CDP, and that *past* rail-related work in the coastal zone required a CDP, rendering Mendocino Railway a violator that is exposed to enforcement action and penalties.

11. Defendant City of Fort Bragg is a municipal corporation organized and existing under and by virtue of the laws of the State of California. Except where preempted, the City has a general police power to regulate land use within its jurisdiction. Under the Coastal Act, it has been delegated the authority under state law to preclear and permit development within the City. The City wrongly contends that Mendocino Railway requires its pre-approval, including via a CDP, for land-use activities occurring on property within its jurisdiction.

GENERAL ALLEGATIONS

A. Legal Background

12. The STB has “exclusive” jurisdiction over (1) “transportation by rail carriers” and (2) “the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State.” 49 U.S.C. § 10501(b). The ICCTA defines “transportation” broadly to include “(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and (B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.” *Id.* § 10102(9); *see also Or. Coast Scenic R.R., LLC v. Or. Dep’t of State Lands*, 841 F.3d 1069, 1072 (9th Cir. 2016).

13. The STB’s exclusive jurisdiction over a railroad means that state and local permitting and preclearance regulation of a railroad’s activities are broadly preempted. U.S. Const. art. VI, cl. 2 (Supreme Clause); 49 U.S.C. § 10501(b) (ICCTA “preempt[s] the remedies provided under Federal or State law”); *City of Auburn v. United States*, 154 F.3d 1025, 1030-31 (9th Cir. 1998) (The ICCTA’s preemptive scope is “broad.”); *Friends of Eel River v. North Coast R.R.*, 399 P.2d 37, 60 (Cal. 2017) (holding that “state

environmental permitting or preclearance regulation that would have the effect of halting a private railroad project pending environmental compliance would be categorically preempted”); *North San Diego County Transit Dev. Bd.—Petition for Declaratory Order*, 2002 WL 1924265 (STB 2002) (holding that the Coastal Act was preempted by ICCTA as applied to rail projects); *Padgett v. STB*, 804 F.3d 103, 105 (1st Cir. 2015) (ICCTA preempts state law governing “regulation of rail transportation”). “Under the ICCTA, the [STB] has jurisdiction over ‘transportation by rail carrier,’ and “[w]here the [STB] has such jurisdiction, it is exclusive. Whether or not the [STB] is exercising its regulatory authority over the transportation, state and local laws governing such permitting are generally preempted.” *Del Grosso v. STB*, 804 F.3d 110, 113-14 (1st Cir. 2015).

14. The ICCTA “shields railroad operations that are subject to the [STB’s] jurisdiction from the application of many state and local laws, including local zoning and permitting laws and laws that have the effect of managing or governing rail transportation.” *City of Alexandria, VA – Pet. for Decl. Order*, STB Fin. Docket No. 35157, 2009 STB LEXIS 3, n.2 (Feb. 17, 2009). Courts and the STB have long recognized that the ICCTA categorically preempts “any form of state or local permitting or preclearance that, by its nature could be used to deny a railroad the ability to conduct some part of its operations or proceed with activities that the [STB] has authorized.” *CSX Transp., Inc., STB Fin. Docket No. 34662*, 2005 WL 1024490, at *2 (STB May 3, 2005). These categories of state and local regulation constitute “per se unreasonable interference with interstate commerce.” *Id.* at *3.

15. Courts have applied this principle to find that rail carriers need not comply with state or local permitting required as a condition of construction and operation. *See, e.g., Padgett*, 804 F.3d at 106-07 (state and local zoning and permitting regulation preempted); *Norfolk S. Ry. Co. v. City of Alexandria*, 608 F.3d 150, 160 (4th Cir. 2010) (though city’s ordinance and permit requirements enhance public safety, they unreasonably burden rail transportation); *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 642-43 (2nd Cir. 2005) (state pre-construction permit process is preempted as it unduly interferes with interstate commerce and unduly delays construction of railroad facilities); *City of Auburn*, 154 F.3d at 1029-31 (local environmental regulation of railroad preempted by ICCTA).

16. Similarly, the ICCTA preempts local noise ordinances and even nuisance suits by nearby residents to the extent they would prevent, manage, or regulate rail operations. *See, e.g., Pace v. CSX*

Transportation, Inc., 613 F.3d 1066 (11th Cir. 2010) (ICCTA preempts private nuisance suit claiming operation of side track caused noise and smoke making land virtually unusable); *Delaware v. STB*, 859 F.3d 16, 21 (D.C. Cir. 2017) (state law prohibiting locomotives from idling to reduce noise is categorically preempted as directly regulating rail transportation); *Friberg v. Kansas City S. Ry. Co.*, 267 F.3d 439, 444 (5th Cir. 2001) (ICCTA unambiguously preempted state negligence claim); *Kiser v. CSX Real Prop.*, 2008 U.S. Dist. LEXIS 90676 (M.D. Fla. Nov. 7, 2008) (ICCTA preempts nuisance claims against intermodal rail operation); *Norfolk S. Ry. Co. v. City of Maple Heights*, 2003 U.S. Dist. LEXIS 28282, * 9 - *15 (N.D. Ohio, May 14, 2003) (ICCTA preempts application of local noise ordinance to intermodal rail facility); *Cannon v. CSX Transp., Inc.*, 2005 Ohio App. LEXIS 77, *P 21 - *P 25 (Ohio App. 2005) (homeowner nuisance suit for noise and vibration preempted). The ICCTA was enacted with the purpose of expanding federal jurisdiction and preemption of railroad regulation. *Or. Coast*, 841 F.3d at 1072.

B. History and Operations of Mendocino Railway

17. The railroad at issue, which Mendocino Railway has owned and operated since 2004, has a long and storied history in California. The railroad was built in 1885 to haul felled redwood trees from the surrounding forest to a lumber mill on the coast of what is now known as the City of Fort Bragg. In addition to hauling lumber and finished products to and from the mill, the railroad delivered mail on behalf of the U.S. Postal Service, provided transportation services to loggers and tourist passengers, and provided passenger transportation between Fort Bragg and the railroad's eastern terminus in Willits, California, to and from which passengers arrived and departed via coach.

18. The mill closed in 2002, ending the need for the railroad to haul timber and finished products to and from the mill, though the opportunity still existed to ship other commodities. Though the railroad at that point became primarily a passenger train, including for excursions colloquially referred to as the "Skunk Train," the railroad was and continues to be a federally licensed railroad subject to the STB's jurisdiction. As a common carrier railroad, it publishes tariffs for shipping freight for local on-line customers.

19. By 2003, the then-owner of the railroad, California Western Railroad ("CWR"), fell on hard times and declared bankruptcy. Following fierce bidding from a number of interested parties who recognized the railroad's continued value to the community, Mendocino Railway in 2004 purchased

1 CWR's railroad assets out of bankruptcy, with the intent of fully restoring its passenger and freight
2 operations. Because the sale involved a federally regulated, Class III railroad, the sale was overseen by
3 the STB, which authorized Mendocino Railway's acquisition of the CWR pursuant to 49 C.F.R. § 1150.31.
4 69 Fed. Reg. 18999 (April 9, 2004) (Notice of Acquisition Exemption).

5 20. The Mendocino Railway line runs 40 miles, from its main station in Fort Bragg to its
6 eastern depot in Willits ("Willits Depot"). Mendocino Railway's Fort Bragg station is fully developed as
7 a rail facility, with, among other things, passenger coaches and freight cars, an engine house, and a dry
8 shed for storage of railroad equipment. Since acquiring the line in 2004 and up through the present,
9 Mendocino Railway has operated tourist and non-tourist passenger services and freight services.

10 21. Approximately 77 acres of the land adjacent to the main rail station in Fort Bragg were
11 previously used for more than a century to conduct and support freight and passenger operations. After 15
12 years of discussions, in 2019, Mendocino Railway acquired those 77 acres from Georgia-Pacific LLC
13 ("GP") in order to further Mendocino Railway's efforts to fully restore freight and passenger services.
14 Subsequently, the railroad acquired another approximately 220 acres from GP at the mill site, another 70
15 acres of pudding Creek, and 14 acres from another entity (Harvest Market). The total acres of the former
16 mill site acquired totals approximately 300.

17 22. Mendocino Railway connects to the State-owned Northwestern Pacific Railroad ("NWP")
18 line, which connects Mendocino Railway to the rest of the national rail system. While the segment
19 connected to Mendocino Railway has been temporarily embargoed pending track repairs, that NWP
20 segment has not been abandoned and remains a part of the national rail system.

21 23. In furtherance of its freight operations, Mendocino Railway has pursued and continues to
22 pursue a variety of much-needed rail-related activities on its property and facilities located in the coastal
23 zone. These activities have included, without limitation: improvements to side tracks; repair and
24 maintenance work on its rail station and engine house; clean-up work in and around a dry shed and
25 elsewhere on railroad property; improvements to the dry shed in order to provide space for the storage of
26 rail cars and other railroad equipment, such as tires for steam locomotives, railcar axles, and other parts
27 and components for steam and diesel locomotives; a lot-line adjustment related to the railroad's
28 acquisition of historically rail-related property from GP; and development of the recently acquired acreage

1 for rail-related uses. The railroad has not obtained a CDP from either the Commission or the City—and
2 does not intend to do so—because any such preclearance review is and would be categorically preempted.

3 24. Mendocino Railway has always been and remains a Class III, common-carrier railroad
4 subject to the STB’s jurisdiction. While the NWP section connecting to the Mendocino Railway line is
5 currently out of service, the NWP’s line has never been abandoned and service is expected to be restored.

6 **C. The City and Coastal Commission Denial of Mendocino Railway’s Status as a Federal Railroad**

7 25. Until recently, the City has acknowledged Mendocino Railway’s status as a common-
8 carrier railroad within the exclusive jurisdiction of the STB. But after Mendocino Railway’s latest
9 purchase of some 300 acres from GP—property that City a had initially considered purchasing but then
10 seemingly lost interest in—the City changed its tune. Starting in 2021, the City sought to excuse its
11 decision not to purchase the property by waging a relentless campaign to make it appear as if Mendocino
12 Railway had stolen the opportunity from the City, while also attacking Mendocino Railway’s status as a
13 federally (and state) regulated railroad, so the City could dictate how Mendocino Railway could use the
14 property. In so doing, the City hoped to avoid public criticism for its decisions and effectively gaining
15 development control over the acquired property without having had to purchase it.

16 26. On October 28, 2021, the City filed a lawsuit against Mendocino Railway in Mendocino
17 County Superior Court. Among other things, the lawsuit seeks an injunction “commanding the Mendocino
18 Railway to comply with *all* City ordinances, regulations, and lawfully adopted codes, jurisdiction and
19 authority,” including the authority to pre-clear and approve work on railroad facilities through the City’s
20 land-use permitting processes

21 27. Similarly, for the last several years, the Commission has made clear its view that
22 Mendocino Railway is not part of the interstate rail network subject to STB jurisdiction, and is therefore
23 not entitled to federal preemption of the Commission’s oversight. The Commission contends that, in order
24 to be lawful, all prior and future rail-related work on Mendocino Railway’s property and facilities must
25 be approved by the Commission under its general authority to review and permit land-use activities in the
26 coastal zone.

27 ///

28 ///

FIRST CLAIM
For Declaratory Judgment
(By Plaintiff Against All Defendants)

28. Plaintiff incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

29. A justiciable controversy exists as to whether Mendocino Railway's freight rail-related activities on its property and facilities, including without limitation, its efforts to improve side tracks; repair and maintenance work on its rail station and engine house; construction of an extension of the southern side of its engine house which is intended to cover existing passenger coaches and freight cars, require a CDP permit or are otherwise within the STB's exclusive jurisdiction, such that the ICCTA preempts the efforts of the City and the Commission to require Mendocino Railway to obtain state and local land-use permits and other preclearance.

30. Mendocino Railway is a federally regulated common carrier that is a part of the interstate rail network under the STB's exclusive jurisdiction, and that the ICCTA therefore preempts state and local land-use permitting authority over its rail-related operations, property, and facilities.

31. Defendants assert that Mendocino Railway is not subject to the STB's exclusive jurisdiction, and is subject to their plenary land-use permitting and preclearance authority for all rail-related activities undertaken within the coastal zone, including the City's boundaries. Therefore, there is a dispute over Mendocino Railway's rights and privileges under the ICCTA, giving rise to a case or controversy over which this Court has jurisdiction.

32. Mendocino Railway seeks a declaration that the actions of the Commission and the City to regulate Mendocino Railway's operations, practices and facilities are preempted under 49 U.S.C. §10501(b) and that Mendocino Railways activities are subject to the STB's exclusive jurisdiction.

33. Mendocino Railway does not intend to apply for a CDP from either the Commission or the City for rail-related work on its property and facilities in the coastal zone, on the grounds that such preclearance is categorically preempted. Defendants have made clear they believe that, absent their authorization, Mendocino Railway's rail-related work is unlawful, creating a cloud of uncertainty over the railroad's operations and the real and imminent risk of enforcement action against it. Defendants have a well-established history of pursuing alleged violators of the CDP requirement through such enforcement

1 actions as cease-and-desist orders, restoration orders, and penalty order.

2 34. Mendocino Railway has no adequate remedy at law and will suffer irreparable harm if this
3 controversy persists unresolved, and its rights and obligations are not established by declaratory judgment.
4 Without declaratory relief, Mendocino Railway will remain under the constant and imminent threat of
5 federally-preempted regulation, the complete disruption of its rail operations and rail-related development,
6 and the sheer uncertainty created by this controversy.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Mendocino Railway requests relief as follows:

9 1. A declaratory judgment that the actions of the Commission and the City to regulate
10 Mendocino Railway's operations, practices and facilities are preempted under 49 U.S.C. §10501(b) and
11 that Mendocino Railway's activities are subject to the STB's exclusive jurisdiction. Therefore Mendocino
12 Railway has the right under the ICCTA to undertake any and all rail-related activities within the coastal
13 zone, including within the City's boundaries without preclearance or approval from the Commission or
14 the City.

