

Contact Information

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City of Fort Bragg's - Economic Impact Analysis of The Mendocino Railway (Skunk Train).

ECONOMIC IMPACT ANALYSIS of THE MENDOCINO RAILWAY (SKUNK TRAIN)











CURRENT SITUATION & ECONOMIC DEVELOPMENT OPPORTUNITY

The Challenge. From 2002 through 2015, Fort Bragg and the Mendocino Railroad (MR aka the Skunk Train) were hit by a series of economic shocks which restructured our local economy:

- In 2002 the Georgia-Pacific Mill Site (owned by Koch Industries) closed resulting in a total direct job loss of 2,000 in a city of 7,200 residents. The closure of the lumber mill impacted the MR, which had historically transported raw logs and finished lumber to and from the Mill.
- In 2013 Tunnel 1 of MR was damaged by a rock slide. It was reopened again in 2014 and yet suffered a second more significant collapse in 2015, which eliminated freight service and significantly reduced the distance for train excursions. The loss of the skunk trail for rail transportation is a challenge for Fort Bragg, due to its relatively isolated location 45 miles from a major highway and the high cost of trucking.

Even with these economic challenges, Fort Bragg has worked hard to remake itself. We have fostered and encouraged small manufacturing and we are working with Georgia-Pacific to rezone the 400 acre Mill Site for a mix of industrial, manufacturing, retail and housing. The rehabilitation of the MR will assist with the redevelopment of this significant property.

DIRECT ECONOMIC IMPACTS

The MR, upon repair of the tunnel, will increase short line passenger services and resume cargo services between Fort Bragg and Willits, California, the economic impacts of both services are analyzed below.

Passenger Service. The Mendocino Railroad provides short tourist excursions through the mountains and the redwood forest. Figure 1 below, illustrates past (white) and future (blue) ridership if the proposed tunnel repair is completed. In 2017 total ridership was 56,559, and ridership is anticipated to steadily increase to 80,000 riders by 2021.



In 2016, Mendocino Railroad passengers spent an estimated \$7.8 million in local expenditures, including \$3.5 million on accommodations, \$3 million on food, and \$1.1 million on arts, entertainment and retail purchases in the Fort Bragg and Willits areas. These expenditures supported 286 jobs and \$643,000 in state and local taxes. By 2021, with the repaired tunnel, the MR passengers will increase their contribution to the local economy by 39% to \$10.9 million and tourist expenditures will support 403 area jobs and provide \$905,000 in local taxes.

Sunk Train - Passenger Tourism Related Expenditures 2016 & 2021								
		2016		2021	Assumptions			
Tourist Expenditures								
Accommodations	\$	3,558,352	\$	5,005,892	Conservative estimate of 1.5 nights of stay/group @ \$110/night			
Food	\$	3,083,905	\$	4,338,439	Conservative estimate of \$55 total for 4 meals per visitor for 1.5 days			
Arts & Entertainment	\$	861,788	\$	1,212,364	Dean Runyan Associates multiplier			
Retail	\$	305,796	\$	430,194	Dean Runyan Associates multiplier			
Total	\$	7,809,841	\$	10,986,889				
Other Impacts								
Direct Employment		286		403	Jobs			
State & Local Taxes	\$	643,765	\$	905,649	TOT and Retail Sales Taxes			
Total Train Passengers		56,071		78,881				
Total Passenger Groups		21,566		30,339				

Freight Growth. With the repair of the tunnel and tracks the Mendocino Railroad will begin freight services between Willits and Fort Bragg. In the near term MR anticipates adding about 1,000 freight cars per year of locally manufactured beer from the North Coast Brewery and solid waste. Over the long term, as the redwood trees of the coast have significantly regrown, future logging operations may increase the demand for freight services.

Direct MR Employment. The Mendocino Railroad provides 22 full time and 29 part time direct jobs to run and manage the train. With the estimated 39% growth in MR revenues, total employment will also increase by an estimated 9 full time and 11 part time jobs.

IMPACT ON REDEVELOPMENT OF GEORGIA PACIFIC MILL SITE

The 400 acre GP Mill Site, owned by the Koch Brothers, once provided over 2,000 working class manufacturing jobs in Fort Bragg. The Mill closed in 2002 and the 400 acre site is currently undergoing a rezoning process that will result in new opportunities for working class manufacturing jobs especially if the Mendocino Railroad resumes freight services. The MR tracks terminate in the heart of a light industrial zoning district and the mixed use districts of the GP Mill Site. The railroad also terminates within track distance from an area zoned for a new lumber mill and a site rezoned for heavy industrial uses. Due to the high cost of transportation to the Coast the MR will be instrumental in the successful redevelopment of the site.

As noted in Figure 1 below the train station is geographically central to the redevelopment of the Mill Site. Proposed new zoning is illustrated with different colors and the various shades of purple denote various types of industrial zoning on the site.



The proposed rezoning will result in 1,100 new jobs, 1,286,000 square feet of development and 394 new housing units. The success of many of these ventures will be improved by a successfully and vibrant Mendocino Railroad.

Table 4: Most Likely Development Potential For Land Use Plan						
Total Parks and Open Space (acres)	246	Acres				
Total Housing Units	394	Units				
Total Housing (Square Feet)	467,200	SF				
Total Square Feet of Commercial & Institutional	562,624	SF				
Total Square Feet of Industrial Development	256,291	SF				
Total Hotel Rooms	162	Rooms				
Total Jobs	1,136	Jobs				
Total Development	1,286,116	SF				

December 7, 2018

Letter from California Public Utilities Commission to Mendocino Railway about it's status as a Class III railroad.

PUBLIC UTILITIES COMMISSION

180 PROMENADE CIRCLE, SUITE 115 SACRAMENTO, CA 95834

December 7, 2018



Robert Jason Pinoli General Manager, Skunk Train & Vice President Mendocino Railway Foot of Laurel Street, Fort Bragg, California 95437

Re: Classification of Mendocino Railway

Mr. Pinoli,

This letter is in regards to your recent inquiry about the classification of the Mendocino Railway. Mendocino Railway is regarded as a Class III railroad by the California Public Utilities Commission (CPUC) (see: http://www.cpuc.ca.gov/General.aspx?id=973). CPUC authority over railroads is spelled out in Public Utilities (PU) Codes sections 309.7, 315, 768, and 1201 – 1205. See attached.

If you have any further questions, please contact me at (916) 928-2515 or email at atm@cpuc.ca.gov.

Sincerely,

David Stewart Utilities Engineer

Safety and Enforcement Division

Rail Crossings Engineering Section

PU Code 1201 - 1205

1201.

No public road, highway, or street shall be constructed across the track of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway, or street at grade, or shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without having first secured the permission of the commission. This section shall not apply to the replacement of lawfully existing tracks. The commission may refuse its permission or grant it upon such terms and conditions as it prescribes.

(Enacted by Stats. 1951, Ch. 764.)

1201.1.

The commission, in consultation with the Department of Transportation, shall adopt rules and regulations prescribing uniform standards regarding the time after the warning signal begins at a railroad crossing at which traffic enforcement shall begin, after public hearings and consultation with transit districts or transportation commissions and multicounty rail transit entities established under Division 12 (commencing with Section 130000), that provide rail transportation. (Added by Stats. 1999, Ch. 841, Sec. 3. Effective January 1, 2000.)

<u>1202.</u>

The commission has the exclusive power:

- (a) To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, of a street railroad by a railroad, of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or of a railroad by a street.
- (b) To alter, relocate, or abolish by physical closing any crossing set forth in subdivision (a).
- (c) To require, where in its judgment it would be practicable, a separation of grades at any crossing established and to prescribe the terms upon which the separation shall be made and the proportions in which the expense of the construction, alteration, relocation, or abolition of crossings or the separation of grades shall be divided between the railroad or street railroad corporations affected or between these corporations and the state, county, city, or other political subdivision affected.
- (d) To authorize on an application-by-application basis and supervise the operation of pilot projects to evaluate proposed crossing warning devices, new technology, or other additional safety measures at designated crossings, with the consent of the local jurisdiction, the affected railroad, and other interested parties, including, but not limited to, represented railroad employees.

(Amended by Stats. 2017, Ch. 425, Sec. 10. (SB 385) Effective January 1, 2018.)

1202.1.

In any proceeding under Section 1202, where the application to the commission states that the parties are not in agreement as to apportionment of costs, but the applicant is willing to advance the amount of money reasonably necessary to enable the respondent to complete the work to be done by it, the commission shall set the application for hearing as soon as its calendar permits on all of the following questions:

- (a) The necessity for the project.
- (b) The approval of the location and the engineering plans, including provisions for handling traffic during construction and the work to be performed by each party.
- (c) The sum to be advanced by the applicant for the work to be done by the respondent. The commission shall render as promptly as possible an interim decision effective within 20 days on the questions, reserving for a later hearing and decision the question of apportionment of costs. The decision shall also order the respondent to proceed upon receipt of the sum to be advanced by the applicant without delay to perform the work to be done by the respondent, integrating the work with that of the applicant or its contractor in such manner that neither will unreasonably obstruct or delay the work of the other, to the end that the people of the state may have the use of the project at the earliest possible date.

In the event of the failure or refusal of the respondent to grant a right of entry to permit the applicant to proceed with the work to be performed by it or its contractor, the applicant may, pursuant to Section 19 of Article I of the Constitution, obtain an order of immediate possession in a court of competent jurisdiction if a condemnation action has previously been filed in that court, or file the action and obtain an order of immediate possession in the event the action has not previously been filed. Upon obtaining the order, the applicant may proceed in the same manner as if a right of entry had been granted, and the respondent shall proceed with its own work and integrate it with that of the applicant or its contractor.

In the final decision apportioning costs, the commission shall credit the sum advanced by the applicant against the applicant's share of the costs. In the final decision, the commission shall also credit against the applicant's share of the costs any increases in those costs found by the commission to be directly attributable to the respondent's willful failure or refusal, after the effective date of the interim decision, to proceed with its own work or to integrate its work with that of the applicant or its contractor.

(Amended by Stats. 1984, Ch. 144, Sec. 167.) 1202.2.

In apportioning the cost of maintenance of automatic grade-crossing protection constructed or altered after October 1, 1965 under Section 1202, as between the railroad or street railroad corporations and the public agencies affected, the commission shall divide such maintenance cost in the same proportion as the cost of constructing such automatic grade-crossing protection is divided. The liability of cities, counties and cities and counties to pay the share of maintenance costs assigned to such local agencies by the commission shall be limited to funds set aside for allocation to the commission pursuant to Section 1231.1. The railroad or street railroad corporations and the public agencies affected may agree on a different division of maintenance costs. If the public agency affected agrees to assume a greater proportion of the cost of maintenance than the apportionment of the cost of construction, the difference shall be paid by the public agency from funds other than the State Highway Fund or any other state fund.

(Added by Stats. 1965, Ch. 1644.)

1202.3.

Notwithstanding any other provision of this chapter, in any proceeding under Section 1202, in the case of a crossing involving a publicly used road or highway not on a publicly maintained road system, the commission may apportion expense for improvements to the county in the case of unincorporated territory, city or other political subdivision if the commission finds (a) that the owner or owners of private property served by such publicly used crossing agree to expressly

dedicate and improve, and the affected public agency agrees to accept, a right-of-way or roadway over such property for a reasonable distance from such crossing as determined by the commission, or (b) that a judicial determination of implied dedication of such road or highway over the railroad right-of-way to public use, based on public user in the manner and for the time required by law, has taken place.

If neither of these conditions is found to exist, the commission shall order the crossing abolished by physical closing.

In no event shall a railroad be required to bear costs for the improvement of a publicly used crossing in excess of what it would be required to bear in connection with the improvement of a public street or highway crossing.

(Added by Stats. 1971, Ch. 1477.)

1202.5.

In prescribing the proportions in which the expense of construction, reconstruction, alteration, or relocation of grade separations shall be divided between railroad or street railroad corporations and public agencies, in proceedings under Section 1202, the commission, unless otherwise provided in this section, shall be governed by the following standards:

- (a) Where a grade separation project, whether initiated by a public agency or a railroad, will not result in the elimination of an existing grade crossing, located at or within a reasonable distance from the point of crossing of the grade separation, the commission shall require the public agency or railroad applying for authorization to construct such grade separation to pay the entire cost.
- (b) Where a grade separation project initiated by a public agency will directly result in the elimination of one or more existing grade crossings, located at or within a reasonable distance from the point of crossing of the grade separation, the commission shall apportion against the railroad 10 percent of the cost of the project. The remainder of such costs shall be apportioned against the public agency or agencies affected by such grade separation.
- (c) Where a grade separation project initiated by a railroad will directly result in the elimination of an existing grade crossing, located at or within a reasonable distance from the point of crossing of the grade separation, the commission shall apportion 10 percent of the cost, attributable to the presence of the highway facilities, against the public agency or agencies affected by the project, and the remainder thereof to the railroad or railroads applying for authorization to construct such grade separation.
- (d) Where the project consists of an alteration or reconstruction of an existing grade separation for the purpose of increasing the capacity of the structure for highway purposes, the commission shall apportion 10 percent of the cost against the railroad and the balance against the public agency or agencies affected by the grade separation. There shall be no apportionment of cost to the railroad if it did not bear any of the cost of the original project, in which case the public agency or agencies shall pay 100 percent of the cost of the alteration or reconstruction of the grade separation. An allocation of funds set aside pursuant to Section 190 of the Streets and Highways Code may be made for such a project notwithstanding subdivision (d) of Section 2454 of the Streets and Highways Code.

Where the project consists of an alteration or reconstruction of an existing grade separation for the purpose of increasing the capacity of the structure for railway purposes, the commission shall apportion 10 percent of the cost against the public agency or agencies affected and the balance against the railroad applying for authorization to alter or reconstruct the grade separation. There shall be no apportionment of cost to the public agency or agencies if the agency or agencies did not bear any of the cost of the original project, in which case the railroad shall pay 100 percent of the

cost of the alteration or reconstruction of the grade separation.

- (e) In the event the commission finds that a particular project does not clearly fall within the provisions of any one of the above categories, the commission shall make a specific finding of fact on the relation of the project to each of the categories, and in apportioning the costs, it shall assess against the railroad a reasonable percentage, if any, of the cost not exceeding the percentage specified in subdivision (b), dependent on the findings of the commission with respect to the relation of the project to each category. The remainder of such cost shall be apportioned against the public agency or agencies affected by the project.
- (f) In the event the commission finds that the respective shares of any apportionment should be divided between two or more railroads or two or more public agencies, the commission, to the extent that it has jurisdiction to do so in a particular proceeding before it, shall divide the shares between the railroads or the public agencies, or both, on any reasonable basis, to be decided by the commission, but in so doing shall follow the standards hereinabove prescribed for apportionment between railroads and public agencies, respectively.
- (g) The standards herein prescribed for apportionment of costs of grade separations shall not be applicable where federal funds are used. On such projects, the apportionments shall be in accordance with federal law and the rules, regulations, and orders of the federal agency administering such law, where applicable.
- (h) No provision of this section or of the Public Utilities Code shall be construed as in any way limiting the right of public agencies or railroads to negotiate agreements apportioning costs of grade separations, and the validity of any and all such agreements is hereby recognized for all purposes regardless whether the method of apportionment prescribed therein conforms to the standards hereinabove prescribed.

As used in this section "public agency" includes a separation of grade district, as well as the state, a county, city, or other political subdivision.

(Amended by Stats. 1991, Ch. 1035, Sec. 1.) 1202.6.

Any municipal corporation, transit district, rapid transit district, or other public entity which provides rail passenger transportation services through a contract with a railroad corporation, may pay all or part of the share of a grade separation project allocated to such railroad corporation, or all or part of such share of a project's cost negotiated and agreed upon as the railroad's share by the railroad and a public agency or agencies pursuant to subdivision (h) of Section 1202.5. In any case where the municipal corporation, transit district, rapid transit district, or other public entity agrees to pay all or part of the railroad's share, it may enter into the negotiations allocating costs and may be a party to the agreement assessing such costs.

(Added by Stats. 1970, Ch. 961.)

1202.7.

Whenever existing automatic grade-crossing safety signal equipment that was installed within the previous 10 years is planned for removal due to upgrade or closure projects undertaken pursuant to Section 130 of Title 23 of the United States Code, and the commission determines that it will meet the same performance criteria and inspection standards as new equipment and therefore be safe to use, the signal equipment shall be made available to the following:

(a) With the consent of the participating railroad, to a state agency designated by the commission, for storage and potential use at a railroad crossing currently nominated by the commission for funding to eliminate hazards of railway-highway crossings pursuant to Section 130 of Title 23 of

the United States Code.

(b) To other railroads for use at other railway-highway crossings within the state. (Added by Stats. 2006, Ch. 885, Sec. 2. Effective September 30, 2006.) 1203.

Each corporation and political subdivision to which any of the expense is apportioned shall pay from the funds available therefor in its treasury the amount apportioned to it at the time and to the parties specified by the order of the commission. If that amount is not so paid the corporation or political subdivision entitled thereto under the order may sue therefor in any court of competent jurisdiction. If no such funds are available the appropriate boards, officers, and employees intrusted with the levy and collection of the taxes or assessments of such political subdivision shall do all acts necessary to include in the next succeeding tax or assessment levy the amount due and shall collect that amount, whereupon the amount due shall be paid in accordance with the commission's order. The commission may by order designate the State, certain of the corporations, and political subdivisions affected, to do all or specified portions of the acts required by any order of the commission made under the provisions of Sections 1202 to 1205, inclusive, and may prescribe the manner and the time within which the parties so designated shall be paid or reimbursed by the other corporations, the State, and political subdivisions among which the expense of the work has been apportioned by the commission.

(Enacted by Stats. 1951, Ch. 764.) **1204.**

If the legislative body of the political subdivision determines that special benefits will accrue from the separation of grades to one or more districts within the political subdivision, and has made a finding to that effect and that the cost thereof, other than the portion to be paid by the railroad, interurban railroad, or street railroad involved, should be paid by such district or partly by the district and partly by the political subdivision, the commission may provide that such proportion of the total cost of the separation of grades, including the acquisition of property and the damage to property or an interest therein, as is not payable by the owners of the railroad, interurban railroad, or street railroad involved, may be assessed upon the district or that a part thereof may be paid by the district and a part by the political subdivision in accordance with the finding of the legislative body of the latter. The commission may provide that the physical work of making the grade separation as well as the proceedings for letting contracts therefor, collecting and enforcing the assessments, and making payment for damages and for the acquisition of property shall be done through the agency of the political subdivision in accordance with law. The order of the commission shall authorize the officers of the political subdivision to enter upon so much of the right of way of the railroad, interurban railroad, or street railroad as is necessary to effect the physical grade separation.

(Enacted by Stats. 1951, Ch. 764.)

1205.

If any order of the commission provides for the payment of a portion of the cost of any such grade separation by a political subdivision without authorizing the assessment of all or any part thereof upon a benefited district, the legislative body of the political subdivision may at any time thereafter apply to the commission to have the order modified in accordance with any finding made by the legislative body, and the commission may thereupon make a new or modified order in the same manner as if such application had been made to it before the making of the order.

PU Code 309.7, 315, and 768

- 309.7 (a) The division of the commission responsible for consumer protection and safety shall be responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description by rail. The Consumer Protection and Safety Division shall advise the commission on all matters relating to rail safety, and shall propose to the commission rules, regulations, orders, and other measures necessary to reduce the dangers caused by unsafe conditions on the railroads of the state. The delegation of enforcement responsibility to the Consumer Protection and Safety Division shall not diminish the power of other agencies of state government to enforce laws relating to employee or environmental safety, pollution prevention, or public health and safety.
- (b) In performing its duties, the Consumer Protection and Safety Division shall exercise all powers of investigation granted to the commission, including rights to enter upon land or facilities, inspect books and records, and compel testimony. The commission shall employ sufficient federally certified inspectors to ensure at the time of inspection that railroad locomotives and equipment and facilities located in class I railroad yards in California are inspected not less frequently than every 120 days [765.5 (d)], and all main and branch line tracks are inspected not less frequently than once every 12 months [765.5 (e) Note: the commission shall conduct focused inspections of railroad yards and track, either in coordination with the Federal Railroad Administration, or as the commission determines to be necessary.]. In performing its duties, the safety division shall consult with representatives of railroad corporations, labor organizations representing railroad employees, and the Federal Railroad Administration.
- (c) The general counsel shall assign to the Consumer Protection and Safety Division the personnel and attorneys necessary to fully utilize the powers granted to the commission by any state law, and by any federal law relating to rail transportation, including, but not limited to, the Federal Rail Safety Act (45 U.S.C. Sec. 421m, et seq.), to enforce safety laws, rules, regulations, and orders, and to collect fines and penalties resulting from the violation of any safety rule or regulation.
- (d) The activities of the Consumer Protection and Safety Division that relate to safe operation of common carriers by rail, other than those relating to grade crossing protection, shall also be supported by the fees paid by railroad corporations, if any, pursuant to Sections 421 to 424, inclusive. The activities of the Consumer Protection and Safety Division that relate to grade crossing protection shall be supported by funds appropriated therefore from the State Highway Account in the State Transportation Fund. On or before November 30 of each year, the commission shall report to the Legislature on the activities of the safety division, and shall fully document in the report all expenditures of those funds in the audit report provided in subdivision (f) of Section 421.

PU Code 315. The commission shall investigate the cause of all accidents occurring within this State upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and may make such order or recommendation with respect thereto as in its judgment seems just and reasonable. Neither the order or recommendation of the commission nor any accident report filed with the commission shall be admitted as evidence in any action for damages based on or arising out of such loss of life, or injury

to person or property. Every public utility shall file with the commission, under such rules as the commission prescribes, a report of each accident so occurring of such kinds or classes as the commission from time to time designates.

PU Code 768. The commission may, after a hearing, require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its employees, passengers, customers, and the public. The commission may prescribe, among other things, the installation, use, maintenance, and operation of appropriate safety or other devices or appliances, including interlocking (GO 33) and other protective devices at grade crossings or junctions and block or other systems of signaling. The commission may establish uniform or other standards of construction and equipment, and require the performance of any other act which the health or safety of its employees, passengers, customers, or the public may demand.

December 12, 2018

Memo from Fort Bragg City Attorney to City Manager regarding its status as a public utility.



CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED/ATTORNEY WORK PRODUCT MEMORANDUM

DATE: December 12, 2018

TO: Tabatha Miller, Fort Bragg City Manager

FROM: Russell Hildebrand, City Attorney

RE: Mendocino Railroad Purchase of Land from Georgia Pacific and

requirements for compliance with state and local law and permits.

INTRODUCTION

You have asked for an opinion letter regarding the status of the Mendocino Railroad (aka Skunk Train) as a public utility and if the pending sale of land from Georgia Pacific to the Mendocino Railroad would require a Coastal Development Permit. My inquiry into the status of the Mendocino Railroad confirms that they are under the jurisdiction of both the federal Surface Transportation Board and the California Public Utilities Commission (CPUC). Based on that legal status, the City is preempted by federal law from requiring a Coastal Development Permit for this land transaction, as will be discussed further below.

DISCUSSION

1) Status of The Mendocino Railroad as a Public Utility

The Mendocino Railroad is subject to the jurisdiction of the federal Surface Transportation Board ("STB"), which jurisdiction arises from Mendocino's purchase and operation of the rail assets of the former California Western Railroad ("CWR"), which was required to be, and was, approved by the STB, pursuant to 49 U.S.C. § 10901 and 49 CFR § 1150.1, et seq. See Notice of Exemption, STB FD 34465, filed March 12, 2004; STB Notice of Decision, 34584, filed April 09, 2004.

The City had a concern that the current operations of the Skunk Train as an excursion only railroad may have altered their claimed status as a Public Utility under California Law. Mendocino Railroad claimed full recognition as a railroad corporation and public utility under California law citing to Pub. Util. Code §§ 211, 216, and 229-230, as set forth in the

December 12, 2018 Mendocino Railroad Land Purchase from GP Page 2

attached legal opinion from Thomas Cregger of Cregger & Chalfant, LLP dated October 1, 2018 (Attachment 1, the "Cregger Opinion").

The City asked for confirmation from the CPUC directly as to the status of the Mendocino Railroad under California law, and we have received that confirmation from the CPUC by letter dated December 7, 2018 from David Stewart (Attachment 2 to this memo). I have also checked the CPUC website and confirmed that the Mendocino Railroad is listed as a regulated railroad on the CPUC website.

2) Exemption of this transaction from the Cal. Subdivision Map Act.

The Cregger Opinion also addressed the requirement for this land purchase to comply with the California Subdivision Map Act, and concluded the answer is that this transaction is exempt because of Mendocino's status as a railroad corporation and public utility, and Mendocino's intended use of the property to extend Mendocino's track and develop related rail facilities (considered to be rights of way) which specifically exempts Mendocino from any requirement under the Subdivision Map Act regarding filing of a parcel map. I agree with that reasoning and conclusion. Government Code § 66428(a)(2) states:

(2) Land conveyed to or from a governmental agency, public entity, public utility, or for land conveyed to a subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map. For purposes of this subdivision, land conveyed to or from a governmental agency shall include a fee interest, a leasehold interest, an easement, or a license.

Having now confirmed that the Mendocino Railroad is classified as a public utility by the California Public Utility Commission, the exemption stated in Government Code § 66428(a)(2) applies to this purchase and sale transaction and the land need only be described by a surveyed metes and bounds legal description to satisfy the legal recording requirements.

3) Requirement for a Coastal Development Permit

The Cregger Opinion discusses the question of whether a railroad is subject to state and local permitting requirements. Under the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101, et seq. ("ICCTA"), the STB exercises jurisdiction over the operation and regulation of railroads, such that in many instances state and local regulation of railroads is preempted by federal law. I have reviewed all of the relevant case law presented by Mr. Cregger and agree with his reasoning and concur in his conclusion that the Mendocino Railroad land purchase from Georgia Pacific is exempt from the requirement for a coastal development. In the case of *Friends of the Eel River v*.

Commented [MT1]: This statement concerns me in that it may be too broad. I read it as saying that Mendo Rail is exempt from all City and State regulation not just the CDP, CEQA or environmental regulations. That may be the case but I don't know that it is necessary to give away here.

December 12, 2018 Mendocino Railroad Land Purchase from GP Page 3

North Coast Rail Authority (2017) 3 Cal. 5th 677, 690-691, 702-713, 716-720 (Eel River) the California Supreme Court addressed the issue of federal pre-emption and held that a private railroad corporation with the legal status of a federally regulated railroad is not subject to the California Environmental Quality Act. For the reasons stated by the Cal. Supreme Court, the requirement for a Coastal Development Permit would subject the railroad to the same delays and uncertainty found to be problematic in the *Eel River* case. Because the City is pre-empted by federal law from requiring a Coastal Development Permit, the City may not require a Coastal Development Permit for the purchase by Mendocino Railroad of the land from Georgia Pacific.

The scope of this opinion is addressed only to the questions presented regarding the purchase of land by Mendocino Railroad from Georgia Pacific for the purpose of expanding railroad operations. If you have any questions regarding the contents of this memo, please contact me. The best phone number to reach me is 916-207-8432 and my email address is rah@jones-mayer.com.

Attachment 1 - Legal Opinion from Thomas Cregger of Cregger & Chalfant, LLP dated October 1, 2018

Attachment 2 - CPUC letter dated December 7, 2018 from David Stewart

December 19, 2018

Email from Marie Jones (City of Fort Bragg) to MRY regarding exemption from CDP for lot line adjustment.

From: Mike Hart

To: Robert Pinoli; Chris Hart

Cc: <u>Torgny Nilsson</u>

Subject: Fwd: Good News for your transaction - CDP exemption for LLA

Date: Wednesday, March 16, 2022 2:27:03 PM

Begin forwarded message:

From: "Jones, Marie" < mjones@fortbragg.com >

Subject: Good News for your transaction - CDP exemption for LLA

Date: December 19, 2018 at 8:44:02 AM PST **To:** Mike Hart < <u>mike@sierraenergy.com</u>>

Good morning Mike,

I now have a legal opinion from the City Attorney affirming that the Skunk Train is exempt under State and Federal law from the requirement to obtain a Coastal Development Permit to process a Lot Line Adjustment for your transaction. You may proceed with your acquisition. The City Attorney has also notified Ann Mingeldorf of GP of his determination.

I am sorry if this process has been frustrating. Now that I have our City Attorney's legal opinion, I am confident that you and GP can proceed without further approvals from the City.

Best of luck with your transaction and have a happy holiday.

Marie Jones
Community Development Director
City of Fort Bragg - 416 N Franlin Street - Fort Bragg, CA 95437
707-961-1807

December 19, 2018

Email from Marie Jones (City of Fort Bragg) to Cristin Kenyon (California Coastal Commission) that MRY is except from the requirement for a CDP.