15 2. An injunction prohibiting Defendants from taking any action that would materially
16 interfere with Mendocino Railway's operation of its railroad as a federally regulated common carrier,
17 including by imposing and enforcing any land-use permitting or other preclearance requirement as the
18 pre-condition of any rail-related development on Mendocino Railway's property or facilities;

19 3. Costs of suit; and

20 4. Such additional relief as may be provided by law or the Court may deem just and proper.

21 DATED: August 9, 2022

FISHERBROYLES LLP

22
23 s/ Paul Beard II

24

Attorneys for Plaintiff MENDOCINO RAILWAY
25
26
27
28

EXHIBIT H

RESOLUTION NO. 2021- _____

**RESOLUTION OF HUMBOLDT COUNTY, DECLARING THE COUNTY'S
OPPOSITION TO POTENTIAL COAL EXPORT THROUGH HUMBOLDT COUNTY
AND REAFFIRMING SUPPORT FOR THE GREAT REDWOOD TRAIL.**

WHEREAS, to complete the Great Redwood Trail, the North Coast Railroad Authority petitioned the Surface Transportation Board to preserve its right-of-way for public use under the railbanking provisions of the National Trail System Act.

WHEREAS, on August 16, 2021, attorneys on behalf of the North Coast Railroad Company, L.L.C. moved before the Surface Transportation Board to oppose railbanking efforts for the line and indicated that it would offer financial assistance to rebuild the defunct line to “deploy it in the transportation of high-volume shipments by rail.”

WHEREAS, the North Coast Railroad Company, L.L.C. evidently represents coal interests seeking avenues for the export of coal to foreign markets via shipping terminals on Humboldt Bay.

WHEREAS, coal has the largest climate impact per unit of energy produced, has contributed the largest proportion of the carbon dioxide now causing global climate change, and which is resulting in local impacts including increasingly catastrophic wildfires and accelerating sea level rise.

WHEREAS, coal is a friable material which invariably produces large amounts of toxic dust (also known as particulate matter) during transportation, handling, storage and processing, which pollutes local air and waterways and has significant negative health effects for humans and wildlife

WHEREAS, coal-fired power plants emit mercury into the atmosphere which is deposited throughout the world in rain and fog, contaminating fish with mercury at levels that can harm human health, particularly children.

WHEREAS, coal trains are often in excess of one mile in length and the estimated rail volume necessary to repay capital costs and routine line maintenance is estimated to require a minimum of two 50-car trains in each direction through Humboldt every day.

NOW THEREFORE, BE IT RESOLVED, that the Humboldt County Board of Supervisors is opposed to coal exports through Humboldt County. The Board directs staff to begin work on a local ordinance to prohibit the construction of new infrastructure for the transportation, storage, processing or export of coal.

PASSED, APPROVED AND ADOPTED by the Humboldt County Board of Supervisors, in the County of Humboldt, State of California, on the ____th day of October, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

AGENDA FOR
MARIN COUNTY BOARD OF SUPERVISORS
MARIN COUNTY CAPITAL IMPROVEMENTS FINANCING AUTHORITY BOARD OF DIRECTORS
MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD OF SUPERVISORS
MARIN COUNTY HOUSING AUTHORITY BOARD OF COMMISSIONERS

Agenda items will be heard at the time specified or later, depending on the progress of the meeting. The Marin County Board of Supervisors encourages a respectful dialogue that supports freedom of speech and values diversity of opinion. The Board, staff, and members of the public are expected to be civil and courteous, and to refrain from questioning the character or motives of another.

AGENDA

Tuesday, September 28, 2021

9:00 a.m. Convene as the Marin County Board of Supervisors

1. Administrator's report. * COVID-19 Update
2. Open time for public expression, with speaker time limit set by the President, on items not on the Board of Supervisors' Agenda. *(While members of the public are welcome to address the Board, under the Brown Act, Board members may not deliberate or take action on items not on the agenda, and, generally, may only listen.)*
3. Board of Supervisors' matters and informational updates concerning regional Board assignments.
4. Consent Calendar A (Items CA-1 through CA-7) *("Consent Calendar A" reflects those agenda items that have prior policy approval from the Board. The detail of Consent Calendar agenda items can be found following agenda item 15.)*
5. Consent Calendar B (Items CB-1 through CB-4) *("Consent Calendar B" reflects those agenda items requiring 4/5 vote of available members relating to budgetary matters. The detail of Consent Calendar agenda items can be found following agenda item 15.)*
6. Request from the County Administrator to confirm appointment of David Joseph Sutton to the position of Public Defender as detailed in staff report dated September 28, 2021.
Recommended action: Approve.

6 - STAFF REPORT

7. Request from the County Administrator to adopt resolution allowing continued use of tele/video-conferencing for the County Board of Supervisors, and all subsidiary County boards and commissions subject to the Brown Act.
Recommended action: Approve.

7 - STAFF REPORT

7 - DRAFT RESOLUTION

7 - ATTACHMENT - AB 361

7 - ATTACHMENT - McLarin

8. Request from the County Administrator to receive First Quarter Budget Update.
Recommended action: Receive report.

8 - STAFF REPORT

9. Request from the Marin County Free Library to receive presentation regarding the 2021 Summer Learning Pre-School Backpack Giveaway Collaborative Project with First 5 Marin.
Recommended action: Receive presentation.

9 - STAFF REPORT
9 - PRESENTATION

10. Request from the Department of Public Works to adopt resolution setting a pilot program Phase II for County assistance towards drainage improvement projects on private property.
Recommended action: Approve.

10 - STAFF REPORT
10 - ATTACHMENT
10 - PRESENTATION

Recess as the Marin County Board of Supervisors

10:00 a.m. Convene as the Marin County Capital Improvements Financing Authority Board of Directors

- 11a. Organization of the Board
i. Election of Chairperson
ii. Election of Vice-Chairperson

- 11b. Request to approve minutes of the meeting of August 25, 2020.

11b - DRAFT MINUTES

- 11c. Executive Director's report.

11c - STAFF REPORT

- 11d. Open time for public expression, with speaker time limit set by the President, on items not on the Marin County Capital Improvements Financing Authority Agenda. *(While members of the public are welcome to address the Authority, under the Brown Act, Board members may not deliberate or take action on items not on the agenda, and generally may only listen.)*

Adjourn as the Marin County Capital Improvements Financing Authority

10:05 a.m. Convene as the Marin County Flood Control and Water Conservation District Board of Supervisors

- 12a. Open time for public expression, with speaker time limit set by the President, on items not on the Flood Control and Water Conservation District Agenda. *(While members of the public are welcome to address the Board, under the Brown Act, Board members may not deliberate or take action on items not on the agenda, and generally may only listen.)*

- 12b. Board of Supervisors' matters.

- 12c. Request to approve actions detailed in staff report dated September 28, 2021, related to the Gallinas Levee Upgrade project, Flood Zone 7, Santa Venetia.
Recommended actions: (i) Authorize the Department of Finance to increase expenditure appropriations in Flood Zone 7 fund (3270) by \$1,900,000 to acquire easements for project; (ii) increase revenue in Flood Zone 7 fund (3270) by \$500,000 in FEMA grant reimbursement; and (iii) authorize the use of available fund balance of \$1,400,000, Flood Zone 7 fund (3270).

12c - STAFF REPORT

- 12d. Authorize President to execute a three-year agreement with Stetson Engineers, Inc. in the amount of \$100,000 for hydraulic modeling and engineering design in Flood Zone 9.
Recommended actions: (i) Authorize President to execute agreement; and (ii) approve related budget actions as detailed in staff report dated September 28, 2021.

12d - STAFF REPORT
12d - AGREEMENT

- 12e. Closed Session
Conference with legal counsel to discuss initiation of litigation pursuant to California Government Code Section 54956.9(d)(4). Number of potential cases: one.

12e - STAFF REPORT

Adjourn as the Marin County Flood Control and Water Conservation District Board of Supervisors

12:00 p.m. Reconvene as the Marin County Board of Supervisors

13. Closed Session Conference with legal counsel to discuss initiation of litigation pursuant to California Government Code Section 54956.9(d)(4). Number of potential cases: one.

13 - STAFF REPORT

Reconvene in Open Session
Announcement from Closed Session.

Recess as the Marin County Board of Supervisors

1:30 p.m. Convene as the Marin County Housing Authority Board of Commissioners

- 14a. Approval of minutes of the meeting of August 24, 2021.

14a - DRAFT MINUTES

- 14b. Board of Commissioners' matters.

- 14c. Open time for public expression, with speaker time limit set by the President, on items not on the Housing Authority Agenda. *(While members of the public are welcome to address the Board, under the Brown Act, Board members may not deliberate or take action on items not on the agenda, and generally may only listen.)*

- 14d. Executive Director's report.

- 14e. Update on Corrective Action Plan.
Recommended action: Discussion only.

14e - PRESENTATION

- 14f. Request to consider Public Housing report.
Recommended action: Discussion only.

14f - PRESENTATION

- 14g. Request to consider 8/21 Housing Choice Voice (HCV) Program Report.
Recommended action: Discussion only.

14g - PRESENTATION

- 14h. Request to authorize Executive Director to ratify the renewal of grant agreement with the County of Marin Department of Health and Human Services, Division of Behavioral Health and Recovery Services (BHRS) in the amount of \$861,207, for the Shelter Plus Care Program.
Recommended action: Approve.

14h - STAFF REPORT
14h - ATTACHMENT

Adjourn as the Marin County Housing Authority Board of Commissioners

3:00 p.m. Reconvene as the Marin County Board of Supervisors

15. Appointments -
Marin Housing Authority (MHA) Board of Commissioners
Two term expirations. At the August 24, 2021 Board of Supervisors' meeting, the Board agreed to interview Sarah Canson, Cathy Cortez, Homer Hall (incumbent), Karen A. Taylor-Turner, and Rob Simon (incumbent).
Recommended actions: Conduct interviews and make two appointments.

15 - ATTACHMENT
15 - APPLICATIONS

BOARD OF SUPERVISORS' CONSENT CALENDAR A
(Items CA-1 through CA-7)

("Consent Calendar A" reflects those agenda items that are routine in nature and/or consistent with past policy direction, and/or have previously authorized spending. All Consent Calendar A matters will be considered under Agenda Item #4. All matters listed on the consent calendar will be acted upon by a single vote of the Board unless Board members or the public request specific items be discussed and/or removed from the Consent Calendar for separate consideration.)

- CA-1 Board of Supervisors
a. Request for In Memoriam adjournments as requested by Board Members during Board of Supervisors' matters.

- b. Approval of minutes of the regular meetings of August 10, 17 and 24, 2021, and the special meeting of August 20, 2021.

[CA1b - DRAFT AUGUST 10, 2021, MINUTES](#)

[CA1b - DRAFT AUGUST 17, 2021, MINUTES](#)

[CA1b - DRAFT AUGUST 24, 2021, MINUTES](#)

[CA1b - DRAFT AUGUST 20, 2021, SPECIAL MINUTES](#)

- c. Appointments -

Request to schedule the following appointments:

- i. Alcohol and Drug Advisory Board

Schedule appointment for October 19, 2021, for one At-Large seat due to the term expiration of Mark Dale.

- ii. Child Care Commission

Schedule the following appointments for November 2, 2021:

(1) Seven Board of Supervisors' appointments which includes a Consumer representative, Discretionary representatives, Provider representatives, and Public Agency representatives.

(2) Ratification of four appointments from the Marin County Superintendent of Schools which includes Community representatives, a Consumer representative, and a Discretionary representative.

- iii. Kentfield Planning Advisory Board

Schedule appointment for October 12, 2021, for one College of Marin seat due to the resignation of Gregory Nelson.

- iv. Measure W West Marin TOT Oversight Committee

Schedule appointments for November 2, 2021, for two District 4 seats due to the term expirations of Michelle Clein and Scoby Zook.

- v. Retirement Board

Schedule appointment for November 2, 2021, for one 9th member seat due to the term expiration of Todd Werby.

- d. Request from Supervisors Connolly and Rodoni to adopt resolution stating the Board's opposition to allow the transportation of coal by train and supporting North Coast Railroad Authority's request to railbank the rail line from Willits to Humboldt Bay.

[CA1d - STAFF REPORT](#)

[CA1d - DRAFT RESOLUTION](#)

CA-2 Community Development Agency

- a. Authorize President to execute amendment to agreement with Strategic Economics, extending the term of the contract to June 30, 2023, for the Inclusionary Study project, funded with an SB2 grant.

[CA2a - STAFF REPORT](#)

[CA2a - AGREEMENT](#)

- b. Request to authorize the Board President, subject to County Counsel approval, to (i) execute documents, detailed in staff report dated September 28, 2021, related to the rehabilitation of the Centertown Apartments located at 855 C Street, San Rafael; and (ii) execute additional related documents, including subordination agreements, that may be required by other sources of financing for this project.

[CA2b - STAFF REPORT](#)

[CA2b - AGREEMENT](#)

CA-3

County Administrator

- a. Authorize President to execute five Estoppel Agreements with Professional Investors 31, LLC, for existing lease agreements at 30 North San Pedro Road, San Rafael, Suites 150 and 275; and 1682 Novato Boulevard, Novato, Suites 102, 105, 150 and 150A.

CA3a - STAFF REPORT

CA3a - AGREEMENT

- b. Authorize President to execute a Second Amendment agreement with Professional Investors 31, LLC, for existing lease agreement at 30 North San Pedro Road, San Rafael, Suite 150, for the Department of Health and Human Services, to include an early termination option.

CA3b - STAFF REPORT

CA3b - AGREEMENT

- c. Authorize President to execute a First Amendment agreement with Professional Investors 31, LLC, for existing lease agreement at 30 North San Pedro Road, San Rafael, Suite 275, for the Department of Health and Human Services, to include an early termination option.

CA3c - STAFF REPORT

CA3c - AGREEMENT

- d. Authorize President to execute a First Amendment to a five-year agreement with Professional Investors 31, LLC, for existing lease agreement, at 1682 Novato Boulevard, Novato, for Suites 150 and 150A, for the Department of Agriculture, Weights and Measures and the Farm Advisory – University of California Cooperative Extension, as detailed in staff report dated September 28, 2021.

CA3d - STAFF REPORT

CA3d - AGREEMENT

- e. Authorize President to execute License Agreement with Merlone Geier Partners for space at 5800 Northgate Mall, San Rafael, Suites 731 and 145, for a vaccination site for the Department of Health and Human Services, as detailed in staff report dated September 28, 2021.

CA3e - STAFF REPORT

CA3e - AGREEMENT

- f. Authorize President to execute agreement with Canal Alliance, in the amount of \$511,567 through September 30, 2022, to support rental assistance outreach, application and processing.

CA3f - STAFF REPORT

CA3f - AGREEMENT

CA-4

Health and Human Services

NOTE: Agreements in items CA-4a – CA-4d are renewals of existing agreements that were included in and funded in the FY 2021-22 budget.

- a. Authorize President to execute FY 2021-23 agreement with North Marin Community Services (NMCS), in an amount not to exceed \$260,000, for the Latino Community Connection, Prevention and Early Intervention Program.

CA4a - STAFF REPORT
CA4a - AGREEMENT

- b. Authorize President to execute FY 2021-23 agreement with North Marin Community Services (NMCS), in an amount not to exceed \$188,000, for Promotores for the Latinx community.

CA4b - STAFF REPORT
CA4b - AGREEMENT

- c. Authorize President to execute FY 2021-23 agreement with North Marin Community Services (NMCS), in an amount not to exceed \$140,000, to provide school-based mental health services.

CA4c - STAFF REPORT
CA4c - AGREEMENT

- d. Authorize President to execute agreement with Marin Center for Independent Living (Marin CIL) from July 1, 2021 to March 31, 2022, in the amount of \$120,917, to provide the Dignity at Home Falls Prevention Program.

CA4d - STAFF REPORT
CA4d - AGREEMENT

- e. Authorize President to execute FY 2021-22 agreement with Bambini Yoga Project, in the amount of \$94,668, to provide community response and recovery coordination to communities in Southern Marin who experience public health threats and emergencies through the Marin County Cooperation Team.

CA4e - STAFF REPORT
CA4e - AGREEMENT

- f. Authorize President to execute FY 2021-22 agreement with Canal Alliance, in the amount of \$193,660, to provide COVID-19 contact tracing and care navigation services.

CA4f - STAFF REPORT
CA4f - AGREEMENT

- g. Authorize President to approve the Department of Health and Human Services contract extensions for various non-profits and individuals for the second quarter of FY 2021-22.

CA4g - STAFF REPORT
CA4g - ATTACHMENT

CA-5

Parks

Authorize President to execute a Memorandum of Understanding (MOU) with National Audubon Society for collaboration and partnership at Aramburu Island.

CA5 - STAFF REPORT
CA5 - AGREEMENT

- CA-6 Public Works
a. Request to purchase six (6) 2022 Ford SUV Hybrid Patrol Vehicles from Towne Ford of Redwood City, in a total amount of \$256,959.12, for the Sheriff's Department.

[CA6a - STAFF REPORT](#)

- b. Authorize President to award contract with Macks Craic, Inc. dba mack5, in an amount not to exceed \$153,200.00, to provide construction management services for the Marin Center Exhibit Hall Seismic Retrofit Project (County Project No. 41C2202).

[CA6b - STAFF REPORT](#)

[CA6b - AGREEMENT](#)

- CA-7 Sheriff
Authorize President to execute Memorandums of Understanding (MOUs) with the following jurisdictions: Towns/Cities of Belvedere, Corte Madera, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael, Sausalito, Tiburon, and the Marin County Sheriff's Department Office of Emergency Services to provide emergency management and emergency operations center services for 2021-2023, as detailed in staff report dated September 28, 2021.

[CA7 - STAFF REPORT](#)

[CA7 - AGREEMENT](#)

BOARD OF SUPERVISORS' CONSENT CALENDAR B

(Items CB-1 through CB-4)

("Consent Calendar B" reflects those agenda items requiring 4/5 vote of available members relating to matters not previously included in the current budget.)

- CB-1 County Administrator
Request to approve monthly budget adjustments and any related balance sheet adjustments as detailed in staff report dated September 28, 2021.

[CB1 - STAFF REPORT](#)

[CB1 - ATTACHMENT](#)

- CB-2 Health and Human Services
a. Request to (i) authorize President to execute agreement with The Rushmore Group, LLC, from October 1, 2021 through June 30, 2023, in the amount of \$177,000, to develop and maintain case review software for quality improvement case reviews of public assistance programs; and (ii) approve related one-time FY 2021-22 budget adjustment, as detailed in staff report dated September 28, 2021.

[CB2a - STAFF REPORT](#)

[CB2a - AGREEMENT](#)

- b. Request to (i) authorize President to accept \$587,683, from State Project Roomkey through the California Department of Social Services designating signatory authority to the Department of Health and Human Services; (ii) execute a first amendment to the contract with Catholic Charities extending the term through January 31, 2022, and increasing the contract amount from \$303,663 to \$548,662; and (iii) approve related one-time FY 2021-22 budget adjustment, as detailed in staff report dated September 28, 2021.

[CB2b - STAFF REPORT](#)

[CB2b - AGREEMENT](#)

- CB-3 Information Services and Technology
Effective September 28, 2021, request to (i) approve cost-covered personnel adjustment, adding a 1.0 FTE fixed-term Advance Systems Engineer; and (ii) approve related budget adjustment, as detailed in staff report dated September 28, 2021.

[CB3 - STAFF REPORT](#)

- CB-4 Public Works
a. Effective September 28, 2021, request to (i) approve cost-covered personnel adjustment, adding a 1.0 FTE Senior Planner, funded by Zero Waste Marin and delete 1.0 FTE Waste Management Specialist position in the Marin County Hazardous and Solid Waste Management Joint Powers Authority (Zero Waste Marin) and (ii) approve budget adjustment, as detailed in staff report dated September 28, 2021.

[CB4a - STAFF REPORT](#)

- b. Effective October 3, 2021, request to (i) approve cost-covered personnel adjustment, adding 1.0 FTE Senior Civil Engineer, 1.0 FTE Associate Civil Engineer-Survey, 1.0 FTE Department Analyst II, and 1.0 FTE Capital Planning and Project Manager III in the Engineering Division and delete 1.0 FTE Engineering Technician III, 1.0 FTE Public Works Inspector, 1.0 FTE vacant Engineering Assistant from the Engineering Division, and (ii) approve budget adjustment, as detailed in staff report dated September 28, 2021.

[CB4b - STAFF REPORT](#)

GLENN MCGOURTY
1st District
Supervisor

MAUREEN
MULHEREN
2nd District
Supervisor

JOHN HASCHAK
3rd District
Supervisor

DAN GJERDE
4th District
Supervisor
Chair

TED WILLIAMS
5th District
Supervisor
Vice-Chair



CARMEL J. ANGELO
Chief Executive Officer/
Clerk of the Board

CHRISTIAN M. CURTIS
County Counsel

COUNTY ADMINISTRATION CENTER
501 Low Gap Road, Room 1070
Ukiah, CA 95482
(707) 463-4441 (t)
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MENDOCINO COUNTY BOARD OF SUPERVISORS

ACTION MINUTES – September 14, 2021

BEFORE THE BOARD OF SUPERVISORS
COUNTY OF MENDOCINO - STATE OF CALIFORNIA
FAIR STATEMENT OF PROCEEDINGS
(PURSUANT TO CALIFORNIA GOVERNMENT CODE §25150)

AGENDA ITEM NO. 1 – OPEN SESSION (PLEDGE OF ALLEGIANCE AND ROLL CALL 9:02 A.M.)

Present: Supervisor Glenn McGourty, Supervisor Maureen Mulheren, Supervisor John Haschak, Supervisor Dan Gjerde, and Supervisor Ted Williams. Chair Gjerde presiding.

Staff Present: Carmel J. Angelo, Chief Executive Officer; Darcie Antle, Assistant Chief Executive Officer; Christian M. Curtis, County Counsel; Atlas M.A. Pearson, Deputy Clerk of the Board; Deena Gera, Deputy Clerk of the Board; and Lindsey Daugherty, Deputy Clerk of the Board.

The Pledge of Allegiance was led by: Atlas M.A. Pearson.

AGENDA ITEM NO. 3 – PUBLIC EXPRESSION

Presenter/s: Michelle Hutchins; Michael Katz; and Ron Edwards.

5A) DISCUSSION AND POSSIBLE ACTION INCLUDING AN UPDATE ASSOCIATED WITH THE NOVEL CORONAVIRUS (COVID-19); AND PROVIDE POSSIBLE DIRECTION REGARDING ESSENTIAL SERVICES IN MENDOCINO COUNTY, OPERATIONAL PREPARATION AND RESPONSE, AND ASSOCIATED COUNTYWIDE ECONOMIC IMPACTS – SPONSOR: PUBLIC HEALTH

Presenter/s: Dr. Andrew Coren, Health Officer; Darcie Antle, Assistant Chief Executive Officer; William Schurtz, Director, Human Resources; and Christian M. Curtis, County Counsel.

Public Comment: Ron Edwards.

Board Directive: GENERAL CONSENSUS OF THE BOARD to pause implementation of County Employee COVID-19 testing program while staff is trying to line up additional testing support and direction from both CAL OSHA and the Federal Government.

Board Action: No Action Taken.

5B) NOTICED PUBLIC HEARING - DISCUSSION AND POSSIBLE ACTION INCLUDING ADOPTION OF A RESOLUTION APPROVING THE CAPITAL FIRE FACILITIES AND EQUIPMENT PLAN AND ADOPTING AND IMPLEMENTING FIRE PROTECTION MITIGATION FEES FOR THE ANDERSON VALLEY COMMUNITY SERVICES DISTRICT PURSUANT TO MENDOCINO COUNTY CODE CHAPTER 5.36 – SPONSOR: COUNTY COUNSEL

Presenter/s: Matthew Kiedrowski, Deputy County Counsel; Blair Aas, SCI Consulting Group; and Angela DeWitt, Anderson Valley Fire Department.

Public Comment: None.

Board Action: Upon motion by Supervisor Williams, seconded by Supervisor Mulheren, IT IS ORDERED that the Board of Supervisors adopts Resolution approving the Capital Fire Facilities and Equipment Plan and adopting and implementing Fire Protection Mitigation Fees for the Anderson Valley Community Services District Pursuant to Mendocino County Code Chapter 5.36; and authorizes Chair to sign same. The motion carried by the following vote:

Aye: 5 – Supervisor McGourty, Supervisor Mulheren, Supervisor Haschak, Supervisor Gjerde and Supervisor Williams

No: 0 – None

Absent: 0 – None

Enactment No: Resolution 21-127

RESOLUTION NO. 21-127

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS APPROVING THE CAPITAL FIRE FACILITIES AND EQUIPMENT PLAN AND ADOPTING AND IMPLEMENTING FIRE PROTECTION MITIGATION FEES FOR THE ANDERSON VALLEY COMMUNITY SERVICES DISTRICT PURSUANT TO MENDOCINO COUNTY CODE CHAPTER 5.36

5C) NOTICED PUBLIC HEARING - DISCUSSION AND POSSIBLE ACTION INCLUDING ADOPTION OF A RESOLUTION APPROVING THE CAPITAL FIRE FACILITIES AND EQUIPMENT PLAN AND ADOPTING AND IMPLEMENTING FIRE PROTECTION MITIGATION FEES FOR THE LITTLE LAKE FIRE PROTECTION DISTRICT PURSUANT TO MENDOCINO COUNTY CODE CHAPTER 5.36 – SPONSOR: COUNTY COUNSEL

Presenter/s: Matthew Kiedrowski, Deputy County Counsel; and Blair Aas, SCI Consulting Group.

Public Comment: Ron Edwards.

Board Action: Upon motion by Supervisor Haschak, seconded by Supervisor Williams, IT IS ORDERED that the Board of Supervisors adopts Resolution approving the Capital Fire Facilities and Equipment Plan and adopting and implementing Fire Protection Mitigation Fees for the Little Lake Fire Protection District Pursuant to Mendocino County Code Chapter 5.36; and authorizes Chair to sign same. The motion carried by the following vote:

Aye: 5 – Supervisor McGourty, Supervisor Mulheren, Supervisor Haschak, Supervisor Gjerde and Supervisor Williams

No: 0 – None

Absent: 0 – None

Enactment No: Resolution 21-128

RESOLUTION NO. 21-128

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS APPROVING THE CAPITAL FIRE FACILITIES AND EQUIPMENT PLAN AND ADOPTING AND IMPLEMENTING FIRE PROTECTION MITIGATION FEES FOR THE LITTLE LAKE FIRE PROTECTION DISTRICT PURSUANT TO MENDOCINO COUNTY CODE CHAPTER 5.36

BOARD RECESS: 10:28 A.M. – 10:48 A.M.

DUE TO TECHNICAL DIFFICULTIES, THE BREAK WAS EXTENDED FROM 10:48 A.M. – 11:00 A.M.