From: Jones, Marie <mjones@fortbragg.com>
Sent: Wednesday, December 19, 2018 10:14 AM

To: Kenyon, Cristin@Coastal

Subject: RE: Skunk Train exemption for requirements for a CDP to do a LLA

Our City Attorney's decision that the Skunk Train is exempt from the requirement for a CDP is excerpted below:

"Mendocino Railroad land purchase from Georgia Pacific is exempt from the requirement for a coastal development. In the case of Friends of the Eel River v. North Coast Rail Authority (2017) 3 Cal. 5th 677, 690-691, 702-713, 716-720 (Eel River) the California Supreme Court addressed the issue of federal pre-emption and held that a private railroad corporation with the legal status of a federally regulated railroad is not subject to the California Environmental Quality Act. For the reasons stated by the Cal. Supreme Court, the requirement for a Coastal Development Permit would subject the railroad to the same delays and uncertainty found to be problematic in the Eel River case. Because the City is pre-empted by federal law from requiring a Coastal Development Permit, the City may not require a Coastal Development Permit for the purchase by Mendocino Railroad of the land from Georgia Pacific."

Thanks,

Marie Jones Community Development Director 707-961-1807

From: Kenyon, Cristin@Coastal < Cristin.Kenyon@coastal.ca.gov>

Sent: Wednesday, December 19, 2018 9:17 AM To: Jones, Marie <mjones@fortbragg.com>

Subject: RE: Skunk Train exemption for requirements for a CDP to do a LLA

Why is that? I don't know of anything in the Coastal Act that exempts public utilities from needing a CDP for an LLA. Only land divisions brought about in connection with the purchase of land by a public agency <u>for public recreational use</u> are excluded from the definition of development.

From: Jones, Marie [mailto:miones@fortbragg.com]
Sent: Wednesday, December 19, 2018 8:40 AM

To: Kenyon, Cristin@Coastal

Subject: Skunk Train exemption for requirements for a CDP to do a LLA

Hello Cristin,

The City's attorney has determined that the Skunk Train as a public utility is exempt from the requirement to obtain a CDP to process a LLA adjustment for the transfer of property between GP and the Skunk Train.

This is my formal notice that we are granting that exemption.

Thanks and feel free to call me with any questions.

Marie Jones Community Development Director 707-961-1807

January 17, 2019

Letter from City Attorney, R. Hilderbrand to California Coastal Commission.

ATTORNEYS AT LAW

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*a Professional Law Corporation

Ryan R. Jones

January 17, 2019

California Coastal Commission Attn: Cristin Kenyon 1385 Eighth Street, Suite 130 Arcata, CA 95521-5967

RE: City of Fort Bragg Coastal Development Permit jurisdiction over a sale of land to a public entity on the former Georgia-Pacific Mill Site

Dear Ms. Kenyon:

I am writing in response to your letter dated December 21, 2018 requesting more information regarding the sale of Georgia-Pacific land to the Mendocino Railway. I'd like to first clear up a fundamental misunderstanding of the basis of this transaction. It is not a lot line adjustment, but rather the sale of land to a public utility which sale is and transfer is exempt from the requirements of the California Subdivision Map Act. I will explain further why that is the case.

After my review of various legal opinions from prior Fort Bragg legal counsel, there is a recurring theme in their analysis and my initial analysis as well. There has been an ongoing legal debate as to whether or not the Mendocino Railway is recognized as a California Public Utility. Because of some legal actions taken by the Skunk Train related to the California Public Utilities Commission's (PUC) ability to regulate the excursion rates set by the Skunk Train, (a related subsidiary to the Mendocino Railway) it appeared they were not a regulated public utility. Case law related to the ongoing litigation between the City of Napa and the Napa Valley Wine Train

City of Fort Bragg Coastal Development Permit jurisdiction over a sale of land to a public entity on the former Georgia-Pacific Mill Site January 17, 2019

seemed to support that point. As an established railroad, the question of whether or not the Mendocino Railway is federally regulated has not been in question.

Rather than continue the debate between conflicting legal opinions, I asked the Mendocino Railway owners to provide the City with a status letter directly from the PUC clarifying whether or not the Mendocino Railway was in fact recognized by the PUC as a regulated railroad and public utility. That confirmation letter from David Stewart with the PUC dated December 7, 2018 was provided to the City.

Having now established that the PUC recognized the Mendocino Railway as a regulated public utility, they have the right to the exemption from the Subdivision Map Act set forth in Government Code Section 66428, subdivision a.2. which states:

Land conveyed to or from a governmental agency, public entity, <u>public utility</u>, or for land conveyed to a subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map. For purposes of this subdivision, land conveyed to or from a governmental agency shall include a fee interest, a leasehold interest, an easement, or a license. [emphasis added]

Therefore, under these circumstances, we are not evaluating a lot line adjustment, but rather the purchase of a surveyed portion of land by a public utility which is exempt from the requirements of the Subdivision Map Act. This land purchase by a public utility is not subject to the jurisdiction of the City, as it is a land conveyance only, and does not involve any application for development of the property at this time. Nor does the statutory language "unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map" supersede the general exemption in these circumstances. There is no evidence that a land transaction, which involves no development in the coastal zone, could create an impact to coastal resources. The scope of the City's consideration is simply our ability to require a permit related

City of Fort Bragg Coastal Development Permit jurisdiction over a sale of land to a public entity on the former Georgia-Pacific Mill Site January 17, 2019

to a purchase of land by a public utility, and does not extend to future development, which will be independently analyzed when and if a development proposal comes forward.

Further bolstering the right of the Mendocino Railway to proceed without permit requirements from the City is the California Supreme Court Case of Friends of the Eel River v. North Coast Rail Authority (2017) 3 Cal. 5th 677, 690-691, 702-713, 716-720 (Eel River) the California Supreme Court addressed the issue of federal pre-emption and held that a private railroad corporation with the legal status of a federally regulated railroad is not subject to the California Environmental Quality Act. In that case the court actually found that CEQA applied because the State of California had an ownership interest in the railroad but made it clear that a privately-owned railroad would not be held to the same standard. The court's reasoning was based on the uncertainty of delays and potential denial of the railroad's activities if subject to CEOA. The court stated in its opinion, "For the foregoing reasons, we acknowledge 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. In the ordinary regulatory setting in which a state seeks to govern private economic conduct, requiring CEQA compliance as a condition of state permission to go forward with railroad operations would be preempted." By clear analogy, the requirements of the City to process a Coastal Development Permit for a land transaction that is exempt from the Subdivision Map Act would similarly subject the Mendocino Railway to delay and potential denial, thereby restricting the business of the railroad.

For the foregoing reasons, the City has determined that this land purchase transaction is exempt from the requirement of obtaining a Coastal Development Permit. It is not the City's position that any or all future development by the Mendocino Railway would be exempt from the requirements for a Coastal Development Permit. Please contact me by email at rah@jones-mayer.com if you have further questions or need any more information.

Sincerely,

Russell Hildebrand

Losson L

City of Fort Bragg City Attorney

December 3, 2019

MRY's letter to City of Fort Bragg re: Stop Work Order for Speeder Shed.



MENDOCINO RAILWAY

1222 Research Park Drive Davis, CA 95618

Tel: 530-759-9827 x 501 Fax: 530-759-9872

tnilsson@sierraenergy.com

December 3, 2019

Sarah McCormick City of Fort Bragg 416 N. Franklin St. Fort Bragg, CA 95437

Dear Ms. McCormick:

It has come to my attention that Scott Perkins, of the City of Fort Bragg's Community Development Department, has posted an Order to Stop Work on our speeder shed in Fort Bragg, apparently because of our lack of permits for the work we are conducting on that speeder shed.

However, as the City is aware, Mendocino Railway is a railroad corporation and public utility under California law. (See Pub. Util. Code §§ 211, 216, and 229-230.) As such, we are subject to jurisdiction of the Surface Transpoltation Board ("STB"), which jurisdiction arises from our purchase and operation of the rail assets of the former California Western Railroad which was required to be, and was, approved by the STB pursuant to 49 U.S.C. § 10901 and 49 CFR § 1150.1, et seq. (See Notice of Exemption, STB FD 34465, filed March 12, 2004; STB Notice of Decision, 34584, filed April 09, 2004.)

Our status as a railroad subject to STB jurisdiction exempts our company from local and state permitting regulations. Under the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101, et seq., ("ICCTA"), the STB exercises jurisdiction over the operation and regulation of railroads such that state and local regulation of railroads is in many instances preempted by federal law. See, generally, *Friends of the Eel River v. North Coast Rail Authority* (2017) 3 Cal. 5th 677, 690-691, 702-713, 716-720. Summarizing the ICCTA's preemptive effect with regard to environmental regulations, the California Supreme Court observed:

More specifically, the rule seems well accepted in federal courts that the ICCTA preempts state and local environmental regulation requiring private railroad companies to acquire permits or preclearance as a condition to operating the railroad, as well as remedies that would prohibit the conduct of railroad business pending compliance with state or local environmental requirements. [*Id.* at 717 (emphasis in original).]

Although *Eel River* dealt with an effort to apply the California Environmental Quality Act ("CEQA") to railroad operations, the STB reached the same conclusion as to the City of Encinitas's effort to impose a Coastal Development Permit ("CDP") requirement on a railroad. In *North San Diego County Transit Development Board—Petition For Declaratory Order* (2002) 2002 WL

Sarah McCormick City of Fort Bragg December 3, 2019 Page 2

1924265 (S.T.B.), the STB held that the City of Encinitas could not, under the Coastal Act, require a CDP of a railroad which sought to construct track within a coastal zone. In rebuffing the City's attempt to impose the CDP requirement, the STB held:

We have repeatedly held that state or local laws that would impose a local pennitting or environmental process as a prerequisite to the railroad's maintenance, use, or upgrading of its facilities are preempted to the extent that they set up legal processes that could frustrate or defeat railroad operations because they would, of necessity, impinge upon the federal regulation of interstate commerce. [Id., at *5.]

The District Court (which had dismissed the City's effort to halt construction of the same track, in *City of Encinitas v. North San Diego County Transit Development Board* (2002) 2002 WL 34681621, prior to referral of the matter to the STB) similarly held:

If the Court were to allow the City of Encinitas to impose environmental or permit regulations upon NCTD operations, NCTD might be prevented from constructing the passing track. Such action would be tantamount to economic regulation by a local government over a rail carrier. The ICCTA demonstrates Congress' intent to preempt such regulatory authority over railroad operations, and to vest jurisdiction over these claims exclusively in the STB. *City of Seattle*, 105 Wash.App. at 836-7, 22 P.3d 260. Accordingly, the Court finds that Plaintiff's claims are preempted by the ICCTA. [*Id.*, at *4.]

As these cases, and these conclusions, have previously been acknowledged by the City and by the former City Attorney, Russell Hildebrand (see, for *e.g.*, Mr. Hildebrand's January 17, 2019 letter to Cristin Kenyon of the California Coastal Commission), we are removing the City's Order to Stop Work and intend to proceed with our work.

The above being said, we value the City and its efforts on behalf of our company and the community as a whole. Without agreeing to waive federal pre-emption or any of our legal rights, we would be happy at any time to discuss any concerns the City might have with any of our work. Should the City have any such concerns, please contact Robert Jason Pinoli at 707-849-1922 so we may discuss them further.

Best regards,

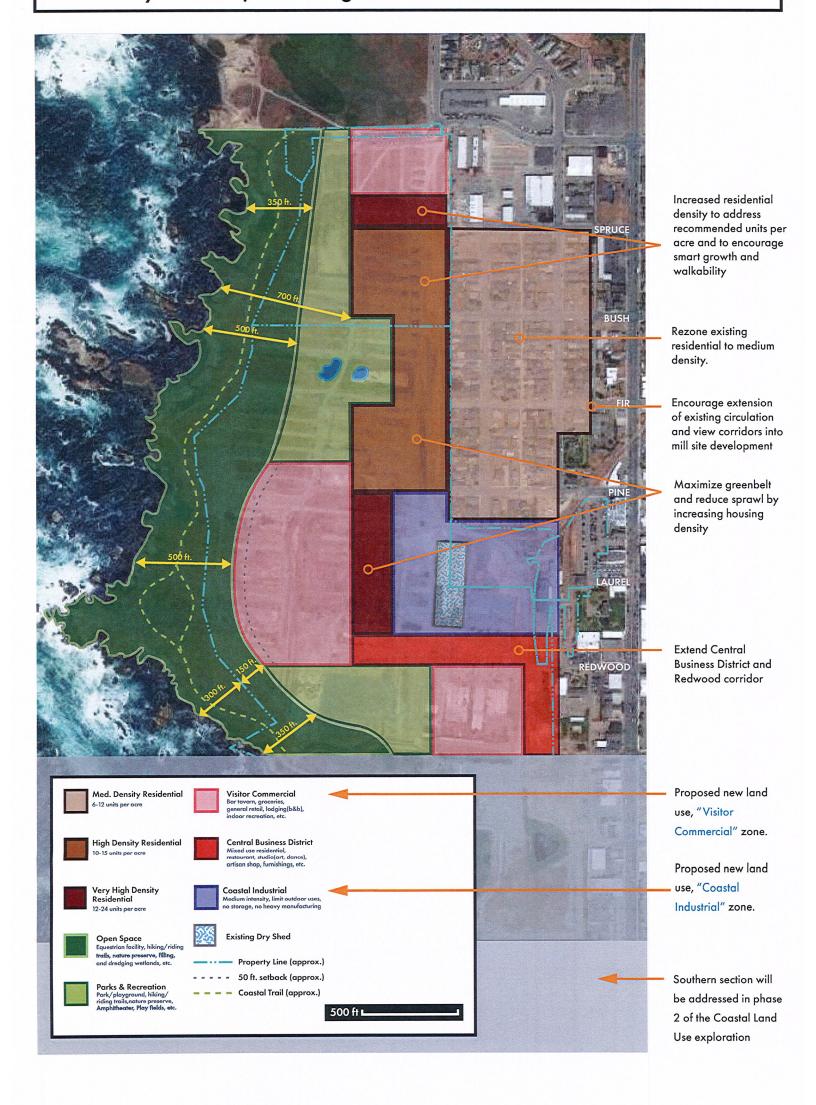
Torgny Nilsson General Counsel

February 26, 2020

City of Fort Bragg – Ad Hoc, Millsite Land Use Map

Mill Site Land Use Map (Plan Area A)

City Council/Planning Commission • Ad hoc 2-26-20



BUILD Grant Application by City of Fort Bragg for Mendocino Railway.