ADJOURNED TO CLOSED SESSION: 11:01 A.M.

9A) PURSUANT TO GOVERNMENT CODE SECTION 54957.6 - CONFERENCE WITH LABOR NEGOTIATOR - AGENCY NEGOTIATORS: CARMEL J. ANGELO, CHERIE JOHNSON AND WILLIAM SCHURTZ; EMPLOYEE ORGANIZATION(S): ALL

9B) PURSUANT TO GOVERNMENT CODE SECTION 54956.8 - CONFERENCE WITH REAL PROPERTY NEGOTIATOR - PROPERTY: APN 002-080-39; PHYSICAL ADDRESS - 195 LOW GAP ROAD, UKIAH CA 95482. AGENCY NEGOTIATORS: CARMEL J. ANGELO, JANELLE RAU, AND DARCIE ANTLE. UNDER NEGOTIATION: PROPERTY ACQUISITION, PRICE AND TERMS

9C) PURSUANT TO GOVERNMENT CODE SECTION 54956.8 - CONFERENCE WITH REAL PROPERTY NEGOTIATOR- PROPERTY: APN 003-130-46 AND PHYSICAL ADDRESS: 1101 S. DORA STREET, UKIAH, CA. AGENCY NEGOTIATORS: CARMEL J. ANGELO, JANELLE RAU, DARCIE ANTLE, IZEN LOCATELLI, AND BEKKIE EMERY. UNDER NEGOTIATION: PROPERTY ACQUISITION, PRICE AND TERMS

9D) PURSUANT TO GOVERNMENT CODE SECTION 54956.9(D)(1) - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION: ONE CASE - MENDOCINO COUNTY SHERIFF MATTHEW KENDALL V. MENDOCINO COUNTY BOARD OF SUPERVISORS - CASE NO. 21-CV00561

9E) PURSUANT TO GOVERNMENT CODE SECTION 54957 - PUBLIC EMPLOYEE PERFORMANCE EVALUATION - BEHAVIORAL HEALTH DIRECTOR

RECONVENED IN OPEN SESSION: 1:40 P.M.

AGENDA ITEM NO. 9 – REPORT OUT OF CLOSED SESSION

Presenter: Chair Gjerde.

Board Action: With respect to Agenda Items 9a), 9b), 9c), and 9e), direction was given to staff. With respect to item 9d), the item was Withdrawn.

5E) DISCUSSION AND POSSIBLE ACTION INCLUDING ACCEPTANCE OF PRESENTATION ON THE REDISTRICTING PROCESS FROM COUNTY STAFF; AND CONDUCTION OF A PUBLIC WORKSHOP WITH THE MENDOCINO COUNTY COMMUNITY-BASED ADVISORY REDISTRICTING COMMISSION TO RECEIVE INPUT ON COMMUNITIES OF INTEREST AND POTENTIAL DISTRICT BOUNDARIES – SPONSORS: EXECUTIVE OFFICE AND COUNTY COUNSEL

Presenter/s: Cherie Johnson, Deputy Chief Executive Officer; Kyle Farmer, Chair, Redistricting Committee; Mary Ziady, Commissioner, Redistricting Committee; Dee Pallesen, Commissioner, Redistricting Committee; Peter McNamee, Commissioner, Redistricting Committee; Paula Cohen, Commissioner, Redistricting Committee; Charlotte Scott, Assistant County Counsel; and Leif Farr, GIS Coordinator.

Public Comment: None.

Board Action: No Action Taken.

5D) NOTICED PUBLIC HEARING - DISCUSSION AND POSSIBLE ACTION TO CONSIDER AN APPEAL OF THE COASTAL PERMIT ADMINISTRATOR FOR APPROVAL OF A BOUNDARY LINE ADJUSTMENT LOCATED NEAR CLEONE (B_2017-0043) TO ALIGN PARCEL BOUNDARIES WITH COASTAL ZONE BOUNDARY AND REMOVE SPLIT DESIGNATIONS. PARCEL "A" (APN: 069-320-01) WOULD INCREASE FROM 10.85 TO 11.35± ACRES, AND PARCEL "B" (APN: 069-320-02) WOULD DECREASE FROM 10.85 TO 10.35± ACRES, LOCATED AT 32800 & 32700 NAMELESS LANE, FORT BRAGG (CONTINUED FROM JULY 20, 2021) – SPONSOR: PLANNING AND BUILDING SERVICES

Presenter/s: Matthew Kiedrowski, Deputy County Counsel.

Public Comment: Colin Morrow; and Carla Sarvis.

Board Action: Upon motion by Supervisor Mulheren, seconded by Supervisor Haschak, IT IS ORDERED that the Board of Supervisors adopts decision making required findings, modifying and affirming the Coastal Permit Administrator's approval of Boundary Line Adjustment (B_2017-0043) and denying the appeal. The motion carried by the following vote:

Aye: 4 –Supervisor Mulheren, Supervisor Haschak, Supervisor Gjerde and Supervisor Williams

No: 1 – Supervisor McGourty

Absent: 0 – None

BOARD RECESS: 2:51 P.M. – 3:01 P.M.

5F) DISCUSSION AND POSSIBLE ACTION INCLUDING ACCEPTANCE OF A PRESENTATION FROM CODE ENFORCEMENT DIVISION REGARDING CURRENT DATA, STATISTICAL INFORMATION AND OVERALL DIVISION METRICS – SPONSOR: PLANNING AND BUILDING SERVICES

Presenter/s: John Burkes, Code Enforcement Officer; Nash Gonzalez, Interim Director, Planning and Building Services; and Christian M. Curtis, County Counsel.

Public Comment: Ron Edwards.

Board Directive: GENERAL CONSENSUS OF THE BOARD to direct the Executive Office to work with the Air Quality Management District and determine what their resources are and what other resources may be required to take the initial step of shutting down alder burns related to HIP camps.

Board Action: No Action Taken.

5H) CHIEF EXECUTIVE OFFICER'S REPORT – SPONSOR: EXECUTIVE OFFICE

Presenter/s: Carmel J. Angelo, Chief Executive Officer; Christian M. Curtis, County Counsel; Howard Dashiell, Director, Department of Transportation; and Kristin Nevedal, Manager, Cannabis Program.

Public Comment: Michael Katz; Monique Ramirez; Ron Edwards; and Jude Thilman.

Board Directive: GENERAL CONSENSUS OF THE BOARD to request that the Auditors Office provide the Board with a monthly fiscal report.

Board Action: No Action Taken.

6A) SUPERVISORS' REPORTS REGARDING BOARD SPECIAL ASSIGNMENTS, STANDING AND AD HOC COMMITTEE MEETINGS, AND OTHER ITEMS OF GENERAL INTEREST

Public Comment: None.

Board Directive: CREATION OF AN AD HOC COMMITTEE consisting of Supervisor Williams and Supervisor Gjerde regarding the fiscal year 21/22 budget process.

5G) DISCUSSION AND POSSIBLE ACTION INCLUDING CERTIFICATION OF THE MENDOCINO COUNTY REFERENDUM PETITION PROTESTING THE ORDINANCE ADOPTING CHAPTER 22.19 - COMMERCIAL CANNABIS ACTIVITY LAND USE DEVELOPMENT ORDINANCE AND AMENDING CHAPTER 10A.17 - MENDOCINO CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 - CANNABIS CULTIVATION SITES – SPONSOR: ASSESSOR/CLERK-RECORDER

Presenter/s: Katrina Bartolomie, Assessor/Clerk-Recorder; and Christian M Curtis, County Counsel.

Public Comment: Kate Marianchild; Ron Edwards; Ellen Drell; Michael Katz; Monique Ramirez; and Corinne Powell.

Board Action: Upon motion by Supervisor Williams, seconded by Supervisor McGourty, IT IS ORDERED that the Board of Supervisors repeals the ordinance adopting Chapter 22.19 - commercial cannabis activity land use development ordinance and amending Chapter 10a.17 - Mendocino cannabis cultivation ordinance and Chapter 20.242 - cannabis cultivation sites. The motion carried by the following vote:

Aye: 5 – Supervisor McGourty, Supervisor Mulheren, Supervisor Haschak, Supervisor Gjerde and Supervisor Williams

No: 0 – None

Absent: 0 – None

5I) ~~DISCUSSION AND POSSIBLE ACTION INCLUDING REVIEW, ADOPTION, AMENDMENT, CONSIDERATION OR RATIFICATION OF LEGISLATION PURSUANT TO THE ADOPTED LEGISLATIVE PLATFORM~~ – SPONSOR: EXECUTIVE OFFICE

Withdrawn.

AGENDA ITEM NO. 4 – APPROVAL OF CONSENT CALENDAR

Presenter/s: Chair Gjerde.

Public Comment: None.

ITEM 4W WAS PULLED FOR SEPARATE CONSIDERATION.

Board Action: Upon motion by Supervisor Williams, seconded by Supervisor Haschak, IT IS ORDERED that Consent Calendar items 4a) – 4v), and 4x) – 4z) are hereby approved as follows. The motion carried by the following vote:

Aye: 5 – Supervisor McGourty, Supervisor Mulheren, Supervisor Haschak, Supervisor Gjerde and Supervisor Williams

No: 0 – None

Absent: 0 – None

Abstain: 0 – None

4A) APPROVAL OF MINUTES OF AUGUST 31, 2021 REGULAR MEETING

Approved;

4B) APPROVAL OF AGREEMENT AMENDMENT WITH PAULA E. GROVES, DOING BUSINESS AS 4FRONT PARTNERS, TO CONTINUE ASSISTING THE COUNTY WITH THE IMPLEMENTATION OF THE LOCAL EQUITY ENTREPRENEUR PROGRAM (LEEP) IN THE AMOUNT OF \$211,565, WITH A NEW TERM END DATE OF FEBRUARY 28, 2022 - SPONSORS: SUPERVISOR WILLIAMS AND CANNABIS PROGRAM

Approved and Chair is authorized to sign same;

Enactment No: Agreement 21-164

4C) ADOPTION OF PROCLAMATION RECOGNIZING SEPTEMBER 15 THROUGH OCTOBER 15, 2021 AS LATINO HERITAGE MONTH IN MENDOCINO COUNTY – SPONSOR: SUPERVISOR MULHEREN

Adopted and Chair is authorized to sign same;

4D) ADOPTION OF PROCLAMATION RECOGNIZING SEPTEMBER 20-26, 2021 AS POLLUTION PREVENTION AWARENESS WEEK, AND SEPTEMBER 18-25, 2021 AS CREEK WEEK IN MENDOCINO COUNTY - SPONSOR: SUPERVISOR MULHEREN

Adopted and Chair is authorized to sign same;

4E) ADOPTION OF RESOLUTION IN OPPOSITION TO AN APPLICATION BY “COAL TRAIN” TO USE RAIL LINES THROUGH MENDOCINO COUNTY AND SUPPORT THE SURFACE TRANSPORTATION BOARD TO GRANT THE REQUEST OF THE NORTH COAST RAILROAD AUTHORITY TO RAILBANK THEIR RAIL LINE FROM WILLITS TO HUMBOLDT BAY – SPONSORS: SUPERVISOR HASCHAK AND SUPERVISOR MULHEREN

Adopted and Chair is authorized to sign same;

Enactment No: Resolution 21-129

RESOLUTION NO. 21-129

RESOLUTION STATING THE BOARD'S OPPOSITION TO AN APPLICATION TO ALLOW THE TRANSPORTATION OF COAL BY TRAIN THROUGH MENDOCINO COUNTY

4F) ADOPTION OF RESOLUTION DECLARING THE CONTINUATION OF A LOCAL EMERGENCY RELATED TO THE MULTIPLE SEPTEMBER 2020 FIRES INCLUDING; AUGUST COMPLEX, OAK FIRE AND HOPKINS FIRE, AS PROCLAIMED BY THE CHIEF EXECUTIVE OFFICER/DIRECTOR OF EMERGENCY SERVICES AND DECLARING THE CONTINUATION OF A LOCAL HEALTH EMERGENCY AS PROCLAIMED BY THE HEALTH OFFICER - SPONSOR: EXECUTIVE OFFICE

Adopted and Chair is authorized to sign same;

Enactment No: Resolution 21-130

RESOLUTION NO. 21-130

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS DECLARING THE CONTINUATION OF A LOCAL EMERGENCY RELATED TO SEPTEMBER 2020 FIRES AS PROCLAIMED BY THE CHIEF EXECUTIVE OFFICER/DIRECTOR OF EMERGENCY SERVICES AND REAFFIRMING THE EXISTENCE OF A LOCAL HEALTH EMERGENCY AS PROCLAIMED BY THE HEALTH OFFICER

4G) ADOPTION OF RESOLUTION DECLARING THE CONTINUATION OF A LOCAL EMERGENCY RELATED TO THE OCTOBER WIND EVENTS AND CORRESPONDING PACIFIC GAS AND ELECTRIC PUBLIC SAFETY POWER SHUTOFF EVENTS ON OCTOBER 23, 2019, OCTOBER 26, 2019 AND OCTOBER 29, 2019, IN MENDOCINO COUNTY AS PROCLAIMED BY THE CHIEF EXECUTIVE OFFICER/DIRECTOR OF EMERGENCY SERVICES- SPONSOR: EXECUTIVE OFFICE

Adopted and Chair is authorized to sign same;

Enactment No: Resolution 21-131

RESOLUTION NO. 21-131

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS RATIFYING THE DIRECTOR OF EMERGENCY SERVICES' PROCLAMATION OF THE EXISTENCE OF A LOCAL EMERGENCY RELATED TO THE OCTOBER 2019 WIND EVENTS

4H) ADOPTION OF A RESOLUTION RENEWING ITS DECLARATION OF A LOCAL EMERGENCY AND EXTENDING THE EXISTENCE OF A LOCAL EMERGENCY DUE TO DROUGHT CONDITIONS AND IMMINENT THREAT OF DISASTER IN MENDOCINO COUNTY - SPONSOR: EXECUTIVE OFFICE

Adopted and Chair is authorized to sign same;

Enactment No: Resolution 21-132

RESOLUTION NO. 21-132

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS RENEWING ITS DECLARATION OF A LOCAL EMERGENCY AND EXTENDING THE EXISTENCE OF A LOCAL EMERGENCY DUE TO DROUGHT CONDITIONS AND IMMINENT THREAT OF DISASTER IN MENDOCINO COUNTY

4I) ADOPTION OF RESOLUTION APPROVING MENDOCINO COUNTY'S 2021-22 TAX RATES - SPONSOR: AUDITOR-CONTROLLER

Adopted and Chair is authorized to sign same;

Enactment No: Resolution 21-133

RESOLUTION NO. 21-133

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS APPROVING THE MENDOCINO COUNTY PROPERTY TAX RATES FOR FISCAL YEAR 2021-22

4J) APPROVAL OF RETROACTIVE AMENDMENT TO BOS AGREEMENT No. 21-086 WITH COLANTUONO, HIGHSMITH & WHATLEY, PC, INCREASING THE TOTAL COMPENSATION BY \$250,000 FOR A NEW TOTAL OF \$300,000 FOR LEGAL SERVICES - SPONSOR: COUNTY COUNSEL

Approved and Chair is authorized to sign same;

Enactment No: Agreement 21-086-A1

- 4K) APPROVAL OF AGREEMENT WITH ABBOTT & KINDERMANN, INC. IN THE AMOUNT OF \$10,000 TO PROVIDE LEGAL SERVICES EFFECTIVE SEPTEMBER 14, 2021 THROUGH JUNE 30, 2022 - SPONSOR: COUNTY COUNSEL**

Approved and Chair is authorized to sign same;

Enactment No: Agreement 21-165

- 4L) ADOPTION OF PROCLAMATION RECOGNIZING SEPTEMBER AS LIBRARY CARD SIGN-UP MONTH IN MENDOCINO COUNTY – SPONSOR: CULTURAL SERVICES AGENCY**

Adopted;

- 4M) AUTHORIZATION OF SUBMISSION OF FUNDING APPLICATION FOR THE COLLECTIONS ASSESSMENT FOR PRESERVATION (CAP) PROGRAM FROM THE FOUNDATION FOR ADVANCEMENT IN CONSERVATION (FAIC) IN THE AMOUNT OF \$7,600 TO PROVIDE ASSESSMENTS OF THE COLLECTIONS AND MUSEUM BUILDING TO ASSIST THE INSTITUTION IN PROTECTING AND PRESERVING THE COUNTY'S CULTURAL RESOURCES– SPONSOR: CULTURAL SERVICES AGENCY**

Approved;

- 4N) ADOPTION OF RESOLUTION APPROVING, AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF DOCUMENTS AS PART OF THE DEVELOPMENT OF THE MEASURE B CRISIS RESIDENTIAL TREATMENT FACILITY LOCATED AT 621 AND 641 SOUTH ORCHARD AVENUE IN UKIAH INCLUDING (1) A QUITCLAIM DEED FOR A LOT LINE ADJUSTMENT BETWEEN THE TWO COUNTY PARCELS, AND (2) A UTILITY EASEMENT IN FAVOR OF THE CITY OF UKIAH, AND AUTHORIZING AND APPROVING OTHER ACTIONS AND MATTERS RELATED THERETO - SPONSOR: GENERAL SERVICES AGENCY**

Adopted and Chair is authorized to sign same;

Enactment No: Resolution 21-134

RESOLUTION NO. 21-134

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MENDOCINO APPROVING, AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF DOCUMENTS AS PART OF THE DEVELOPMENT OF THE MEASURE B CRISIS RESIDENTIAL TREATMENT FACILITY LOCATED AT 621 AND 641 SOUTH ORCHARD AVENUE IN UKIAH, INCLUDING (1) A QUITCLAIM DEED FOR A LOT LINE ADJUSTMENT BETWEEN THE TWO COUNTY PARCELS AND (2) A UTILITY EASEMENT IN FAVOR OF THE CITY OF UKIAH, AND AUTHORIZING AND APPROVING OTHER ACTIONS AND MATTERS RELATING THERETO

- 4O) ADOPTION OF RESOLUTION AMENDING POSITION ALLOCATION TABLE AS FOLLOWS: PROBATION DEPARTMENT, BUDGET UNIT 2560; ADD 3.0 FTE DEPUTY PROBATION OFFICER II - SPONSOR: HUMAN RESOURCES**

Adopted and Chair is authorized to sign same;

Enactment No: Resolution 21-135

RESOLUTION NO. 21-135

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS AMENDING THE POSITION ALLOCATION TABLE PROVIDING THE NUMBER AND COMPENSATION OF OFFICERS, DEPUTIES AND EMPLOYEES IN THE VARIOUS OFFICES OF THE COUNTY OF MENDOCINO

- 4P) ADOPTION OF RESOLUTION ADOPTING THE NEW OR REVISED CLASSIFICATIONS AND ESTABLISHING THE SALARY OF CODE ENFORCEMENT OFFICER I, CODE ENFORCEMENT OFFICER II, SUPERVISING CODE ENFORCEMENT OFFICER, CODE ENFORCEMENT OFFICER MANAGER, AND AMENDING POSITION ALLOCATION TABLE AS FOLLOWS: PLANNING AND BUILDING SERVICES, BUDGET UNIT 2851; ADD 8.0 FTE CODE ENFORCEMENT OFFICER II, ADD 2.0 SUPERVISING CODE ENFORCEMENT OFFICER, ADD 1.0 CODE ENFORCEMENT MANAGER; DELETE 4.0 CODE ENFORCEMENT OFFICER I, DELETE 1.0 ADMINISTRATIVE ASSISTANT; AUTHORIZE THE RECLASSIFICATION AND RELATED PAY ADJUSTMENT OF THREE (3) INCUMBENTS AND Y-RATING OF TWO (2) INCUMBENTS - SPONSOR: HUMAN RESOURCES**

Adopted and Chair is authorized to sign same;

Enactment No: Resolution 21-136

RESOLUTION NO. 21-136

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS AMENDING THE POSITION ALLOCATION TABLE PROVIDING THE NUMBER AND COMPENSATION OF OFFICERS, DEPUTIES AND EMPLOYEES IN THE VARIOUS OFFICES OF THE COUNTY OF MENDOCINO

- 4Q) APPROVAL OF RETROACTIVE FIRST AMENDMENT TO PA AGREEMENT NO. 21-132 WITH CLIENTFIRST CONSULTING GROUP, LLC, DBA, CLIENTFIRST TECHNOLOGY CONSULTING IN THE AMOUNT OF \$111,500 FOR A NEW TOTAL OF \$161,460 TO PROVIDE SERVICES RELATED TO POST GoLIVE ACTIVITIES FOR THE COUNTY-WIDE PROPERTY TAX SOFTWARE SYSTEM, THROUGH A NEW END DATE OF JUNE 30, 2022 (ORIGINAL END DATE JUNE 30, 2021) – SPONSOR: INFORMATION SERVICES**

Approved and Chair is authorized to sign same;

Enactment No: Agreement 21-166

- 4R) APPROVAL OF AGREEMENT WITH INTERWEST CONSULTING GROUP IN THE AMOUNT OF \$196,500.00 FOR THE PREPARATION AND UPDATE OF TITLE 20, DIVISION I (INLAND ZONING ORDINANCE) AND TITLE 17 (DIVISION OF LAND REGULATIONS) OF THE MENDOCINO COUNTY CODE, FOR THE PERIOD BEGINNING SEPTEMBER 14, 2021 THROUGH JUNE 30, 2023 – SPONSOR: PLANNING AND BUILDING SERVICES**

Approved and Chair is authorized to sign same;

Enactment No: Agreement 21-167

- 4S) APPROVAL OF SECOND AMENDMENT TO REVENUE GRANT AGREEMENT NO. 17-10704 WITH CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, OFFICE OF ORAL HEALTH, IN THE AMOUNT OF \$30,000 FOR A NEW AGREEMENT TOTAL OF \$865,130, FOR THE CHILDREN'S DENTAL DISEASE PREVENTION PROGRAM (EQUIPMENT SUPPORT AND REFERRAL MANAGEMENT/CARE COORDINATION TOOLS) TO BE UTILIZED BETWEEN SEPTEMBER 1, 2021 THROUGH JUNE 30, 2022; AND AUTHORIZATION FOR THE PUBLIC HEALTH TRANSITION DIRECTOR TO SIGN ANY ADDITIONAL AMENDMENTS THAT DO NOT EXCEED THE MAXIMUM AMOUNT – SPONSOR: PUBLIC HEALTH**

Approved and Chair is authorized to sign same;

Enactment No: Interim Agreement *21-168

- ~~4T) APPROVAL OF RETROACTIVE AGREEMENT WITH ARMOROUS IN THE AMOUNT OF \$25,000 TO PROVIDE SECURITY PERSONNEL SERVICES ON A STAND-BY BASIS FOR INMATES RECEIVING MEDICAL CARE OUTSIDE OF THE MENDOCINO COUNTY JAIL EFFECTIVE MAY 11, 2021 THROUGH JUNE 30, 2021 – SPONSOR: PUBLIC HEALTH~~**

Withdrawn.

- 4U) RATIFICATION OF SUBMISSION OF GRANT APPLICATION FOR THE FY 2021 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM LOCAL SOLICITATION IN THE AMOUNT OF \$16,156 FOR THE REPLACEMENT OF AGED COMPUTER EQUIPMENT TO BE UTILIZED BETWEEN OCTOBER 1, 2020 THROUGH SEPTEMBER 30, 2022; AND AUTHORIZATION FOR THE SHERIFF TO ACCEPT FUNDS AND SIGN THE RESULTING REVENUE AGREEMENT IF AWARDED BY THE U.S. DEPARTMENT OF JUSTICE (DOJ) – SPONSOR: SHERIFF-CORONER**

Approved;

- 4V) RATIFICATION OF SUBMISSION OF GRANT APPLICATION FOR THE FY 2021 RURAL VIOLENT CRIME REDUCTION INITIATIVE FOR LAW ENFORCEMENT AGENCIES IN THE AMOUNT OF \$150,000 FOR THE RESIDENT DEPUTY PAY INCENTIVE PLANS TO BE UTILIZED BETWEEN OCTOBER 1, 2021 THROUGH SEPTEMBER 30, 2024; AND AUTHORIZATION FOR THE SHERIFF TO ACCEPT FUNDS AND SIGN THE RESULTING REVENUE AGREEMENT IF AWARDED BY THE U.S. DEPARTMENT OF JUSTICE (DOJ) – SPONSOR: SHERIFF-CORONER**

Approved;

- 4X) RATIFICATION OF SUBMISSION OF GRANT APPLICATION FOR THE 2021-22 DOMESTIC CANNABIS ERADICATION SUPPRESSION PROGRAM (DCESP) FUNDING FROM THE UNITED STATES DEPARTMENT OF JUSTICE (DOJ) DRUG ENFORCEMENT AGENCY (DEA) FOR THE PERIOD OF OCTOBER 1, 2021 THROUGH SEPTEMBER 30, 2022 – SPONSOR: SHERIFF-CORONER**

Approved;

- 4Y) ADOPTION OF RESOLUTION APPROVING AMENDMENT NUMBER ONE TO PURCHASING AGENT AGREEMENT NUMBER 21-211, WITH REGIONAL GOVERNMENT SERVICES AUTHORITY, FOR DROUGHT EMERGENCY PROJECT MANAGEMENT SERVICES INCREASING THE AMOUNT OF THE AGREEMENT BY \$25,000 FOR A TOTAL AGREEMENT AMOUNT OF \$75,000 (COUNTYWIDE) – SPONSOR: TRANSPORTATION**

Appr Adopted and Chair is authorized to sign same;

Enactment No: Resolution 21-137

RESOLUTION NO. 21-137

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS APPROVING AMENDMENT NUMBER ONE TO PURCHASING AGENT AGREEMENT NUMBER 21-211, WITH REGIONAL GOVERNMENT SERVICES AUTHORITY, FOR DROUGHT EMERGENCY PROJECT MANAGEMENT SERVICES INCREASING THE AMOUNT OF THE AGREEMENT BY \$25,000 FOR A TOTAL AGREEMENT AMOUNT OF \$75,000 (COUNTYWIDE)

- 4Z) AUTHORIZATION TO STAFF TO ENTER INTO CONTRACT NEGOTIATIONS WITH C&S WASTE SOLUTIONS OF CALIFORNIA, INC., FOR RESIDENTIAL AND COMMERCIAL GARBAGE, RECYCLABLE MATERIAL AND ORGANIC WASTE COLLECTION FOR COUNTY SOLID WASTE FRANCHISE AREA NUMBER TWO (UKIAH AND FORT BRAGG AREAS) – SPONSOR: TRANSPORTATION**

Approved;

AGENDA ITEM NO. 4 – CONSENT CALENDAR – REMOVED FOR SEPARATE CONSIDERATION:

- 4W) APPROVAL OF FIRST AMENDMENT TO BOARD OF SUPERVISORS AGREEMENT NO. 19-013 WITH KEEFE COMMISSARY NETWORK, LLC IN THE AMOUNT OF \$350,000 FOR A NEW AGREEMENT TOTAL OF \$1,400,000 TO PROVIDE INMATE COMMISSARY SERVICES EFFECTIVE JANUARY 1, 2022 THROUGH DECEMBER 31, 2022 – SPONSOR: SHERIFF-CORONER**

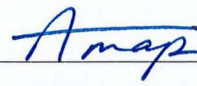
Continued;

Board Directive: GENERAL CONSENSUS OF THE BOARD to Continue to the next meeting, per the request of Supervisor Williams.