FY 2020 - CITY OF FORT BRAGG CALIFORNIA'S BUILD 2020 GRANT APPLICATION

Project Title	City of Fort Bragg, California's 2020 BUILD Grant Application To Rebuild Mendocino Railway's ("MR") Tunnel, Rehabilitate and Improve Safety Over Its Rural Rail Line,							
	and Reinvigorate the Economy.							
Project Location	City of Fort Bragg, CA, and Mendocino County, CA (rural funds)							
Type Of								
Application	A project to repair a collapsed tunnel; replace 17,248 chromated copper arsenate railroad ties and 1,355 sticks of rail; renew an access trail and establish eight fire suppression staging areas to benefit operations and public safety; install fencing, a gate, and security cameras to improve security; and rehabilitate an engine house (the "Project") to restore freight and passenger operations over MR's entire 40-mile rail line ("Line"), which extends from Fort Bragg, CA to Willits, CA. The project includes repairing MR's collapsed tunnel at MP 3.52 links Fort Bragg, CA, which is located on a remote section of the California coast, with difficult roads, to Willits, CA, a town 40 miles inland to the east. The Project is being undertaken because the railroad's freight and passenger offerings have historically been the economic engine for the region. After 130 years of service, the collapse of Tunnel #1 severed the Line, prevented MR from renewing freight services, reduced passenger offerings, and caused the rural region's fragile economy to experience setbacks. Further setbacks in 2020 related to COVID-19, has completely fractured the region's economy. The Project will remedy the region's economic downturns, by benefiting industry, facilitating efficient safe freight rail transportation,							
Applicant/	stimulating economic growth, and creating jobs. Tabatha Miller, City Manager							
Applicant Type	City of Fort Bragg, CA							
rippiicum Type	416 N. Franklin Street							
	Fort Bragg, CA 95437							
	Phone: (707) 961-2829							
First Tier Sub-	Mendocino Railway (aka California Western Railroad ("CWR") and the "Skunk Train")							
Awardee/	Foot of Laurel Street							
P3 Partner	Fort Bragg, CA 95437							
	Contact:	Counsel:						
	Christopher G. Hart, President	Crystal M. Zorbaugh						
	Mendocino Railway / Skunk Train	Baker & Miller, PLLC						
	1222 Research Park Drive	2401 Pennsylvania Avenue, N.W., Ste. 300						
	Davis, CA 95618	Washington, DC 20037						
	(530) 554-2522	(202) 663-7823						
	chart@sierrarailroad.com	czorbaugh@bakerandmiller.com						
Project Area /Type	Repair of Collapsed Tunnel and Rehabilitation and Improvement of a Rural Rail Line							
Total Cost	\$18,779,790.00	•						
BUILD Funds	\$9,274,307.00 (49%) FY 2020 BUILD Funds (Rural Funds).							
P3 Local Match	\$9,505,483.00 (51%) from MR							
Completion Date	All funds will be obligated in advance of the September 30, 2022 deadline for FY 2020							
•	funds and the Project will be complete by December 31, 2026.							
NEPA Status	The lead agency for purposes of an Environmental Assessment would be the Federal							
	Railroad Administration. The Project should qualify for a Categorical Exclusion.							
	Kamoad Administration. The Project sho	sala quality for a categorical Energion.						
Congressional	CA– 2nd Congressional District: CA Ass							
Congressional Districts		sembly Member Jim Wood						

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2	Support Statements	https://spaces.hightail.com/space/niquSI5mt6
	Economic Impact Analysis of	https://spaces.hightail.com/space/JY5dAWyMjD
3	Mendocino Railway and FB	
	Eco-Development Strategy	
	Report on Other Line	https://spaces.hightail.com/space/BVbvflOCE4
4	Infrastructure & Additional	
4	Repairs Proposed to be Made	
	VIA A RRIF Express loan	
5	Bids, Cost Documentation, and	https://spaces.hightail.com/space/Ont9JTi4fY
<i>J</i>	Detailed Project Timeline	
6	Benefit-Cost Analysis ("BCA")	https://spaces.hightail.com/space/msLz6vEv8c
	Mendocino Railway's ("MR")	https://spaces.hightail.com/space/GumZWifm8L
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,	Engineering Report & Tunnel	
	Engineering ("Report")	
8	Environmental Documentation	https://spaces.hightail.com/space/sgPGh84JhB
9	FRA's CE worksheet &	https://spaces.hightail.com/space/V3P1RDctVf
9	Program Comment	
10	Funding Commitment Letter	https://spaces.hightail.com/space/5eRzxYlJFX

I. PROJECT DESCRIPTION

The City of Fort Bragg, CA (the "City") with the support of Mendocino County, CA along with federal, state and local legislators and community leaders, and shippers and communities along the rail line, seek FY 2020 Better Utilizing Investments to Leverage Development ("BUILD") Discretionary Grant funds ("BUILD 2020") to assist Mendocino Railway ("MR"), which was formerly the California Western Railroad ("CWR") and is commonly known in the community as the "Skunk Train," in repairing a collapsed tunnel; replacing 17,248 chromated copper arsenate railroad ties¹ and 1,355 sticks of rail; renewing an access trail and establishing eight fire suppression staging areas to benefit railroad operations and public safety; installing fencing, a gate, and security cameras to improve security (prevent trespassers and dumping); and restoring an engine house using a combination of federal and MR funding as part of a true public-private partnership (the "Project").³ Prior to the tunnel, at MP 3.52 in Fort Bragg, CA ("Tunnel #1") collapsing in 2015, MR, functioned as an economic engine for the region, by allowing freight and passengers to be transported from western Mendocino County to eastern Mendocino County. Further setbacks in 2020, related to COVID-19, have completely fractured the region's rural economy. The Project will remedy the region's economic downturns while benefiting industry, facilitating efficient safe freight rail transportation, promoting regional connectivity, stimulating economic growth, and creating jobs.

¹ The ties installed by the previous owner of MR's rail line began to fail after only two decades, which is approximately half the normal life expectancy for ties. The failure of the ties significantly increased MR's maintenance costs upon it taking ownership of the rail line.

² This footnote summarizes in detail some of the specific components and intended outcomes for the Project. The renewed access trail will allow for ATV or UTV access over the Line for public safety and fire suppression purposes. An access trail has a smaller environmental impact than building a road, yet still allows railroad personal and emergency personnel access to the rail line and areas adjacent to it, especially during fire season. MR will purchase and place water tank cars and storage containers that have additional fire suppression equipment (conex boxes with gear and equipment (including ATVs) on existing track (sidings and spurs) to support easy and immediate access and evacuation services in the event of a fire. Like many railroads, MR routinely experiences theft, vandalism and excessive littering of dangerous items. As such, the Project has a security component to prevent/reduce trespass access. MR will install a gate, strategically placed fencing, and security cameras. Lastly, MR will restore an engine house to bring the structure which is necessary for rail operations, into a state of good repair.

³ As a passenger and freight rail project, the project qualifies as an Eligible project pursuant to § C(3)(i)(a) of the Notice of Funding Opportunity ("NOFO"). <u>See</u> 85 Fed. Reg. 10,811.

⁴ Exhibit 1 includes various maps (including a geospatial map and a railroad map showing the Line's relative location). Exhibit 1 link https://spaces.hightail.com/space/szDnYxuznJ.

The importance of preserving the rail line and the Project's regional importance is demonstrable. MR connects two economically challenged communities with challenging mountainous roads to each other and attracts capital and economic development to the region. MR has a storied legacy of transporting freight and passengers and being the economic engine for the rural areas of Fort Bragg and greater Mendocino County. 6 Various industries are eagerly awaiting the reopening of MR's rail line for freight services, including Flowbeds, North Coast Brewing Company ("NCBC"), Willits Redwood Company, Geo Aggregates, Mendocino Land Trust, Lyme Redwood Forest Company, ER Energy (propane), the City for transportation of water and municipal solid waste ("MSW"). Additionally, the former CWR-served GP Lumber Mill site ("GP Site"), a 400-acre parcel between the ocean and downtown Fort Bragg, CA is currently in the process of being redeveloped for industrial, commercial, and residential use purposes. The City is currently finalizing zoning plans for the proposed mixed development and the railroad facilities located in the GP Site. MR's accommodation of rail service to/from the GP Site will help facilitate recovery in the wake of COVID-19 and provide businesses long-awaited access to freight rail service, 8 while also promoting regional connectivity. It is anticipated that the reopening of the approximately 40-mile rail line from MP 0 (at the City of Fort Bragg, CA) to MP 40 (at Willits, CA) (the "Line") for passenger services should generate 25,000 or more

⁵ Because of the challenging mountainous terrain, MR routinely supports law enforcement and emergency response efforts in the region. Over the years, MR has assisted law enforcement in search and rescue missions, and recovery of bodies. In 2011, MR provided support for the manhunt for Aaron Basler, who murdered two people one along the route of the Skunk Train. MR supported the 41-day manhunt, by transporting equipment and personnel and providing logistics support to identify potential hiding places. MR's support was crucial because drone and aircraft (military grade) heat sensing technology couldn't successfully penetrate the forest and law enforcement resorted to "boots on the ground," and the most logical means for transporting personnel in and out was by train. Several times a year, MR transports fire agencies (Local and State) and police officers to and from medical emergencies, fires, incidents, etc.

⁶ The train is the top commercial tourist attraction in Mendocino County, carrying about 60,000 passengers per year. See Skunk Train saved by conservationists, rail buffs, Mercury News, available at https://www.mercurynews.com/2013/06/20/skunk-train-saved-by-conservationists-rail-buffs/. The cost of fixing the Line's problems simply exceeds available resources.

⁷ County Supervisor Dan Gjerde has said Fort Bragg currently ships its MSW over State Route 20 and has long been looking for a way to eliminate the truck traffic and get the MSW to Willits where it is processed. Transporting MSW alone will generate 1,000 annual carloads. However, the Line fully rehabilitated would open up countless freight possibilities, reduce truck traffic, improve the quality of life for residents, and truly promote the public interest. Exhibit 2 - Support Statements link https://spaces.hightail.com/space/niquSI5mt6

⁸ The Project will allow businesses at the GP site to ship more efficiently by rail and will increase the railroad's freight traffic volume. The positive ripple effects from the two projects supporting each other are very important for the region.

passenger trips to be taken over the Line (<u>See</u> Exhibit 3). Restoration of a fully functioning Line will attract millions of additional passengers for the Skunk Train; and, the increase in passenger traffic will benefit the region's economy greatly because those visitors will contribute about \$10,986,889.00 to the economy resulting in the creation of approximately 120 additional jobs. <u>Id.</u>

The approximately \$18.8 M Project will provide enormous local and regional benefits and improve the quality of life and safety for City residents and residents of greater Mendocino County. For starters, the Project will help foster economic prosperity throughout the region. MR/ Skunk Train's operations at full operations would add close to \$20 MM (including nearly \$11 MM in tourist expenditures on accommodations, food, arts & entertainment, and retail) to the local economy. Id. As such, the Project is of tremendous economic importance to the region. The Project will also provide for safer, more efficient, and reliable movement of freight and people; generate regional economic benefits; reduce highway congestion, and solidify the resiliency of the Line's infrastructure. In addition to ensuring continued safe, efficient, and affordable railroad access for existing and planned users, the preservation and improvement of this essential regional asset will benefit the region's largely rural population as it continues its struggle to maintain economic parity with more heavily populated portions of the U.S. The fire suppression and access road improvements and restoring the engine house are necessary to address critical weather issues unique to California. Simply put, the Skunk Train is "critical infrastructure" for shippers and residents of the surrounding communities in the region because the Skunk Train's passenger operations, directly and indirectly, support economic development in the region and provide alternative transportation access to the region's fragile roads.

Since taken ownership of the Line in 2004 after the previous owners of the Line filed for bankruptcy, MR has continued to address issues related to decades of deferred maintenance. By the time MR acquired the Line, all rail operations had ceased. The Line includes two tunnels: collapsed Tunnel #1 and Tunnel #2 at MP 35.4. Tunnel #1 was constructed in 1893 and is one of the primary points of focus for this Project. Tunnel #2, on the other hand, was constructed 18 years later with significantly improved construction techniques and has shown few signs of deterioration over the past 107 years. ¹⁰ MR has made significant repairs to the Line (at a cost of \$1.8 M), including making repairs to a smaller portion of Tunnel #1 in 2013 after a partial collapse. Unfortunately, those repairs were not enough and in 2015, Tunnel #1 collapsed again,

⁹ Exhibit 3 - Economic Impact Analysis of Mendocino Railway and FB Eco-Development Strategy link https://spaces.hightail.com/space/JY5dAWyMjD.

¹⁰ Tunnel #2 is structurally-sound and MR is budgeting for and reserving funds for ongoing maintenance to ensure that inspections and maintenance continue at regular intervals. In addition to the two tunnels, the Line has 30 bridges, the majority of which are in good shape. MR had an inspection of the bridges in 2017 and while no major improvements are contemplated, 27 bridges need some small fixes and improvements. See Exhibit 4 - Report on Other Line Infrastructure & Additional Repairs Proposed to be Made via a RRIF Express loan link https://spaces.hightail.com/space/BVbvflOCE4. As part of MR's innovative financing package, MR is seeking an RRIF Express loan to address the minor necessary bridge repairs.

severing the Line and preventing MR from renewing freight services and significantly reducing passenger offerings. Before the collapse of Tunnel #1, 70% of MR's annual ridership originated in Fort Bragg, CA. MR's importance to the region is strong and demonstrated by the fact that MR is also making some improvements to assist it and police and emergency responders with fighting wildfires along the Line and throughout the region.¹¹

The estimated cost for the Project is \$18,779,790.00. ¹² MR is prepared to self-fund \$9,505,483.00 (51 percent) of the cost with private resources but needs a BUILD 2020 grant from the United States Department of Transportation ("USDOT") in the amount of \$9,274,307.00 (49 percent) to undertake the Project. Even with the matching BUILD 2020 grant funds, the Project would be the most expensive capital project undertaken by MR ever. ¹³ If BUILD 2020 funds can be obtained, completion of the Project will help stabilize a fragile economy with limited economic opportunity and foster the creation of employment opportunities in the region. Restoring freight service over the Line will fuel economic development, by improving a transportation asset that connects the region's communities to job opportunities and is critical to economic development in the region.

MR retained the services of Michael Rodriguez, AICP, and former Transportation Planner & Economist with Economic Development Research Group and Parsons Brinckerhoff, to conduct a benefit-cost analysis ("BCA"). The BCA, attached as Exhibit 6, demonstrates that

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¹¹ The region only has fire and police stations located in Fort Bragg, CA and Willits, CA. On average, MR provides fire and police departments' assistance two to four times a year. Strategically locating fire suppression equipment could generally reduce emergency response time by on average 20-40 minutes depending on the location. However, should an accident cut off highway access in the mountainous regions the benefit would be even greater (response time could be improved by an hour or more). Improving fire and emergency response time even a handful of times a year has tremendous value not only with respect to property, but also with respect to lives that could be saved. That said, it is difficult to quantify the value of a life saved.