THERE BEING NOTHING FURTHER TO COME BEFORE THE BOARD, THE MENDOCINO COUNTY BOARD OF SUPERVISORS ADJOURNED AT 5:57 P.M.

Attest: ATLAS M.A. PEARSON
Deputy Clerk of the Board


DAN GJERDE, Chair


Atlas M.A. Pearson

NOTICE: PUBLISHED MINUTES OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS MEETINGS

- Effective March 1, 2009, Board of Supervisors minutes will be produced in “action only” format. As an alternative service, public access to recorded Board proceedings will be available on the Board of Supervisors’ website in indexed audio format
- LIVE WEB STREAMING OF BOARD MEETINGS is now available via the County’s YouTube Channel. If technical assistance is needed, please contact The Mendocino County Executive Office at (707) 463-4441.
- Minutes are considered draft until adopted/approved by the Board of Supervisors
- The Board of Supervisors’ action minutes are also posted on the County of Mendocino website at: www.mendocinocounty.org/government/board-of-supervisors
- To request an official record of a meeting of the Mendocino County Board of Supervisors, please contact the Executive Office at (707) 463-4441
- Please reference the departmental website to obtain additional resource information for the Board of Supervisors and Clerk of the Board: www.mendocinocounty.org/government/board-of-supervisors

Thank you for your interest in the proceedings of the Mendocino County Board of Supervisors



County of Sonoma

State of California

Date: October 19, 2021

Item Number: _____

Resolution Number: _____

☐ 4/5 Vote Required

Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California,

Whereas, the North Coast Railroad Authority has recently sought permission from the United States Surface Transportation Board to abandon failed, unused rail segments between Willits and Humboldt County and railbank the segment, allowing for the development of the Great Railroad Trail; and

Whereas, a North Coast Railroad Company (NCRC), a company based in Wyoming, the principals of which have not been made public, has recently submitted paperwork to the Surface Transportation Board objecting to the exemption of the railbanking request from certain challenges, stating its intent to purchase the railroad; and

Whereas, the proposed use has been widely reported and corroborated to be for the transportation of coal that is mined in the Midwest; and

Whereas, it is presumed that this company intends to transport this coal across the state of California to Marin County and then haul it north through Sonoma, Mendocino, Trinity, and Humboldt counties to the port of Humboldt; and

Whereas, coal is the biggest contributor to climate change; and

Whereas, according to a 2015 study, between five hundred and two thousand pounds of coal and coal dust can escape from every single loaded train car; and

Whereas, coal dust can cause devastating disease in humans and animals, cause

spontaneous fires, and degrade and destabilize the rail bed; and

Whereas, the Russian and Eel Rivers supply drinking water to nearly one-million people in Northern California, and habitat to numerous threatened and endangered species; and

Whereas, the North Coast Rail line has been shut down for over twenty years having been built on unstable ground, leading to erosion, landslides and washouts on a regular basis, in which segments through the canyon are simply gone, leaving the tracks hanging in the air high above the Eel River, with the necessary repairs widely regarded as cost prohibitive; and

Whereas, the Great Redwood Trail will create a destination for our local communities and attract outdoor enthusiasts, boosting our regional economy and creating the longest continuous railbanked segment in America.

Now, Therefore, Be It Resolved the County of Sonoma hereby notifies the Surface Transportation Board of our strong support for the North Coast Railroad Authority's request for exemption from offers for financial assistance filed in AB 1305x, and opposition to the acceptance of any offer of financial assistance with respect to the segment proposed to be railbanked; and

Be It Further Resolved the County of Sonoma encourages the Surface Transportation Board to grant the request of the North Coast Railroad Authority to railbank their rail line from Willits to Humboldt Bay.

Supervisors:

Gorin:

Rabbitt:

Coursey:

Gore:

Hopkins:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.

CITY OF ARCATA CITY COUNCIL MEETING

COUNCIL CHAMBER
736 F Street, Arcata

OCTOBER 06, 2021
Wednesday, 6:00 PM

AGENDA

Special accommodations for the disabled who attend City meetings can be made in advance by contacting the City Clerk at 822-5953. Assistive listening devices are available.

Pursuant to Government Code section 54957.5, all writings or documents relating to any item on this agenda which have been provided to a majority of the City Council, including those received less than 72 hours prior to the City Council meeting, will be made available for public inspection in the agenda binder located on the counter in the lobby at Arcata City Hall, 736 F Street, during normal business hours, and on the City's website at www.cityofarcata.org.

PLEASE NOTE: Speakers wishing to distribute materials to the City Council at the meeting are requested to provide 10 copies to the City Clerk.

**PUBLIC ADVISORY: THE CITY COUNCIL CHAMBER IN CITY HALL
WILL NOT BE OPEN TO THE PUBLIC**

COVID-19 NOTICE

Consistent with Executive Orders N-25-20 and N-29-20 from the Executive Department of the State of California and the Humboldt County Public Health Officer's March 19, 2020, Shelter-in-Place Order, the City Council meeting location will not be physically open and City Councilmembers will be teleconferencing into the meeting via Zoom Video Communications.

How to Observe and Participate in the Meeting:

Observe:

Members of the public can observe the meeting on television on Access Humboldt Channel 10, online by visiting www.cityofarcata.org and clicking on the See Live Meetings, Agendas, and Archives button on the home page, or on the City's YouTube channel at <https://www.youtube.com/c/CityofArcataCA>

Public Comment Participation:

Members of the public may access the Zoom meeting directly to provide Public Comment.

1. Join from a PC, Mac, iPad, iPhone or Android device: Please use this URL:
<https://us06web.zoom.us/j/81024813672>

2. If you do not wish for your name to appear on the screen, then use the drop down menu and click on “rename” to rename yourself to be anonymous.
3. If you want to comment during the public comment portion of any item, click on **raise your hand** on the right-hand side of your screen. When it is time for public comment on the item on which you wish to speak, the Clerk will unmute you. You will have 3 minutes to comment, subject to the Mayor’s discretion.

Or join by phone:

1. *67 1-669-900-6833
2. Enter Meeting ID: 810 2481 3672
3. If you are accessing the meeting via telephone and want to comment during the public comment portion of any item, press **star (*) 9** on your phone. This will raise your hand. When it is time for public comment on the item on which you wish to speak, the Clerk will unmute your phone. You will hear a prompt that will indicate your phone is unmuted. You will have 3 minutes to comment, subject to the Mayor’s discretion.
4. NOTE: Your phone number will appear on the screen unless you first dial star (*) 67 before dialing the numbers as shown above.

SPECIAL MEETING

5:30 p.m.

1. **ROLL CALL**
2. **PUBLIC COMMENT**
3. **CLOSED SESSION**
 - A. **CONFERENCE WITH LABOR NEGOTIATORS Pursuant to Government Code Section 54957.6 (Three Items). Employee Organizations: International Union of Operating Engineers Local No. 3; Arcata Police Association; and Management/Mid-Management/Confidential Employees. Agency Negotiator: Danette Demello.**

4. CLOSED SESSION REPORTS

- A. CONFERENCE WITH LABOR NEGOTIATORS Pursuant to Government Code Section 54957.6 (Three Items). Employee Organizations: International Union of Operating Engineers Local No. 3; Arcata Police Association; and Management/Mid-Management/Confidential Employees. Agency Negotiator: Danette Demello.**

5. ADJOURNMENT

REGULAR MEETING

6:00 p.m.

I. FLAG SALUTE

II. ROLL CALL

III. CEREMONIAL MATTERS

- A. Recognition of Russ Forsburg for His 30 Years of Service on the Forest Management Committee.**
- B. Proclamation Recognizing October 2021 as *Community Planning Month*.**
- C. Proclamation Recognizing October 2021 as *Domestic and Intimate Partner Violence Awareness Month*.**

IV. REPORT BY COMMISSION/COMMITTEE

- A. Annual Report from the Transactions and Use Tax Oversight Committee.**

V. EARLY ORAL COMMUNICATIONS

This 15-minute time period is provided for people to address the Council on matters not on the agenda. At the conclusion of all oral communications the Council may respond to statements. Any request that requires Council action will be set by the Council for a future agenda or referred to staff. Speakers addressing the Council at this time may be limited to two minutes. All other Oral and Written Communications will be heard at this meeting under Agenda Item XI.

VI. N/A

VII. CONSENT CALENDAR

All matters on the Consent Calendar are considered to be routine by the City Council and are enacted in one motion. There is no separate discussion of any of these items. If

discussion is required, that item is removed from the Consent Calendar and considered separately. At the end of the reading of the Consent Calendar, Council members or members of the public can request that an item be removed for separate discussion.

- A. Approve the Minutes of the City Council Meeting of September 15, 2021.**
- B. Approve the Minutes of the City Council Meeting of September 21, 2021.**
- C. Bi-Weekly Report on General Warrants.**
- D. Declare a Continuation of the Local Emergency Related to the Coronavirus Pandemic.**
- E. Adopt Ordinance No. 1551, An Ordinance of the City Council of the City of Arcata Amending Title VI, Chapter 4, Section 6566 of the Arcata Municipal Code Reauthorizing the Public, Educational, and Government (PEG) Fee on State Cable/Video Service Franchises Operating in the City of Arcata; Waive Reading of the Text and Consent to Read by Title Only.**
- F. Adopt Resolution No. 212-19, A Resolution of the City Council of the City of Arcata Amending the Class and Pay Resolution—International Union of Operating Engineers Local No. 3 (to Reflect New Positions: Code Enforcement/Permit Technician and Facilities Maintenance Technician [Foodworks]).**
- G. 1) Adopt the Successor Memorandum of Understanding between the City of Arcata and Arcata Police Association for July 1, 2021–June 30, 2024, and Authorize the Mayor to Execute; 2) Adopt Resolution No. 212-20, A Resolution of the City Council of the City of Arcata Amending the Class and Pay Resolution for Arcata Police Association [Reflecting the Negotiated Salary Increases for Term of the Successor Memorandum of Understanding, Effective Retroactively to the Pay Period That Includes July 1, 2021].**
- H. 1) Adopt Resolution No. 212-21, A Resolution of the City Council of the City of Arcata Establishing and Authorizing Supplemental Compensation and Benefits for Management and Confidential Employees [to Reflect Revisions and Additions]; 2) Adopt Resolution No. 212-22, A Resolution of the City Council of the City of Arcata Amending the Class and Pay Resolution—Management, Mid-Management, Confidential & Appointed Employees [to Reflect a 4% Salary Increase Effective Retroactively to the Pay Period That Includes July 1, 2021, and Future Increases for FY 2022/2023 and FY 2023/2024].**
- I. Award a Construction Contract for the 2021 Arcata Paving Project to GR Sundberg, Inc., in the Amount of \$1,416,634.25; Authorize the City Engineer to Increase the Contract Amount by up to \$141,663.43 (10 Percent, for a Total of \$1,558,297.68) to Allow for Any Unforeseen Contingencies and Additional Work as Necessary; and Authorize the City Manager to Execute All Applicable Documents.**

- J. Approve the Purchase of a Sullair 185 Portable Air Compressor for Environmental Services, and Award Purchase Contract to Cresco Equipment Rentals & Affiliates in the Amount of \$23,272.25, Including Tax and Freight; and Authorize the City Manager to Execute All Applicable Documents.**
- K. Approve a Proclamation in Recognition of National Long-Term Care Residents' Rights Month, October 2021.**
- L. Approve Amendment No. 1 to the Subdivision Agreement for the 30th Street Improvements Project and Authorize the City Manager to Execute Amendment No. 1.**
- M. Adopt Resolution No. 212-16 Supporting North Coast Railroad Authority's Request to Railbank the Rail Line from Willits to Humboldt Bay, and Opposing the Transportation of Coal by Freight to the Port of Humboldt Bay.**
- N. Adopt Resolution No. 212-18 Authorizing the Destruction of Certain City Records Maintained by the City Relating to the Departments of City Manager (Property and Special Projects, Personnel, City Clerk), Environmental Services, and Finance as Permitted under Section 34090 of the California Government Code and the Secretary of State's Local Government Records Program.**

VIII. ITEMS REMOVED FROM CONSENT CALENDAR

Items removed from the Consent Calendar will be heard under this section.

IX. OLD BUSINESS

A. Consider Resolution No. 212-17 to Decriminalize Entheogens in Arcata.

This resolution would decriminalize the use of entheogenic plants and fungi by those twenty-one (21) years of age and older by deprioritizing the use of City resources to assist in the enforcement of laws imposing criminal penalties for the use and possession for such plants.

RECOMMENDATION:

It is recommended that the Council consider a resolution of the City Council of the City of Arcata declaring that the investigation and arrest of individuals twenty-one (21) years of age and older involved with the adult personal use, cultivation and possession of entheogenic plants and fungi listed on the Federal Schedule 1 list, not be a priority for the City of Arcata.

B. Consider the Amended City of Arcata 2021–2023 Legislative Platform.

A Legislative Platform is a summary of locally approved policy statements that provide a framework for the City's response to state and federal legislation as well as local ceremonial opportunities. The City recognizes the need for active

legislative engagement at the local, state and federal levels to protect and enhance the interests of Arcata's residents and businesses. This platform is intended to ensure that the City can respond to important legislative concerns on a regular basis and that the City can respond quickly to changes in legislation that often have deadlines that fall in between City Council meetings.