¹² MR solicited bids for the Project components. For the tunnel, Granite submitted a bid in the amount of \$5,429,814.00. Granite is very familiar with the Project and was involved with the work done in 2017 to stabilize the ground above Tunnel #1. The Tunnel #1 repairs include but are not limited to the following: implementing erosion control measures, excavating and exposing the west end of the tunnel, installing lighting, lighting, generator, air regulator and large vans, and implementing soil nail shoring and shotcrete application to secure existing tunnel. MR has also sought bids for other Project components. See Exhibit 5 -Bids and Detailed Project Timeline link https://spaces.hightail.com/space/Ont9JTi4fY.

¹³ Over the past five years, MR has invested heavily (over \$1 MM per year, which is impressive for a company that only grosses approximately \$3 MM in revenue a year) in repairing and maintaining the Line. MR has sought financial assistance from all possible sources, including local communities and area residents. Unfortunately, the City does not have funds available to contribute towards the Project and there are no other possible state funding sources. MR applied for a BUILD grant in 2018 (received a highly recommended rating and made it to the Secretary's desk) and again in 2019, but unfortunately the Project was not selected for funding either time.

the benefits of the Project substantially exceed the costs to the government. As shown in the BCA, at a 7 percent discount rate and a net present value of \$130,986,326 the repairs to collapsed Tunnel #1 and rehabilitation of the Line generate an economic rate of return of 46.5%. The associated benefit-cost ratio is 6.1. Moreover, the Project will create jobs, revitalize rail infrastructure, connect the underemployed to new career opportunities in industries locating along the Line and drive economic growth in the region.

Initial Project engineering is underway (See Exhibit 7). ¹⁵ Environmental consultants have already started environmental review activities for the various components of the Project (See Exhibit 8 & National Environmental Policy Act ("NEPA") discussion, infra). ¹⁶ Also attached as Exhibit 9 is the FRA Categorical Exclusion ("CE") worksheet. ¹⁷ While not fully complete at this stage and won't be until the Project is selected for a grant and further funding becomes available, based on the preliminary environmental analysis, the Project will likely qualify for a CE. Moreover, MR's preliminary review suggests that FRA's Section 106 Exempted Activities Program Comment may be able to be utilized to speed up environmental review. This is truly an infrastructure investment by the government that can begin within a year, will create short-term and long-term jobs, and will result in significant long-term economic benefits for an economically challenged region.

As stated previously, the City does not have resources to contribute towards the Project and has been unable to locate state and/or federal funding. After serious consideration, as explained in Section III, MR specifically created a \$6 per passenger ticket BUILD assessment towards rehabilitation to be applied to future passenger sales to maximize the non-federal match. The City's contribution to the Project will be serving as the grant administrator for the Project, which is fully consistent with other plans being pursued by the City.

¹⁴ Exhibit 6 (the BCA) link https://spaces.hightail.com/space/msLz6vEv8c. A **confidential** spreadsheet supporting the BCA link at https://spaces.hightail.com/space/JHu35hGvcK.

¹⁵ Exhibit 7 (Initial PE) is available at https://spaces.hightail.com/space/GumZWifm8L.

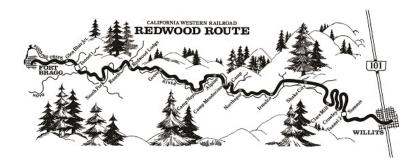
¹⁶ Exhibit 8-Environmental Documentation link https://spaces.hightail.com/space/sgPGh84JhB.

¹⁷ Exhibit 9 (CE) link https://spaces.hightail.com/space/V3P1RDctVf.

¹⁸ Since 1950, California's population has quadrupled "result[ing] in severe congestion on roads, rail, airports, and bridges. By 2040, the State's population is projected to grow from 39 million to 50 million." The California State Rail Plan ("SRP") is available at https://dot.ca.gov/-/media/dot-media/programs/rail-mass-transportation/documents/rail-plan/1-chapter-lcsrpfinal.pdf. Carload traffic is projected to increase by over 50% between 2013 and 2040 and short lines will need to grow to handle the forecasted growth. https://dot.ca.gov/-/media/dot-media/programs/rail-mass-transportation/documents/rail-plan/2-chapter-2csrpfinal.pdf. No Class III freight rail funding is available at the state level because the limited rail funding available typically goes to Amtrak and passenger projects in heavily populated areas of the State.

II. PROJECT LOCATION¹⁹

The Project is located on the Line, which runs from Fort Bragg, CA (MP 0) to Willits, CA (MP 40) to the east. The Line runs through Mendocino County, which has three designated opportunity zones²⁰ where the poverty level is more than 30%. Economic activity within the region served by MR is, at best, modest, so retaining populations is difficult. Limits on economic opportunity throughout the region are demonstrated by earnings and workforce participation.²¹ The Project involves the repair of Collapsed Tunnel #1 at MP 3.52, replacement of 17,248 chromated copper arsenate railroad ties and 1,355 sticks of rail, renewal of an access trail (from approximately MP 37.5 to MP 1.0), the establishment of eight fire suppression staging areas throughout the Line to benefit operations and public safety, installation of fencing, a gate (near MP 37.5 and MP 1), and security cameras to improve security (prevent trespassers and dumping), and rehabilitation of an engine house at MP 0, which are collectively necessary to restore and secure freight and passenger operations over MR's entire Line. Tunnel #1 links Fort Bragg, CA, which is located on a remote section of the California coast, with difficult to navigate roads, to Willits CA, 40 miles to the west. Tunnel #1 is at an approximate latitude of 39.4445 and a longitude of -123.7624 in Mendocino County, CA.



Pursuant to § C(3)(ii) of the NOFO, the Project qualifies as a rural project because none of the towns/cities located along the Line had a census-designated population of greater than

²⁰ http://www.dof.ca.gov/Forecasting/Demographics/opportunity_zones/index.html

http://www.labormarketinfo.edd.ca.gov/cgi/databrowsing/localAreaProfileQSResults.asp?selectedarea=&selectedindex=&menuChoice=localAreaPro&state=true&geogArea=0604000045.

Moreover, many individuals that are employed are underemployed. Approximately 1/5 of Mendocino County residents live in poverty.

https://www.census.gov/quickfacts/fact/table/mendocinocountycalifornia/PST045217?.

¹⁹ Various maps of the Line are available in Exhibit 1.

Of the 87,606 people that reside in Mendocino County, approximately 43% of below the age of 18 or above the age of 65, which limits these individuals' workforce participation. https://www.census.gov/quickfacts/fact/table/mendocinocountycalifornia/PST045217?. According to Mendocino County employment data, as of May 2019, 39,210 people participate in the workforce. Mendocino's unemployment rate per capita is higher than the State of California's unemployment rate. The average salary in Mendocino County, California was \$46,069.00 in 2015.

200,000 as of the 2010 census. Furthermore, based on the anticipated population growth for the region, the Project will remain a rural project once the 2020 census results are released. The Project is located in the City and Mendocino County, CA. MR's western terminus, the City of Fort Bragg, CA, is a small community of approximately 7,273 residents, roughly 140 highway miles northwest of Sacramento, CA. MR's eastern terminus, Willits, CA is a smaller community of approximately 4,900 residents, roughly 115 miles northwest of Sacramento, CA.

The City accounts for a large percentage of the workforce participants in the region. As of the 2010 census, the City of Fort Bragg, CA was a designated Urban Cluster: 30574 (UC); however, the Project qualifies as a rural Project because the City's population was only 7,273. The remainder of Mendocino County is very rural and not in an Urbanized Area, as that term is defined by the Census Bureau. The City has approximately 2,645 persons per square mile, but the rest of Mendocino County, CA only has approximately 25 persons per square mile. The Median household income (in 2017 dollars) for the City was \$41,273.00 and for Mendocino County, CA was \$46,528.00. 19% of the City's residents and 16% of Mendocino County residents live in poverty. Id. Based on these criteria, the Project qualifies as a rural project under the BUILD 2020 program.

III. GRANT FUNDS, SOURCES AND USES OF PROJECT FUNDING

The Project is expected to cost \$18,779,790.00. The City on behalf of MR seeks \$9,274,307.00 (49 percent) in BUILD 2020 (Rural) funds. The City, a local government entity, is an Eligible Applicant under § C(1) of the NOFO and will serve as the grant administrator to MR for its passenger and freight rail transportation capital project, an Eligible Project under § C(3)(i)(a) of the NOFO. The City will use the BUILD 2020 grant to assist MR in funding the Project, which is necessary to restore freight and passenger operations over the Line. The City will subcontract with its first-tier sub-awardee, MR, to arrange for and contract out completion of the Project.

MR is a small privately-owned Class III railroad based in Fort Bragg, CA. ²⁴ MR is a Surface Transportation Board ("STB") regulated freight railroad that also owns the "Skunk Train," which provides passenger services over the Line. MR is owned by Sierra Railroad Company ("SRC"), which also owns the Sierra Northern Railway ("SNR"), another small common carrier railroad. SNR provides maintenance services to all railroads within the SRC corporate family, as well as contracts with a number of ports, industrial complexes, military bases, and other railroads to provide maintenance services. MR will subcontract with SNR and other qualified providers to complete the various components of the Project

²² https://www.census.gov/quickfacts/fortbraggcitycalifornia

²³ https://www.census.gov/quickfacts/fact/table/fortbraggcitycalifornia/INC110216 and https://www.census.gov/quickfacts/fact/table/fortbraggcitycalifornia/INC110216 and <a href="https://www.census.gov/quickfacts/fact/table/mendocinocountycalifornia/PST045217?.

²⁴ <u>See Mendocino Railway – Acquisition Exemption – Assets of the California Western Railroad</u>, FD 34465 (STB served April 9, 2004).

As noted previously, when MR took ownership of the Line in 2004, the Line was in bad shape having suffered from decades of deferred maintenance. The Project involves the repair of Collapsed Tunnel #1, replacement of 17,248 chromated copper arsenate railroad ties and 1,355 sticks of rail, renewal of an access trail, the establishment of eight fire suppression staging areas throughout the Line installation of fencing, a gate, and security cameras to improve security, and rehabilitation of an engine house, which are collectively necessary to restore and secure freight and passenger operations over the entire Line.

The Project cost represents the estimated cost of the Project plus administrative costs and funding for contingencies. The details for the various components of the Project are contained in the bids in Exhibit 5. MR is committed to providing 51% of the Project's costs and any cost overruns above and beyond the BUILD 2020 funds (See letter from Robert Jason Pinoli, Vice President of MR). This means that of the total \$18,779,790.00 Project cost, 49% would be funded by the requested BUILD 2020 funds (Rural Funds) grant, and MR has committed in writing to supplying the remaining 51% plus any cost overruns.

MR spent numerous hours carefully crafting an innovative financing plan for its local (non-federal match) and planning for other less time-sensitive line improvements (See Section (F)(3). For the Project, MR will (1) use a significant portion of its annual maintenance of way ("MOW") budget for 6 years to provide a \$3,000,000.00 in cash match; (2) has specifically created a \$6 per passenger ticket BUILD assessment towards rehabilitation to be applied to future passenger sales to generate an additional match of \$1,800,000.00; ²⁶ (3) is covering work train wages, work train fuel, and administrative wages in the amount of \$2,542,024.00; (4) is pledging an additional \$1,250,000.00 in cash; and (4) is providing an in-kind contribution of \$913,459 (Work Train usage) to carry supplies and crew to Tunnel #1 and other work sites. ²⁷

MR's trains will assist with the removal of the railroad ties from the Line. In the Project, MR will incur administrative costs, which exceed MR's normal operational costs related to coordination with subcontractors; dispatching work trains; and inspecting the work performed.

²⁵ Exhibit 10 - Funding Commitment Letter link https://spaces.hightail.com/space/5eRzxYlJFX.

²⁶ In the event that the BUILD Assessment generates more than the \$1,800,000.00 anticipated, MR's match will remain at 51% because MR will reduce its cash contribution from funds it reserves for MOW projects. This will ensure that MR continues to set aside money for future maintenance/capital projects for the Line's other infrastructure, which was not included in the Project (Tunnel #2 and the bridges). Note, the BUILD assessment was originally created in 2018, but because the Project was not selected for funding and MR had to utilize all revenues for maintenance purposes, the fund has not been fully funded. The BUILD Assessment fund currently has \$830,502 available to contribute towards the Project.

²⁷ MR's 51% match includes a 46% cash match and a 5% in-kind match. The in-kind match covers train operation costs. MR will contribute crew, fuel, cars and locomotives to provide contractors with work trains, which will be the primary means to transport contractor personnel, equipment and materials to the work sites. The Line is mountainous and only accessible by the railroad or poorly maintained dirt roads used for occasional logging projects. Using MR's trains will facilitate faster completion of the Project and reduce the Project's environmental footprint.

MR carefully developed this financing plan after determining that the City did not have the resources to contribute towards the Project and no other state or federal funding was available. MR determined the only way to fund the Project is a combination of private funds and the BUILD 2020 (Rural Funds) grant. As a small railroad with limited resources, MR's 51% match is the largest contribution MR could possibly make towards the Project, while still reserving sufficient funds for other planned investments in the Line. ²⁸

Upon completion of the Project, MR will employ asset management practices optimizing the long-term utility of the Line by using revenues from on-line traffic to maintain and upgrade the Line and structures as needed in the future. Rebuilt Tunnel #1 will have a lifespan of a century or more, and replacement of the 17,248 chromated copper arsenate railroad ties and 1,355 sticks of rail means that the Line will need little maintenance for several years and last for 20-50 years. Moving forward, MR will maintain Tunnel #1 and the Line per FRA regulations. Given MR's significant contribution, MR has every incentive to minimize costs. Like any capital project, MR's contributions will eventually be fully recovered through revenues generated by increased freight and passenger traffic. As required by the NOFO, below is a Project budget:

	\$\$\$ Dollars			Percentage			
COMPONENT	NON-FED.	BUILD	OTH.	TOTAL	NON	BUILD	TOTAL
			FED.		FED.		
Tunnel Repair	\$2,000,000.00	\$3,429,814.00	0	\$5,429,814.00	36.8	63.2	100
MOW Work	\$2,324,436.00	\$2,973,150.00	0	\$5,297,586.00	43.9	56.1	100
Engine House	\$400,000.00	\$496,000.00	0	\$896,000.00	44.6	55.4	100
Safety-Fire Access	\$772,000.00	\$1,103,000.00	0	\$1,875,000.00	41.2	58.8	100
Safety-FireStaging	\$100,238.00	\$248,000.00	0	\$348,238.00	28.8	71.2	100
Safety-Security	\$100,000.00	\$135,000.00	0	\$235,000.00	42.6	57.4	100
Work Train-Wages	\$1,620,711.00	0	0	\$1,620,711.00	100	0	100
Work Train-Fuel	\$456,729.00	0	0	\$456,729.00	100	0	100
Work Trains	\$913,459.00	0	0	\$913,459.00	100	0	100
City Admin. Costs	\$464,584.00	\$389,043.00	0	\$853,627.00	54.4	45.6	100
Contingencies	\$353,326.00	\$500,300.00	0	\$853,626.00	41.4	58.6	100
Project Total	\$9,505,483.00	\$9,274,307.00		\$18,779,790.00			

As stated above, MR is using a significant portion of its annual MOW budget for 6 years to provide a \$3,000,000.00 in cash match and has specifically created a \$6 per passenger ticket BUILD assessment towards rehabilitation to be applied to future passenger sales to generate an additional match of approximately \$1,800,000.00. MR is prepared to fund any additional project over and beyond the anticipated project cost, necessary to complete the Project.

operations over the Line. MR's funding commitment when added to the normal capital and infrastructure needs of the company strain the MR's net income for the projected Project years.