RECOMMENDATION:

It is recommended that the Council review and discuss the enclosed amended Legislative Platform 2021–2023 and provide direction to staff regarding items of consensus that should be included in the Platform.

X. NEW BUSINESS

XI. ORAL AND WRITTEN COMMUNICATIONS

This time is provided for people to address the Council or submit written communications on matters not on the agenda. At the conclusion of all oral and written communications, the Council may respond to statements. Any request that requires Council action will be set by the Council for a future agenda or referred to staff. Speakers addressing the Council may be limited to three minutes, with a maximum of five minutes, and a time limit on the overall length of oral communications may be imposed.

XII. COUNCIL AND STAFF REPORTS

All reports shall be specifically limited to City business and shall not request or lead to action by the Council at this meeting.

A. Update on the Status of the Safe Parking Program.

B. Other Council and Staff Reports.

XIII. DATES OF FUTURE MEETINGS

XIV. CLOSED SESSION

XV. CLOSED SESSION REPORTS

XVI. ADJOURNMENT

Other than items continued or tabled to a date certain, the Council may, by majority vote, continue all matters not completed by 10:30 p.m. to the following Thursday at 6:00 p.m. in the Council Chamber. Should the Council vote to continue the meeting past 10:30 p.m., discussion on an item on the agenda that either requires or allows for public input may not begin without a unanimous vote of the City Council members present. (Closed Session items may begin later.) (Reference: Resolution No. 101-69)

CITY COUNCIL OF THE CITY OF NOVATO

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NOVATO SUPPORTING NORTH COAST RAILROAD AUTHORITY'S REQUEST TO RAILBANK THEIR RAIL LINE FROM WILLITS TO HUMBOLDT BAY AND OPPOSING NORTH COAST RAILROAD COMPANY, L.L.C.'S EFFORTS TO TRANSPORT COAL MINED IN MONTANA, UTAH AND WYOMING THROUGH MARIN COUNTY TO THE PORT OF HUMBOLDT BAY

WHEREAS, the North Coast Railroad Authority (NCRA) was formed in 1989 by the California Legislature under the North Coast Railroad Authority Act, Government Code Sections 93000, et seq and was intended to ensure continuation of railroad service in Northwestern California; and

WHEREAS, railbanking is s a voluntary agreement between a railroad company and a trail agency to use an out-of-service rail corridor as a trail until a railroad might need the corridor again for rail service; and

WHEREAS, NCRA has submitted a request to the Surface Transportation Board to railbank its rail line from Willits to Humboldt Bay for the Great Redwood Trail, which would provide the longest trail in the country for hikers, bicyclists and nature lovers to enjoy; and

WHEREAS, North Coast Railroad Company, L.L.C, a new corporation based in Wyoming, has recently submitted paperwork to the federal Surface Transportation Board objecting to the NCRA's request to railbank its rail line from Willits to Humboldt Bay with the intent to purchase the railroad; and

WHEREAS, it has been widely reported that North Coast Railroad Company, LLC intends to use the railroad to transport coal mined in other states across California and through Marin, Sonoma, Mendocino, Trinity and Humboldt counties on its way to the Port of Humboldt Bay; and

WHEREAS, coal is the single biggest contributor to climate change with the burning of coal being responsible for nearly 50% of the carbon dioxide emissions worldwide and accounting for over 70% of the greenhouse gas emissions from all electrical generation; and

WHEREAS, coal dust can cause devastating disease in humans and animals, can cause spontaneous fires, and loose coal can adversely impact drinking water, watersheds and the surrounding environment; and

WHEREAS, studies have shown that between five hundred and two thousand pounds of coal and coal dust can escape from each loaded trail car; and

WHEREAS, shipping large amounts of coal through Northern California and Marin County could present a serious danger to communities, waterways and endangered species in the region.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Novato hereby supports the North Coast Railroad Authority's request to railbank their rail line from Willits to Humboldt Bay and opposes North Coast Railroad Company, L.L.C's efforts to transport coal mined in Montana, Utah and Wyoming through Marin County to the Port of Humboldt Bay.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of Novato, Marin County, California, at a meeting thereof, held on the 5th day of October 2021, by the following vote, to wit:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

City Clerk of the City of Novato

Approved as to form:

City Attorney of the City of Novato

**CITY OF UKIAH
CITY COUNCIL MINUTES
Regular Meeting**

Virtual Meeting Link: <https://attendee.gotowebinar.com/rt/3862698010362077965>

**Ukiah, CA 95482
September 15, 2021
6:00 p.m.**

1. ROLL CALL

Ukiah City Council met at a Regular Meeting on September 10, 2021, having been legally noticed on September 15, 2021. The meeting was held virtually at the following link: <https://attendee.gotowebinar.com/rt/3862698010362077965>. Mayor Orozco called the meeting to order at 6:03 p.m. Roll was taken with the following **Councilmembers Present:** Mari Rodin, Josefina Dueñas, Jim O. Brown (*arriving at 6:05 p.m.*), and Juan V. Orozco. **Councilmembers Absent by Prearrangement:** Douglas F. Crane. **Staff Present:** Sage Sangiacomo, City Manager; David Rapport, City Attorney; and Kristine Lawler, City Clerk.

MAYOR OROZCO PRESIDING.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Orozco.

3. PROCLAMATIONS/INTRODUCTIONS/PRESENTATIONS

a. Introduction of Neil Davis, Director of Community Services.

Presenter: Shannon Riley, Deputy City Manager.

Staff Comment: Neil Davis, Director of Community Services.

Introduction was received.

URGENCY ITEM

a. Approve the Sole Source Purchase of a 2020 F-150 Police Responder XL Truck in the Amount of \$57,030.46 from Redwood Ford.

Presenter: Sage Sangiacomo, City Manager.

Motion/Second: Rodin/Duenas to approve urgency item due to timelines and place as agenda item 13d. Motion **carried** by the following roll call votes: AYES: Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: Crane. ABSTAIN: None.

4. PETITIONS AND COMMUNICATIONS

Clerk stated that all communications had been distributed.

5. APPROVAL OF MINUTES

a. Approval of the Minutes for the August 30, 2021, Special Meeting.

Motion/Second: Rodin/Duenas to approve Minutes of August 30, 2021, a special meeting, as submitted. Motion **carried** by the following roll call votes: AYES: Crane, Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: None. ABSTAIN: None.

b. Approval of the Minutes for the September 1, 2021, Regular Meeting.

Motion/Second: Rodin/Duenas to approve Minutes of September 1, 2021, a regular meeting, as submitted. Motion **carried** by the following roll call votes: AYES: Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: Crane. ABSTAIN: None.

6. RIGHT TO APPEAL DECISION

7. CONSENT CALENDAR

- a. Report of Disbursements for the Month of August 2021 – *Finance*.
- b. Report to Council for the Emergency Replacement of a Flow Meter at the Water Treatment Plant (WTP), from JM Integration LLC, (PO No. 47439) in the Amount of \$19,366.39 – *Water Resources*.
- c. Approval of Budget Amendment in the Amount of \$3,000 for CASp Training Expenses for the Chief Building Official – *Finance*.
- d. Adopt Resolution (2021-41) Approving an Initial Study/Negative Declaration and General Plan Amendment No. 21-01 to Allow for Increased Density and Lot Coverage in Compliance with the General Plan Housing Element and State Housing Laws – *Community Development*.
- e. Adoption of Resolution (2021-42) Approving Records Destruction for City Manager's Office – *City Clerk*.
- f. Approval of Budget Amendment in the Amount of \$10,000 for Colantuono, Highsmith & Whatley PC for Specialized Legal Services Related to LAFCo Matters – *Finance*.
- g. Authorize City Manager to Execute an Memorandum of Understanding (MOU) (COU No. 2122-113) to Partner with Ukiah Unified School District to Expand the After School Education and Safety Program – *Community Services*.
- h. Approve Budget Amendment (COU No. 2021-204-A1) in the Amount of \$565,727 for Contract No. 2021-204 with CWS Construction Group for the Electric Service Center Site Work, and Approve the Reset of Staff's 10% Change Order Authority Based on the Revised Contract Amount of \$2,963,326.85 – *Electric Utility*.
- i. Review Landfill Closure Financial Plan Update – *Finance*.
- j. Adoption of Resolution (2021-43) Approving the Application to the CA State Parks Outdoor Equity Grant Program – *Community Services*.
- k. Consideration and Action Regarding Recommendation to Reject All Bids Received for Specification No. E38915 Percolation Ponds 1-3 Scarification for the Waste Water Treatment Plant – *Water Resources*.

Motion/Second: Rodin/Brown to approve Consent Calendar Items 7a-7k, as submitted. Motion **carried** by the following roll call votes: AYES: Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: Crane. ABSTAIN: None.

8. AUDIENCE COMMENTS ON NON-AGENDA ITEMS

No public comment was received.

9. **COUNCIL REPORTS**

Presenters: Councilmembers Rodin and Duenas, and Mayor Orozco.

10. **CITY MANAGER/CITY CLERK REPORTS**

Presenter: Sage Sangiacomo, City Manager.

- **Update of Drought and Water Conditions**

11. **PUBLIC HEARINGS (6:15 PM)**

a. **Consideration of the Planning Commission's Recommendation to 1) Adopt an Initial Study and Mitigated Negative Declaration (SCH No.2021040428); 2) Conditionally Approve the Ukiah Western Hills Open Land Acquisition & Limited Development Agreement Project; and 3) Introduce by Title Only an Ordinance to Prezone the Conservation Parcels to "PF" Public Facilities and the Development Parcels to "R1-H" Single Family Residential-Hillside Overlay District. File No.: 20-5915**

Presenters: Craig Schlatter, Community Development Director; Michelle Irace, Planning Manager; and Maya Simerson, Project Administrator.

PUBLIC HEARING OPENED AT 7:30 P.M.

No public comment was received.

PUBLIC HEARING CLOSED AT 7:31 P.M.

Motion/Second: Brown/Rodin to adopt the Initial Study and Mitigated Negative Declaration. Motion **carried** by the following roll call votes: AYES: Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: Crane. ABSTAIN: None.

Motion/Second: Brown/Rodin to conditionally approve the Ukiah Western Hills Open Land Acquisition and Limited Development Agreement (COU No. 2122-114) Project including added language that Planning Manager, Michelle Irace added (*see added language below*). Motion carried by the following roll call votes: AYES: Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: Crane. ABSTAIN: None.

Added Language: *Condition of Approval No. 1 - Approval of the Project is contingent upon City Council approval of the Development Agreement, which includes an easement, road access and maintenance agreement.*

Motion/Second: Brown/Rodin to introduce Ordinance by title only. Motion **carried** by the following roll call votes: AYES: Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: Crane. ABSTAIN: None.

City Clerk, Kristine Lawler, read the following title into the record:

UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UKIAH TO PREZONE CERTAIN PARCELS IN ASSOCIATION WITH THE WESTERN HILLS OPEN LAND ACQUISITION AND LIMITED DEVELOPMENT PROJECT

Motion/Second: Brown/Rodin to introduce the Ordinance to prezone the conservation parcels to "PF" Public Facilities and the development parcels to "R1-H" Single Family Residential-Hillside Overlay District. Motion **carried** by the following roll call votes: AYES: Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: Crane. ABSTAIN: None.

12. UNFINISHED BUSINESS

- a. Receive Status Report and Consider Any Action or Direction Related to the Novel Coronavirus (COVID-19) Emergency Including Operational Preparedness and Response; Continuity of City Operations and Services; Community and Business Impacts; and Any Other Related Matters.**

Presenter: Tami Bartolomei, Office of Emergency Services Coordinator.

Report was received.

RECESS: 8:04 – 8:17 P.M.

Councilmember Duenas returning at 8:19 P.M.

- b. Presentation of Findings to Improve the Efficiency and Productivity of the Paths, Open Space and Creeks Commission (POSC) and the Parks, Recreation, and Golf Commission (PRGC); and Seeking Direction from Council Regarding the Reformation of the Commissions as a Single Public Spaces Commission.**

Presenters: Neil Davis, Community Services Director; Shannon Riley, Deputy City Manager; and Craig Schlatter, Community Development Director.

Motion/Second: Rodin/Brown to approve staff initiation of processes to reform the Paths, Open Space and Creeks Commission (POSCC) and the Parks, Recreation into a combined Public Spaces Commission. Motion **carried** by the following roll call votes: AYES: Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: Crane. ABSTAIN: None.

- c. Adoption of Resolution of the City Council of the City of Ukiah Opposing the Application from the North Coast Railroad Company and Encouraging the Surface Transportation Board to Support Railbanking Between Willits and Humboldt County.**

Presenter: Shannon Riley, Deputy City Manager.

Motion/Second: Rodin/Brown to adopt Resolution (2021-44) opposing the application from the North Coast Railroad Company and encouraging the Surface Transportation Board to support railbanking between Willits and Humboldt County. Motion **carried** by the following roll call votes: AYES: Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: Crane. ABSTAIN: None.

13. NEW BUSINESS

- a. Award Professional Services Agreement to GHD Inc. in the Amount of \$312,491 to Prepare the Plans, Specifications, and Estimate for the Great Redwood Trail Phase 4 Project.**

Presenter: Tim Eriksen, Public Works Director/City Engineer.

Motion/Second: Rodin/Brown to award professional services agreement to GHD Inc. (COU No. 2122-118) in the amount of \$312,491 to prepare the plans, specifications, and estimate for the Great Redwood Trail Phase 4 Project. Motion **carried** by the following roll call votes: AYES: Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: Crane. ABSTAIN: None.

- b. Possible Introduction by Title Only of an Ordinance Amending Division 1, Chapter 4, Article 4B of the City Code Regarding the Procedure for Filling Vacancies on the Design Review Board.**

Presenters: Kristine Lawler, City Clerk and Craig Schlatter, Community Development Director.