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²⁸ MR has historically posted a net profit, and expects to remain profitable in the long-term; however, MR cannot meet its existing capital and maintenance needs plus handle the additional \$18,779,790.00 in costs associated with the Project in order to restore freight and passenger operations over the Line. MR's funding commitment when added to the normal capital and

IV. SELECTION CRITERIA (PRIMARY & SECONDARY)

A. Safety (Primary)

The Project will prevent increases in the per capita accident rate, and the consequences of highway crashes, injuries, and fatalities among drivers and non-drivers in the Project area that are likely to occur if the Project is not undertaken. Currently, Tunnel #1 is collapsed. As such, repairing the tunnel will reduce highway traffic and allow for safe freight and passenger operations over the 40-mile Line to resume. The tie replacement component of the Project is crucial to ensuring safe passenger and freight operations. Railroad ties provide the primary support for the rails themselves, transferring the load from railcar wheel to rail, dispersing through the rail and plate, and over the surface of the tie and ultimately into the ballast, giving the track a solid, sound base upon which trains can pass over. As such, tie replacement generates numerous safety benefits including reducing the risk of derailments, and the risks associated with re-railing the cars. The improved track structure reduces time, from derailments and repair, provides reliability to haul commodities and people at a reasonable speed (increased operating efficiencies), and maintains the largest asset a railroad likely has.

Renewal of the access trail increases the safety of the Line by giving MR's staff the capability to routinely patrol the entire Line and look for unanticipated hazards, particularly during fire season. Similarly, creating fire suppression staging areas will improve MR's response time should a weather-related event or other incidents occur. Vandalism, littering, and trespassing is a threat to infrastructure and more important human life. MR's proposed security improvements will limit access to MR's Line and ensure that derailments occur far less frequently. Restoration of the engine house will ensure that MR continues to function in a state of good repair. Collectively, all of the Project's improvements will allow MR to provide safer rail transportation for the movement of freight and people.

For a more extensive discussion of the safety aspects of the Project, see BCA (Exhibit 6). However, the table and discussion below summarize some of the anticipated safety benefits to be derived from reducing the number of trucks on the region's roads, which due to mountainous terrain and poor conditions are often difficult to navigate. Reopening the Line for freight would divert truck traffic from the roads and resume safe rail transportation of commodities that would otherwise be sent by trucks. As such, the Project keeps trucks off the road, reduces congestion, and fosters the safe multimodal movement of goods and people.

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²⁹ As explained in California DOT's <u>2015 State of the Pavement Report</u>, Mendocino County, which is in District 1, has many distressed roads and roads in need of significant repairs. The conditions of the two major nearby highways, Highways 20 and 128 are terrible. Highway 20 has as many as three to four accidents a week during the winter months. Renewing freight rail transportation in the region will not only be better for the environment, but it will also reduce damage to the region's already fragile nearby highways. See DOT's report, which is located at http://www.epavellc.com/wpcontent/uploads/documents/CALTRANS%20State%20of%20Pavement%20Report%202015.pdf

BCA - Table 10 - Crash Rates in California, 2017

Crash Type	Rate
Fatality (persons per 100 MM VMT)	1.13
Injury (persons per 100 MM VMT)	80.50
Property Damage Only (PDO)	84.02
(crashes per 100 MM VMT)	

The Project will result in 19.2 MM fewer VMT, which will translate to reductions in fatalities, injuries, and Property Damage Only ("PDO") crashes. Over 20 years, there will be 0.22 fewer (statistical) fatalities³⁰; 8.7 fewer injuries; and 16.1 fewer PDO crashes. This is both a private benefit and public benefit. Private individuals benefit from avoiding the risk of injury or death; shipping companies avoid the cost of compensating individuals for crashes; and the public benefits in their reduced medical payments. This benefit advances the USDOT goal for Safety. In the 20-year period from 2026 to 2045, this benefit totals \$1.39 MM (2018 \$ PV), or an annual average of \$69,354 per year.

B. State of Good Repair (Primary)

(i) Consistency with Relevant Plans to Maintain Transportation Facilities and Address Vulnerabilities

Tunnel #1 has collapsed, severing the east-west Line and existing ties have exceeded their useful life and must be replaced. Those components and the other Project components are fully consistent with the 2017 Mendocino County Regional Transportation Plan ("RTP"), which states that no railroad currently provides freight service in Mendocino County, and restoring freight service is a priority. Mendocino County faces atypical transportation challenges in that the "[t]ransportation routes tend to be located within valleys, and east-west travel is especially difficult since parallel ridges must be traversed. The mountainous nature of the County tends to minimize ground transportation options throughout the region." Id. at 8.

³⁰ This analysis places monetary value on fractions of a safety incident (fatality, injury, or crash). The figure 0.22 fatalities means it would take 4.5 analysis periods to produce one full fatality. Alternatively, it can be viewed as a probability, or a 22% probability of a fatality occurring in the analysis period.

³¹ MR has included pictures showing the conditions of ties that need to be replaced. These pictures can be viewed at https://spaces.hightail.com/space/WNLgVexdnC.

https://www.mendocinocog.org/files/742330750/2017+RTP+As+Adopted%28web+format%29.pdf (Page 3)

The RTP states:

[m]uch of the roadway system in Mendocino County is in mountainous terrain and is seriously deficient in sight distance, shoulder width, and vertical/horizontal alignment. The effect of one large truck and trailer on traffic operations is the equivalent of four to twelve passenger cars, depending on the amount of traffic and difficulty of the terrain. With the estimate of one freight car removing approximately four heavy trucks from Highway 101, the positive effect of an operating freight railroad makes the resumption of rail service a priority for improving the region's transportation system. Id. at 84.

This passage clearly shows that reopening the Line for passenger and freight would resolve some of the significant transportation challenges faced by the region. Moreover, users of the Line have the ability to travel outside of Mendocino County by connecting to an Amtrak Thruway Bus at CWR's station in Willits, CA. As such, improving the Line would open the region up to businesses and visitors outside of Mendocino County. For all of these reasons, the Project is fully consistent with relevant plans to maintain transportation facilities in the region.

(ii) If Left Unimproved, Tunnel #1 and the Condition of the Line Threaten the Transportation Network, Mobility of Goods and People, and Economic Growth in the Region

The objective of the Project is to reopen the entire Line for freight and passenger traffic. If these repairs are not performed, the future of rail transportation in the very rural region is in jeopardy. In its current condition, the severed Line, directly and indirectly, threatens economic growth in the region. The RTP states:

[F]reight rail service will help make it possible for timber and extractive industries to remain competitive and encourage agricultural processing and storage industries to develop in the region. Provision of tourist and excursion passenger service will encourage the expansion of the tourist industry throughout the county. An economically viable railroad system, serving the users in Mendocino County and providing access to businesses and visitors outside of the county is an important element in meeting the region's overall transportation needs. <u>Id.</u> at 84.

Two of the "rail" goals/objectives of the RTP are to establish "a fully operational rail transportation system connecting Mendocino County to interregional, state and national rail system service, providing safe and efficient access for freight and passenger movement;" and, "improve economic vitality of the region through rail-related tourism." Id. at 26. The collapse of Tunnel #1 threatens the mobility of goods, economic growth,

and the stability of the region because the Line has long driven economic development in the region.³³

According to Mendocino County, the "Skunk Train" is the top commercial tourist attraction in Mendocino County, carrying about 60,000 passengers per year. ³⁴ On the freight side, the Project will ensure shippers and industries, including the City (MSW), NCBC, Lyme Redwood Forest Company, Geo Aggregates, FloBeds, and those in the process of establishing operations at the GP Site, which as stated previously is being developed for 400 acres industrial and mixed-use purposes, that safe and viable rail service is in place and that they can establish/grow their businesses confident in the capacity of MR to meet current and future service needs. ³⁵ In sum, the Project seeks to address transportation challenges related to critical infrastructure, which has and will help sustain and flourish economic growth in the region.

(iii) Appropriately Capitalized and Optimizes Long-Term Cost Structure

Upon completion of the Project, MR will employ asset management practices optimizing the long-term utility of Tunnel #1 and the Line using revenues from on-line traffic to maintain and upgrade the Line's infrastructure in the future. A rebuilt Tunnel #1 and rehabilitated Line will require little maintenance for the first several years. Moreover, MR will maintain and repair the Line in accordance with FRA regulations standards. With proper maintenance, the new Tunnel #1 should last a century or more. The other improvements to the Line should likewise only require minimal yearly maintenance for the next decade.

MR has a clear long-term self-interest in reopening the entire Line for freight and passenger services. MR revenues from the Line generate approximately \$3,000,000 in annual revenues. In the Project, MR is dedicating a large percentage of its revenues each year of the Project to rebuild Tunnel #1 and rehabilitate/improve the Line. Given that MR is contributing 51% of the entire Project's cost and is setting aside additional money for the maintenance of the Line's infrastructure, MR has every incentive to keep costs down. Like any capital project, MR's contributions will eventually be fully recovered through revenues generated by freight and passenger traffic, increased growth through expansion, and general economic volume growth due to economic growth in the area.

³⁵ Eight customers have expressed interest in freight services once operations resume over the Line. NCBC (beer and other related commodities) and the City (MSW) have provided anticipated volumes; this demonstrates there will be a significant diversion from truck to rail.

³³ The Line is "definitely an economic engine" said the executive director of the Willits Chamber of Commerce, when the Line suffered problems in 2013. See <u>Skunk Train nearly ready to roll on long trips again</u>, Mercury News, available at https://www.mercurynews.com/2013/08/12/skunk-train-nearly-ready-to-roll-on-long-trips-again/.

³⁴ https://visitmendocino.com/mendocino-county-bucket-list/.

(iv) Sustainable Source of Revenue for Long-Term Operation/Maintenance Is Available And The Project Will Reduce Life-Cycle Costs

A fundamental principle of MR's corporate culture is to strive to maintain efficiency and cost-effective use of its resources, a characteristic that has allowed MR to purchase and reopen the former CWR and make the Line profitable again despite the Line being shut down for over 8 months and harmful negative international attention related to the closure of the Line. Long-term funding for maintaining new Tunnel #1 and the Line will derive from MR's general revenues, and MR clearly has a vested interest in the longevity of the new structure. MR has historically posted a net profit and expects to remain profitable in the long-term; however, MR cannot meet its existing capital and maintenance needs plus dedicate \$9,505,483.00 to the Project. In fact, MR's funding commitment will, when added to the normal capital and infrastructure needs of the company, strain the company's net income for the projected Project years.

Moving forward, MR's increase in passenger traffic and the traffic to be generated from reopening the Line to freight will generate significant revenues. These revenues will ensure that a strong MR revenue stream continues into the foreseeable future. Without the Project, the revenue stream will remain disrupted, and MR will be unable to recoup Project costs. Project completion will prevent this from occurring and will enhance MR's revenue stream by allowing MR to expand current passenger offerings and establish freight operations, both of which will drive economic growth. Therefore, there is a sustainable source of revenue to historically show that long-term operation and maintenance of Tunnel #1 and the Line would not be in jeopardy.

(v) Project Maintains or Improves Infrastructure That Supports Border Security

The Project is not located in an area that necessitates improvements to support border security and as such this criterion is inapplicable.

(vi) Project Will Enable Infrastructure to Remain in a State of Good Repair

The collapse of Tunnel #1 severed the Line and prevented MR from renewing freight and passenger services; this significantly reduced passenger offerings, and, caused the region's fragile economy to experience some setbacks, which has jeopardized the future of the Line. Prior to the collapse of Tunnel #1 70% of MR's annual ridership originated in Fort Bragg, CA. While Tunnel #1 needs to be repaired and new ties and sticks of rail need to be installed, most of the Line's other critical main infrastructure, including the 30 bridges and Tunnel #2 is generally only in need of minor repairs, which MR hopes to make using an RRIF Express loan that MR is seeking to make additional repairs beyond the scope of the BUILD grant (See Exhibit 4). The renewal of the access trail, the establishment of fire suppression staging areas, the security enhancements, the restoration of the engine house, will bring the entirety of the Line's infrastructure into a state of good repair. Moreover, reconstruction of Tunnel #1 using the most modern design and most innovative materials on the market will reinforce the existing steel structure and allow for continued operations, without interference, in even the worst of storms.

Rebuilt Tunnel #1 will be better able to withstand a natural disaster, including fire and flooding because Tunnel #1 will have been built at the most up to date standards. Additionally, to prepare for the Tunnel #1 rebuild, MR terraced the hillside and eliminated the slopes and installed drainage to run water off the hill and minimize slide activity to ensure the stability of the hillside. The Project will rehabilitate and revitalize rail infrastructure, provide continued and new economic growth opportunities in industries located along the rail line, and preserve the rural region's economic engine for growth. The Project will enable MR to promptly respond to wildfires and other incidents to minimize the chance that such events will disrupt freight and passenger service. The Project's components collectively will help ensure that the Line remains viable for economic development for another century or more. (See Exhibit 7 for Tunnel specs.). To be clear, MR not having the funds to complete the Project would be crippling to the region's fragile rural economy because not reopening the entire Line strains MR's continued to ability to invest in the Line and keep the bridges and Tunnel #2 in exceptional shape. The Project is necessary to keep the entire line and all its infrastructure in a state of good repair.

C. Economic Competitiveness (Primary)

(i) The Project Will Decrease Transportation Costs and Improve Access to Job Opportunities

In addition to restoring/promoting safe, efficient and affordable freight and passenger railroad access for existing and planned users, the Project will create jobs through the revitalization of rail infrastructure by connecting the underemployed to new career opportunities to be located in industries along the Line, while establishing Mendocino County's only freight transportation system. As explained on page 6 and in footnote 21, Mendocino County has three designated opportunity zones³⁶ where the poverty level is more than 30%. As such, the Project will support proposed economic development and created increased earnings and workforce participation for residents located in the rural region.

MR is an important part of the economic opportunity of the region. Economic opportunity requires three essential elements – private capital, public-sector capital (mostly infrastructure), and human capital in the form of an educated and adaptable workforce. The fact that businesses plan to locate along the Line demonstrates that there are no appreciable impediments to the flow of private sector capital into the region. Private firms are willing and able to directly invest dollars into the City of Fort Bragg, CA, and Mendocino County, due to the presence of MR. The success of the to be developed GP Site at Fort Bragg (commercial and residential development) is dependent on MR reestablishing passenger and freight operations over the entire Line.³⁷ If MR is unable to resume complete operations over its complete Line, these entities would be forced to use less efficient trucks, which would increase transportation

³⁷ MILL SITE NORTH CONCEPT MASTER PLAN PRESENTATION SPECIAL JOINT CITY COUNCIL/ PLANNING COMMISSION MEETING Sept. 21, 2019 ("<u>Mill Site North Plan</u>"), available at https://spaces.hightail.com/space/LRHGkp2OD5.

³⁶ http://www.dof.ca.gov/Forecasting/Demographics/opportunity_zones/index.html

costs for the industries and businesses, and reduce the quality of life for the region's residents. Likewise, MR's inability to undertake and complete Project would disincentivize additional businesses from locating in the region and at the to be developed GP site.

As discussed in the BCA, the economic opportunities to be created by the Project are of utmost importance to the overall economic potential of the rural region that MR serves. Particularly, in the wake of additional economic setbacks related to COVID-19, which has further fractured the region's economy. As the largely rural region involved in the Project continues to face economic challenges attributable to technological advances, it can use MR to meet these challenges. As a basic regional passenger and freight resource, the MR has the potential to serves as part of the bedrock on which community leaders can and will continue to base economic development decisions.

(ii) Project Improves Long-Term Efficiency and Reliability for Movement of Goods and People

The Project will help facilitate the long-term efficiency and reliability of the movement of goods and people throughout the region by allowing freight and passengers to travel safely and efficiently over the entire Line. Completion of the Project will allow MR to resume freight operations over MR's entire Line and once again provide Mendocino County's shippers access to freight railroad services. Freight railroad service will foster additional opportunities for economic growth throughout the United States by allowing these industries to have a farther reach by establishing transload services at Willits, CA. The Project will also promote tourism and movement of people in the region by allowing MR to resume passenger operations over the entire 40-mile Line. Completion of the Project will promote the competitiveness of American industry in these economically distressed areas by ensuring industry willing to locate in the region that goods can be moved efficiently and reliably, while also providing a quick, efficient, safe, and enjoyable means of transporting people. MR will emerge from the Project as an effective engine for growth. MR's reopening of its entire rail Line and MR's enhanced freight and passenger services will contribute to the future expansion needs of the shippers, passengers, and the region. The Project will use existing transportation infrastructure to efficiently and reliably drive economic activity to the area.

(iii) Increases Economic Productivity of Land, Capital, and Labor

The BCA contains a quantitative discussion of how the Project will result in time and operating costs savings and will promote the long-term efficiency and productivity of the region (See Exhibit 6). As explained in the BCA, upon completion of the project, the Line will serve as the key economic catalyst for the region by providing current and future entities, including the City, access to efficient rail service. Without the Project, these shippers will have to rely on trucks, a less option, which results in substantial cost and transit time increases. As explained in $\S(C)(i)$, industry is willing to locate in the region because of MR's cost-effective transportation services, which serves an incentive for establishing a business in the region. Moreover, the development proposed at the GP Site could be a game-changer. See Mill Site North Plan. In the

1960s, James Rouse began to develop what would become the planned community of Columbia, MD. Six decades later, Columbia has maximized the economic productivity of the land, capital, and labor located within the community.³⁸ Similar to the development of Columbia, MD, the Project will allow the railroad which is integral to the Mill Site North Plan, to become an engine for maximizing economic productivity in the region.

Dependence on agriculture as a means of community sustenance was made impracticable by tremendous productivity gains following World War II. For recent generations, the movement toward global supply-chains has diminished the viability of the rural manufacturing activity that replaced agriculture as an economic mainstay. In this competitive environment, rural communities are seeking to reinvent themselves based on locally available assets that distinguish them from their competitors. In the case of Mendocino County, CA, MR is that asset. Table 6 shows, the Project will promote economic competitiveness throughout the region.

	77 85 1/01			
	Hops/Malt/Glass	Beer	Latex	Total
Truck Carloads	450	550	28	1,028
Rail Carload Equivalents	225	275	14	514
Tons	22,500	27,500	1,400	51,400
\$ Value / Ton (2018 \$)	\$697.81	\$888.50	\$1,649.95	NA
Commodity Value	\$15,700,833	\$24,433,616	\$2,309,923	\$42,444,373
\$ Value Added / \$ Output	.509	.348	.297	NA
Total Value Added	\$7 991 274	\$8 502 898	\$686 047	\$17 180 670

BCA Table 6 - Increased Commodity Tonnage and Value Added

See BCA, page 11.

The BCA estimates \$17.2 MM in additional value-added per year as a result of the Project improvements to the railroad. These benefits are private benefits that accrue to a combination of the producers of the commodities as well as the specific consumers of the commodity. This benefit contributes to USDOT's Economic Competitiveness goal since it definitionally increases U.S. GDP. As explained in the BCA, in addition to the traffic above MR has been approached about handling another 5,000 carloads of traffic (municipal waste and timber). To be clear, the passenger and freight services to be offered by MR combined with the affordability of businesses establishing operations in the area makes the region ripe for growth. For this to occur, freight and passenger operations must be restored through the completion of the Project. The Project supports several of the regional economic clusters currently targeted for development in the area.

To consider the costs of *not* doing the Project, one need not look any further than the impact on two rural areas involved in the Project: the City of Fort Bragg, CA, and Mendocino County. If the Project is not undertaken, shippers will have to continue to rely on less efficient

³⁸ <u>See Here's a suburban experiment cities can learn from, Washington Post Magazine (July 13, 2017), available at https://www.washingtonpost.com/lifestyle/magazine/heres-a-suburban-experiment-cities-can-learn-from/2017/07/11/c737165e-4d1f-11e7-bc1b-fddbd8359dee_story.html.</u>

and more costly trucks, and the rural region's direct and indirect revenue to be generated from MR's passenger operations is lost forever. Newly established businesses' ability to compete with other regions in California will be comprised due to exorbitant transportation costs, and an inability to attract sufficient customers. Conversely, funding the Project will increase economic productivity because these very same employers will not only be able to maintain existing business but will have opportunities to expand as service will improve and costs lowered. Also, MR is concerned about its long-term financial vitality, since it is currently handicapped by its railroad being divided in half. Maintenance and repairs to the equipment on the east side of Tunnel #1 have not been to their mechanical shops in three years and rely upon less-efficient "field repairs." Also, the MR tourist train is considered one of the best tourist train rides in North America but with a shortened route due to Tunnel #1's closure, it may over time lose its international appeal and experience a decline in ridership.

(iv) Project Will Result In Long-Term Job Creation and Economic Opportunity

A strong and competitive freight and passenger rail system is crucial to the area's future economic health and will contribute to the generation of long-term jobs along the Line. The Project will also indirectly facilitate immediate and long-term job creation and economic benefits in Fort Bragg, CA. MR and the surrounding community have long benefitted from MR's operation of the Line. As shown in Exhibit 3, the Project will create approximately 120 additional permanent jobs. The Project will also quickly create and preserve jobs as it will result in the immediate hiring of several contractors, subcontractors, and related support positions. Additionally, because freight and passenger rail service for MR's existing shippers and communities will be restored, the Project will continue to indirectly support the numerous industries that depend upon the Line. 39 As noted, without the Project, industries are forced to rely on trucks at a higher cost, which is inefficient and worse for the environment. MR's economist, Michael Rodriguez did not undertake an analysis of the jobs (economic impact) to be created from the Project; however, such an analysis has been conducted for the passenger rail service and has shown economic impacts to the magnitude of \$47.9 MM in additional statewide economic output. 40 While such economic impacts are beyond the scope of the BCA, such statistics demonstrate the importance of the Line to the region it serves. MR has served as an economic catalyst in the region for decades. Completion of the Project will allow it to continue to do so for decades to come.

The Project will advance the Office of Management and Budget's ("OMB") employment opportunity policy. MR, as the City's general contractor for the Project, will use its best efforts to hire subcontractors who provide maximum practicable opportunities for small and/or

³⁹ The Project directly impacts employment in the area, freight shippers in the region need the line to reduce transportation costs.

⁴⁰ Stone Consulting, Inc. (2018). "Skunk Train" Excursion Railroad Economic Impact Analysis. Consulting report for the Mendocino Railway. This report is available at https://spaces.hightail.com/space/RG4ioUuL69

disadvantaged businesses, including veteran-owned small businesses and service-disabled-veteran-owned small businesses. MR is further committed to using subcontractors who have sound track records on labor practices and have proven their compliance with federal laws ensuring workplace safety and fairness. MR will use its best efforts to select subcontractors who are disadvantaged business enterprises businesses or represent disadvantaged segments of the community. MR has hired Baker & Miller PLLC, a California Certified Small Business enterprise, to assist with the preparation of this BUILD 2020 Grant application.

(v) Project Supports Global Economy

The Project will facilitate efficient and reliable freight service over the Line and support the global economy by transloading from rail to trucks at Willits, CA. Without the Project, the rural regions of the City and Mendocino County are effectively cut off from the global economy. As such, the Project will remedy the existing service gap and attract private economic development in the region. Increasing regional economic competitiveness will also benefit the nation's economy. Failure to undertake the Project threatens the mobility of goods, economic growth, and the stability of the region. Historically MR has been the only railroad serving the region and will be the railroad doing so in the future assuming MR secures funding for the Project. Collectively, the Project will bridge the existing rail service gaps in rural Mendocino, and Fort Bragg, California, and will facilitate the expansion of private economic development. Moreover, the Project will help address the economic disruptions discussed herein.

D. Environmental Sustainability (Primary)

(i) Reduces Energy Use And Pollution Through Congestion Mitigation

As discussed in the BCA (Exhibit 6), the Project will allow freight and passenger operations over the Line to be restored. As such, the Project will improve energy efficiency, reduce dependence on foreign oil, reduce greenhouse gas emissions, and otherwise benefit the environment by making freight rail transportation available to existing shippers who currently must rely on trucks. Once completed, the Project will reduce the current levels of per capita CO2 emissions and fuel consumption in the area as shippers switch from trucks to environmentally-friendly freight railroad service. The Project will promote decreased movement of goods by less-energy efficient modes. Moreover, the Project will reduce emissions from cars as people travel the 40-mile mountainous trip from Willits to Fort Bragg, CA by rail

(ii) Avoids Adverse Environmental Impacts

The Project will take place entirely within MR's existing right-of-way. Most of the work performed to Tunnel #1 will occur inside the tunnel and as such there will be little, if any, adverse impact on the Project area. MR has an environmental consultant on retainer to assist with additional environmental analysis concerning the repair of collapsed Tunnel #1. MR has AECOM on retainer and is in the process of engaging them to assist with the environmental review process for the Project. In preparation for undertaking the tunnel portion of the Project, in 2017, MR terraced the hillside and eliminated the slopes and installed drainage to run water off the hill and minimize slide activity to ensure the stability of the hillside. At the time of these improvements, there was extensive environmental analysis performed to inspect the area

surrounding Tunnel #1 to determine possible environmental impacts that could from the improvements. 41 MR commits to best practices and abiding by any environmental conditions placed on the Project as a result of FRA's environmental review.

(iii) Provides Environmental Benefits

The Project will allow efficient freight and passenger rail service to be provided over the Line; alleviate road congestion, by moving goods out of trucks and into freight cars; and reduce pollution effects from highway vehicle idling, smog, and particulate matter. The Project will also reduce greenhouse gas emissions by promoting a rail alternative to truck transportation. Currently, there is no freight rail service available in Mendocino County. As explained in the BCA, the Project will promote the health and well-being of individuals in the affected area. The table below (BCA at page 14) summarizes some of the Project's environmental benefits.

Truck Emissions Reductions

DOT Goal: Environmental Sustainability **Benefit Incidence**: Public benefit; all of

society.

20-year Benefit: Emissions savings: $NO_X - 26.7$ tons; $PM_{10} - 1.6$ tons; $SO_X - 0.3$ tons;

VOC - 3.8tons.

20-Year Value: \$334,000 **Average per vear:** \$16.700

E. Quality of Life (Primary)

The Project will improve the quality of life for residents in rural Mendocino County and the City by (1) increasing transportation options for individuals and businesses at the GP Site and throughout the region, which in turn will reduce congestion on the region's fragile roads, consumption of fossil fuels (and dependence on foreign energy sources), and emissions of CO2 and other pollutants; (2) expanding access to essential services for residents who want to use the Line to travel between Fort Bragg and Willits, CA for necessities or pleasure; ⁴² (3) creating

⁴¹ MR recently finished the hillside stabilization, which had three to four levels of stop gap measures or Best Management Practices ("BMP's") to protect against sediment discharge, not to mention Rain Event Action Plans for when rainfall was greater than .25." MR has performed follow-up visits to check turbidity and temperatures to make sure no discharges if any were above the allowable limit. There have been no discharges from the hillside stabilization.

⁴² While not an FRA "Quality of Life" criterion, the Project preserves access to a regional asset that provides comfort and happiness to many. Mendocino Land Trust owns the Noyo River

improved connectivity for the region's residents who live in the rugged Noyo Canyon, who are often isolated in the winter months because of dirt road access issues. Resumption of service over the Line would give these sometimes stranded citizens year-round access to transportation to secure goods and services.

Photos Demonstrating How MR Impacts Quality of Life⁴³









As stated herein, MR is also making improvements to provide it, emergency responders, the police, and residents the peace of mind that threats to their quality of life can be effectively handled. For example, MR is making some improvements to assist it and police and emergency responders with fighting wildfires along the Line and throughout the region. In the event of a larger fire, these improvements could save not only MR but nearby residences as well. The BCA has a further discussion of the livability criteria with respect to the Project.

Redwoods property, which is comprised of 426 acres of redwoods and forestry and is conserved in perpetuity for forest conservation and regeneration purposes. The California Redwood forest is one of our nation's greatest treasures, the oldest living organisms on our planet, and the tallest. The California Redwoods attract people from around the world and making the destination one of the "Top 10 Things to See" in California. MR is one of only two places where people with ambulatory restraints can be taken into these forests. MR is also one of the nation's oldest railroads and provides such a unique experience that National Geographic listed MR's Skunk Train as one of the Top 10 family activities in California.