Motion/Second: Rodin/Duenas to introduce Ordinance by title only. Motion **carried** by the following roll call votes: AYES: Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: Crane. ABSTAIN: None.

City Clerk, Kristine Lawler, read the following title into the record:

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UKIAH AMENDING DIVISION 1, CHAPTER 4, ARTICLE 4B, SECTION 1161 OF THE CITY CODE REGARDING APPOINTMENT OF DESIGN REVIEW BOARD MEMBERS

Motion/Second: Brown/Rodin to introduce the Ordinance to amend Division 1, Chapter 4, Article 4B of the City Code Regarding the Procedure for Filling Vacancies on the Design Review Board. Motion **carried** by the following roll call votes: AYES: Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: Crane. ABSTAIN: None.

c. Receive Updates on City Council Committee and Ad Hoc Assignments and, if Necessary, Consider Modifications to Assignments and/or the Creation/Elimination of Ad hoc(s).

No reports were received.

d. Approve the Sole Source Purchase of a 2020 F-150 Police Responder XL Truck in the Amount of \$57,030.46 from Redwood Ford.

Presenter: Noble Waidelich, Police Captain.

Motion/Second: Brown/Rodin to approve the sole source purchase of a 2020 F-150 Police Responder XL Truck in the amount of \$57,030.46 from Redwood Ford. Motion **carried** by the following roll call votes: AYES: Rodin, Dueñas, Brown, and Orozco. NOES: None. ABSENT: Crane. ABSTAIN: None.

THE CITY COUNCIL ADJOURNED TO CLOSED SESSION AT 9:04 P.M.

14. CLOSED SESSION

a. Conference with Legal Counsel – Anticipated Litigation

(Government Code Section 54956.9(d)(2)or(4))

Significant exposure to litigation pursuant to paragraph (2) or (4) of subdivision (d) of Section 54956.9. Consideration of potential litigation arising from emergency drought declaration.

(Government Code Section 54956.9(e)(2)): (Number of potential cases: 1)

b. Conference with Legal Counsel – Anticipated Litigation

(Government Code Section 54956.9(d)(2)or(3))

Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (Number of potential cases: 1)

c. Conference with Legal Counsel – Anticipated Litigation

(Government Code Section 54956.9(d)(2)or(3))

Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (1 potential case, involving possible termination of construction contract for cause)

d. Conference with Legal Counsel – Existing Litigation

(Government Code Section 54956.9(d)(1))

Name of case: Vichy Springs Resort v. City of Ukiah, Et Al; Case No. SCU-K-CVPT-2018-70200

- e. **Conference with Legal Counsel – Existing Litigation**
(Government Code Section 54956.9(d)(1))
Name of case: Vichy Springs Resort v. City of Ukiah, Et Al; Case No. SCUК-CVPT-20-74612
- f. **Conference with Legal Counsel – Existing Litigation**
(Cal. Gov't Code Section 54956.9(d)(1))
Name of case: City of Ukiah v. Questex, LTD, et al, Mendocino County Superior Court, Case No. SCUК- CVPT-15-66036
- g. **Conference with Legal Counsel – Existing Litigation**
(Cal. Gov't Code Section 54956.9(d)(1))
Name of case: Siderakis v. Ukiah, et al, Mendocino County Superior Court, Case No. 21CV00603
- h. **Conference with Real Property Negotiators**
(Cal. Gov't Code Section 54956.8)
Property: APN Nos: 003-500-19; 003-190-08; 057-050-12; 157-050-11; 157-060-003; 001-040-83; 157-050-03, 157-060-02, 157-050-04, 157-050-03, 157-030-02, 157-050-01, 157-050-02, 157-050-10, 157-050-09, 157-070-01, 157-070-02, 003-190-01; 003-181-01; 003-582-38
Negotiator: Sage Sangiacomo, City Manager;
Negotiating Parties: Dave Hull and Ric Piffero
Under Negotiation: Price & Terms of Payment
- i. **Conference with Labor Negotiator (54957.6)**
Agency Representative: Sage Sangiacomo, City Manager
Employee Organizations: All Bargaining Units

Direction provided to Staff.

15. ADJOURNMENT

There being no further business, the meeting adjourned at 10:59 p.m.



Kristine Lawler, City Clerk

RESOLUTION NO. RES-2021-170

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA URGING THE SURFACE TRANSPORTATION BOARD TO: (1) REJECT THE APPLICATION SUBMITTED ON BEHALF OF THE NORTH COAST RAIL COMPANY, LLC TO ACQUIRE AND REHABILITATE THE NORTH COAST RAIL AUTHORITY'S RAIL LINE BETWEEN EUREKA AND WILLITS FOR THE PURPOSES OF "HIGH-VOLUME SHIPMENTS," AND (2) GRANT THE REQUEST OF THE NORTH COAST RAIL AUTHORITY TO RAILBANK ITS RAIL LINE FROM WILLITS TO HUMBOLDT BAY

WHEREAS, on May 14, 2021, the North Coast Rail Authority ("NCRA") filed a petition seeking the Surface Transportation Board's permission to abandon a 175.4-mile portion of rail line in favor of creating the Great Redwood Trail, a multi-use pathway extending 320 miles along the agency's right of way; and

WHEREAS, the section of rail line that NCRA filed to abandon was closed by federal safety officials after destructive rainstorms in 1998 washed out hillsides and collapsed tunnels and repair estimates are approximately \$2.8 billion; and

WHEREAS, on August 16, 2021, a newly formed corporation named the North Coast Railroad Company LLC ("NCRCo") filed a pleading with the Surface Transportation Board representing that the corporation is ready to make an "Offer of Financial Assistance" to acquire and rehabilitate the NCRA's rail line between Eureka and Willits for the purposes of "high-volume shipments;" and

WHEREAS, it is widely believed that NCRCo is intending to use the railroad to transport coal mined in the Midwest across the state of California to Marin County, and then haul it north through Sonoma, Mendocino, Trinity, and Humboldt counties to the port of Humboldt; and

WHEREAS, according to railroad studies, somewhere between five hundred to two thousand pounds of coal and coal dust can escape from every single loaded train car carrying coal and coal can cause devastating impacts to drinking water, watersheds, and the surrounding environment; and

WHEREAS, the NCRCo proposal would transport coal along the Russian and Eel rivers which supply drinking water to nearly one-million people of Northern California and are a habitat for numerous threatened and endangered species; and

WHEREAS, the transportation of coal through California, through Sonoma County and through Santa Rosa is inconsistent with the strongly stated goals of the State of California, the County of Sonoma and the City of Santa Rosa to reduce carbon emissions by reducing the use of fossil fuels.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Santa Rosa hereby urges the Surface Transportation Board to reject the application submitted on behalf of

the North Coast Rail Company LLC for authorization to acquire and rehabilitate the NRCA's rail line between Eureka and Willits for the transport of "high volume shipments."

BE IT FURTHER RESOLVED that the Council urges the Surface Transportation Board to grant the request of the North Coast Rail Authority to railbank its rail line from Willits to Humboldt Bay to allow for the creation the Great Redwood Trail, a 320 mile multi-use trail.

IN COUNCIL DULY PASSED this 12th day of October, 2021.

AYES: (6) Mayor C. Rogers, Council Members Alvarez, Fleming, Sawyer, Schwedhelm, Tibbetts

NOES: (0)

ABSENT: (1) Vice Mayor N. Rogers

ABSTAIN: (0)

ATTEST: _____ APPROVED: _____
City Clerk Mayor

APPROVED AS TO FORM: _____
City Attorney



DATE: September 23, 2021

TO: Transportation Authority of Marin Board of Commissioners

FROM: Anne Richman, Executive Director 
David Chan, Director of Programming and Legislation

SUBJECT: Resolution to Oppose Coal Transport Through Marin County (Action), Agenda Item No. 11

RECOMMENDATION

Staff recommends that the TAM Board adopts the attached Resolution No. 2021-08 (Attachment A) to oppose the possibility of coal transport by freight rail through Marin County and inform the Surface Transportation Board and other relevant stakeholders of TAM's position.

BACKGROUND

The North Coast Railroad Authority (NCRA), a California entity that oversees rail lines in Northern California, sought the federal Surface Transportation Board's permission to abandon failed, unused rail segments between Willits and several points in Humboldt County. The railroad was closed by federal safety officials after destructive rainstorms in 1998 washed out hillsides and collapsed tunnels.

NCRA also requested to "railbank" the dilapidated train tracks for the proposed Great Redwood Trail. The intent of NCRA's railbank request is to convert the right of way for completion of the 320-mile Great Redwood Trail connecting San Francisco and Humboldt Bay for use by hikers, cyclists, and equestrians.

Railbanking means converting unused tracks for other public purposes, although the tracks can potentially be restored for rail traffic later. NCRA estimates that costs to restore the tracks for freight traffic would exceed \$2 billion and will still remain unreliable due to the regular slides and washouts, especially along the environmentally sensitive Eel River Canyon.

DISCUSSION

A newly formed corporation, North Coast Railroad Company, LLC, based in Wyoming, recently filed an objection with the Surface Transportation Board to the railbanking request from NCRA and the Great Redwood Trail proposal. The filing says the corporation wants to restore the railway for "future, high-volume traffic flows".

The filing did not specifically mention coal transport but many, including State Senator Mike McGuire and Congressman Jared Huffman, suspect that the North Coast Railroad Company, LLC, has ambition to transport millions of tons of coal from Montana, Utah and Wyoming through Northern California including the counties of Marin, Sonoma, Mendocino, Trinity, and Humboldt. The final domestic destination is believed to be the Port of Humboldt Bay before the transported coal is exported to foreign destinations.

The fate of the rail line will be determined by the Surface Transportation Board that will look at the financial viability of the applicant and could potentially make a narrow determination based on whether the corporation is adequately capitalized to reopen the rail line for freight traffic. North Coast Railroad Company, LLC, also asserted that federal policy requires the Surface Transportation Board to prioritize maintenance or restoration of a rail line wherever possible. It is conceivable that the Surface Transportation Board may grant the petition filed by the North Coast Railroad Company, LLC.

A broad-based coalition of stakeholders, including the aforementioned State Senator Mike McGuire and Congressman Jared Huffman, NCRA, counties along the impacted rail line, and others have expressed opposition to the petition by the North Coast Railroad Company, LLC, for a myriad of health and safety issues related to coal and the transport of coal, and strong support for the Great Redwood Trail proposal.

TAM staff believes that it is important to express support to stakeholders who are trying to convince the Surface Transportation Board to reject the petition filed by the North Coast Railroad Company, LLC.

Furthermore, the TAM Board adopted a Legislative Platform in January 2021 that directs staff to support legislation that mitigates climate change and protects the environment. Adopting the attached draft resolution is consistent with TAM's Legislative Platform.

FISCAL IMPACTS

There are no immediate fiscal impacts to TAM with adopting a resolution to oppose the transport of coal by freight rail through Marin County.

NEXT STEPS

Upon Board adoption, a signed copy of the resolution will be transmitted to the Surface Transportation Board and other relevant stakeholders, including but not limited to State Senator Mike McGuire and Congressman Jared Huffman.

ATTACHMENTS

Attachment A: Draft Resolution No. 2021-08

Attachment A

TAM RESOLUTION NO. 2021-08

RESOLUTION OF THE TRANSPORTATION AUTHORITY OF MARIN (TAM) OPPOSING THE POSSIBILITY THAT COAL MAY BE TRANSPORTED THROUGH MARIN COUNTY AND INFORMING THE SURFACE TRANSPORTATION BOARD OF TAM'S POSITION

WHEREAS, A new corporation, North Coast Railroad Company, LLC, based in Wyoming has recently submitted paperwork to the federal Surface Transportation Board objecting to the Railbanking for the Great Redwood Trail with the intend to purchase the railroad; and

WHEREAS, It has been widely reported and corroborated that North Coast Railroad Company, LLC, is intending to use the railroad to transport coal, which is mined in other states, across the state of California through Marin County, and then north through Sonoma, Mendocino, Trinity, and Humboldt counties to the Port of Humboldt Bay; and

WHEREAS, Coal is the single biggest contributor to climate change; and

WHEREAS, The burning of coal is responsible for nearly 50% of the carbon dioxide emissions worldwide, and accounts for over 70% of the greenhouse gas emissions from all electrical generation; and

WHEREAS, According to railroad studies, between five hundred to two thousand pounds of coal and coal dust can escape from each loaded train car; and

WHEREAS, Coal dust can cause devastating disease in humans and animals, cause spontaneous fires, and degrade and destabilize the rail bed; and

WHEREAS, Loose coal can cause devastating impacts to our drinking water, watersheds, and surrounding environment; and

WHEREAS, The Russian and Eel Rivers supply drinking water to nearly one million people of Northern California, and habitat for numerous threatened and endangered species; and

WHEREAS, Shipping large amounts of coal through California's North Coast could present a serious danger to communities in the region; now, therefore, be it

RESOLVED, That the Transportation Authority of Marin hereby notifies the Surface Transportation Board of its strong opposition to the North Coast Railroad Company, LLC's application; and be it further

RESOLVED, THAT the Transportation Authority of Marin hereby urges the Surface Transportation Board to reject the request from North Coast Railroad Company, LLC; and be it further

Attachment A

RESOLVED, That the Transportation Authority of Marin encourages the Surface Transportation Board to grant the request of the North Coast Railroad Authority to railbank its rail line from Willits to Humboldt Bay.

PASSED AND ADOPTED at a regular meeting of the Transportation Authority of Marin held on the 23rd day of September 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Eric Lucan, Chair
Transportation Authority of Marin

ATTEST:

Jennifer Doucette
Clerk of the Board