⁴³ Since 1885, the Skunk Train has offered MMs of visitors the opportunity to experience the majestic redwood forests of Northern California in a completely unique way. The same sights and sounds that greeted locals great-great-grandparents still welcome tens of thousands of new riders each year. It's a magical connection to the past, and to the majesty of nature. It is a historic monument that still breathes life into the legacy of rail travel every day, as it steams along the world-famous Redwood Route. A true treasure, and a gift to be stewarded and passed down to future generations, to give them a glimpse back in time to the foundation that made the West possible, and to the conservationist spirit that preserved it for the future.

F. Innovation (Secondary)

(i) Innovative Technologies

The Project seeks to make safety improvements using a combination of traditional and innovative technologies. One of the traditional measures being employed is the renewal of an access trail⁴⁴ to patrol the Line and the surrounding forestry, especially during fire season. This improvement combined with the establishment of eight fire suppression staging areas is assisted by MR's purchase of fire suppression equipment, which involves using innovative technology to mitigate wildfires and other incidents as they occur. To successfully fight wildfires, delay in response time must be kept to a minimum. ⁴⁵ This equipment will not only benefit MR but will also be available to assist police and emergency responders with incident response. MR will also be installing modern wifi cell linked security cameras for detecting, assisting with mitigating and documenting security risks, such as fires and trespassing, that occur over the Line. Vandalism, littering, and trespassing is a threat to infrastructure and more important human life. MR's proposed security improvements will use innovative technology to limit access to MR's Line and ensure that derailments occur far less frequently. Certain typical innovative technology such as drones and aircraft (military grade) heat-sensing technology have in the past not been able to successfully penetrate the forest adjacent to the Line. With this in mind, MR developed the Project as such to utilize the aforementioned traditional and technological advances to maximize transportation safety over the Line after corroborating with regional emergency responders. As such MR has the capacity to implement these innovations, and no additional permitting, approvals, exemptions, waivers, or other procedural action is necessary to do so.

(ii) Innovative Project Delivery

The Project will employ innovative project delivery expeditiously rehabilitate the Line and allow for the resumption of freight and passenger services over the entire Line. MR has already undertaken a preliminary environmental analysis of the Project's components and drafted a CE⁴⁶ for the Project. While not fully complete at this stage and won't be until the Project is selected for a grant and further funding becomes available, based on the preliminary environmental analysis, the Project likely qualifies for a CE and will not require an Environmental Assessment or Environmental Impact Statement. Alternatively, MR's preliminary review also suggests that FRA's Section 106 Exempted Activities Program Comment may be able to be utilized to speed up environmental review. ⁴⁷ As such, the Project

⁴⁴ MR is purchasing 2-wheel ATVs offered by Rokon, which due to technological advances allow for greater flexibility for patrolling, spot MOW work and quicker response to fire incidents than currently available using existing technology and equipment.

⁴⁵ Strategically locating fire suppression equipment would reduce emergency response time by on average 20-40 minutes depending on location and in some locations response time would be improved by an hour or more.

⁴⁶ See Exhibit 9 (CE).

⁴⁷ See Pages 26 & 27 and Exhibit 8.

involves innovative project delivery because the Project's components qualify for either a CE or the Program Comment and MR has provided FRA the requisite supporting information.

(iii) Innovative Financing

In order to keep the Line running, MR has in recent years sought financial assistance from all possible sources, including local communities and even area residents. Unfortunately, the State of California, Mendocino County nor the City has funds available to contribute towards the Project. After determining that no state or local resources are available to contribute towards the Project and no other federal funding was available, MR spent countless hours carefully crafting an innovative financing plan for its local (non-federal match), which would still allow MR to dedicate money towards repairs to other infrastructure was for MR to:

- contribute a significant portion of its MOW budget for 6 yrs. to provide a \$3,000,000.00 cash match;
- create a \$6 per passenger ticket BUILD assessment towards rehabilitation to generate an additional match of \$1,800,000.00; 48
- cover work train, work train fuel, and administrative wages totaling \$2,542,024.00;
- pledge an additional \$1,250,000.00 in cash; and is providing an in-kind contribution of \$913,459.00 (Work Train usage).

Under this plan, MR would immediately commence work on Project, which would be completed in 5 and 1/3 years or less. 49 This financing plan will requireMR to dedicate a significant portion of its MOW dollars to completion of the Project. Dedicating a significant portion of MR's MOW funds to the Project will allow MR to contribute 51% of the overall Project's costs. To be clear, the only way for MR to fund the Project is through a combination of private funds and the BUILD 2020 (rural) grant. As stated previously, MR is a small railroad with limited resources; as such MR's 51% match is the largest contribution MR could possibly make towards the Project, while still reserving sufficient funds for other less time-sensitive planned investments on the Line discussed below. Since acquiring the Line MR has tried everything to bring the Line completely into a state of good repair, including as recognized in FN 13, applying for funding under BUILD 2018 and BUILD 2019. After failing to secure federal funding MR went back to the drawing board and decided to submit a smaller ask for BUILD to address its most critical needs and seek a RRIF express loan to allow MR to fund the balance. Exhibit 4 summarizes the improvements MR hopes to fund via a RRIF Express federal loan. Collectively, MR is prepared to dedicate significant portions of its revenues to completely revitalize the Line and bring it into a state of good repair, but requires federal assistance to do so. MR has included some proposed tie and rail upgrades in both applications, so MR wants to clarify the following: if MR gets an RRIF loan and is selected for a BUILD grant, MR will make

⁴⁹ To maximize MR's contribution, the Project will be performed in stages based on most urgent need. The Project Schedule is included as part of Exhibit 7.

⁴⁸ As stated previously, if the BUILD Assessment generates more than the \$1,800,000.00 anticipated, MR's match will remain at 51% and FRA's contribution will remain at 49%.

the improvements included in BUILD and the expanded improvements to bring the Line completely into a State of Good Repair.

MR's objective is to use BUILD in connection with RRIF to completely revitalize the Line, by replacing 59,499 ties, 4107 sticks of rail, and making other less time-sensitive improvements. MR stands ready to dedicate a large percentage of its revenues each year for the next decade to address both its most critical repairs and other Line improvements. MR's commitment is an excellent example of the pairing of public and private funds to achieve public and private (and mutual) benefits, such as promoting economic efficiency and development, while simultaneously encouraging rural economic growth. To be clear, a RRIF loan in the amount of 9,274,307.00 is required for the Line to generate its true economic potential. Moreover, the Project will serve as a model for rail infrastructure improvement, and it will demonstrate how common objectives can be achieved by better-utilizing infrastructure to leverage development in rural communities. The collapse of the tunnel in 2015 decreased MR's overall revenues and that combined with the rising cost of materials leave MR only a finite window of time before reopening the entire 40-mile line could become cost-prohibitive. Every dollar that MR has to commit to patchwork maintenance combined with MR's decrease revenues decreases the amount of money that MR has to invest in the Line.

The Project utilizes the following innovations to fulfill its long-term objectives:

- Fire suppression innovation strategy;
- Staggered Project schedule to maximize private partner's contribution;
- Innovative financing plan to maximize private partner's contribution;
- Project likely qualifies for a CE or the Program Comment or both; and
- While the Project does not include broadband installation on the Line, MR continues to pursue opportunities that would allow for concurrent broadband development.

(iv) Partnership

The Project is unique because MR has been working with the City, residents, and local interest groups to utilize the Line to maximize economic development in the region. The Project has the support of federal, state, and local officials (See Exhibit 2), as well as community groups. Therefore, the Project is aligned with and is supported by a broad range of stakeholders. The Project is also integrated with Mendocino County's transportation objectives and planning. As stated in Exhibit 2, both the City and NCBC are eagerly awaiting the ability to switch from trucks to rail transportation. The Project enjoys broad endorsement, a private funding commitment from MR, and numerous private industries, some of which are not traditionally involved in transportation projects. As demonstrated by the Mill Site North Plan, MR is a key part of the commercial and residential development proposed at Fort Bragg. Here, there truly is a public/private partnership as there will be a combination of federal and private funding. The Project is to be undertaken by the City, in partnership with a private railroad and local industry. The Project is included in Mendocino County's RTP. As such, the Project is fully consistent with and indeed would facilitate Mendocino County's transportation plans. The Project dovetails neatly into the relevant state, metropolitan, and local planning, all of which anticipate future rail transportation growth.

In the coming years, the 400-acre GP Site will be reopened for business and will have the potential to generate significant additional economic development in the area, if freight rail service is restored As stated in Exhibit 3, "Due to the high cost of transportation to the Coast the MR will be instrumental in the successful redevelopment of the mill." The Project will foster economic development in the region, benefit local industry, and restore safe and efficient freight rail transportation. While not directly providing a financial contribution towards the Project, MR's prospective shippers are all indirect partners in the Project. Likewise, in recognition of the Administration's goal of attracting significant new, non-federal revenue streams dedicated to transportation infrastructure investment. MR established a \$6 per passenger ticket historic assessment that beginning July 2018 was added to every passenger ticket sold to create a steady revenue stream for maximizing investment in MR's freight and passenger infrastructure. In essence, every rider of the MR is a partner in ensuring that the MR continues to support economic development in the region for the foreseeable future.

V. ENVIRONMENTAL RISK REVIEW

A. Technical & Financial Capacity

Initial Project engineering/designing for the component of the Project related to repairing Tunnel #1 is underway (see Exhibit 7). No engineering is necessary for the other Project components; however, the specifications for such improvements are included in Exhibit 7. The Project is technically feasible, but it cannot be completed without matching federal funds, which are essential to achieving the anticipated benefits of the Project. As noted, the entire Project can be completed, not just funds obligated, by December 31, 2026. From a technical perspective, MR is proposing to rebuild Tunnel #1 within a year. The proposed design for Tunnel #1 will be less vulnerable to fire, flooding, earthquake, and derailment damage. The improvements to Tunnel #1 and other Project improvements allow MR to serve as an engine for economic growth.

In addition to being technically feasible, the Project is also financially feasible. The Project cost is approximately \$18,779,790.00 based upon recent bid estimates (See Exhibit 5). MR seeks a BUILD 2020 grant of \$9,274,307.00 (49% of total Project Costs) (Rural Funds). MR proposes to contribute \$9,505,483.00 (51%) of its resources as a local match, making this Project a truly innovative public-private partnership. MR is a profitable company and has enough cash flow to fund its existing expenses, cover its match, pursue its proposed RRIF Express projects, plus future maintenance needs. Assuming the BUILD 2020 funds are awarded,

⁵⁰ All necessary pre-construction activities will be complete to allow grant funds to be obligated well in advance of the statutory deadline for obligation of grant funds awarded under BUILD 2020, which is September 30, 2022. It is possible that the Project may encounter some delays attributable to weather; however, MR has already factored routine weather delays into its anticipated completion date.

the Project is financially viable and can be delivered on time. MR has a pattern of completing projects on time and consistent with budgets initially allocated for its various projects.⁵¹

B. Project Schedule

MR will obtain all required approvals and complete permitting well in advance of the September 30, 2022, statutory deadline for the obligation of FY 2020 funds. Moreover, the entire Project can be complete by December 31, 2026. The following is a general overview of the estimated timeframe for the Project. Note that the dates listed represent a timeline for which environmental review can be complete, bids issued and construction begun. This timeline ensures that Project construction can begin within a few months of receipt of a BUILD 2020 grant, and that grant funds will be utilized steadily and expeditiously once construction starts.

Tunnel #1 Engineering/Planning and Design

• Complete. (<u>See</u> Exhibits 4, 5, 7 & 8).

Environmental Permits/Grant Agreements

- MR will seek a CE and/or utilize the FRA's Section 106 Exempted Activities Program Comment for the Project. The work to Tunnel #1 will be confined to the tunnel and should create very little environmental impacts. Likewise, the other planned improvements (tie and rail replacement, renewal of the access trail, establishing of eight fire suppression staging areas to benefit railroad operations and public safety, installing the fencing, a gate, and security cameras to improve security, and restoring the engine house) should qualify for a CE or under the Program Comment as rail improvements in existing right-of-way.
- From January 1, 2021-September 30, 2021, MR will complete any necessary environmental processes and execute the required grant agreements. ⁵²

Repair of Tunnel #1 and Rehabilitation of Its Track (5 1/3 Years)

- Mobilization: October 1, 2021 (to allows for completion of environmental review and development of grant agreement)
- Demobilization: December 31, 2026

The complete Project Schedule for the Project is contained in Exhibit 5.⁵³ Please note, MR has built-in time for unforeseen weather events/delays. Most important, the entire Project will be completed no later than December 31, 2026.

⁵¹ Documents for a 2009/2010 state funded project demonstrate that MR has a record of completing projects on time and on budget. See https://spaces.hightail.com/space/aJf2HsNS2C.

⁵² Project does not involve acquisition of real property, so there will be no real estate delays

⁵³ See Exhibit 5 - Bids, Cost Documentation and a Detailed Project Timeline.

C. Required Approvals

(a) National Environmental Policy Act

The designated lead agency for purposes of the Environmental Assessment would be the FRA. Under the regulations for the FRA, the Project likely qualifies for a CE⁵⁴ or and/or should be exempted under the FRA's Section 106 Exempted Activities Program Comment. The following paragraphs provide an overview of information associated with each environmental permitting area of interest.

No tunnel work will be performed outside Tunnel #1. Therefore, the impact on endangered species and either the Pudding Creek or the Noyo River should be de minis, if any. During the Project, MR is committed to employing BMP to ensure that any environmental impacts are minimized, including MR will ensure that all work is done within existing railroad right-of-way; all materials, supplies, and personnel will be transferred to and from Tunnel #1 using work trains (not trucks) to reduce the Project's environmental footprint; discarded materials will be loaded into train immediately to prevent wind blowing materials into nearby waterways. MR will when necessary ensure that silt fences are installed along with straw wattles, and bales of straw to ensure that if there is any dirt removed there is no chance for it to enter a waterway.

Tie replacement BMPs will include ensuring that all work is done within existing railroad right-of-way; ties to be marked by experienced Track Inspector or Track Maintenance Supervisor familiar with the track and its operating requirements; ties to be received in Bundles and unloaded in railroad ROW; ties to be individually distributed to spot of installation; old Ties will be collected and placed in a dumpster for disposal, and old Ties will be properly disposed of as hazardous waste.

Examples of BMP for various project components include:

- Installation of silt fences if any soil is disturbed near a stream or tributaries
- Covering disturbed surfaces with organic matter to prevent soil runoff.
- Possible seeding of disturbed surfaces with native plants/grasses to prevent erosion and regrowth in any disturbed areas.
- Use of mulching to prevent surface areas of disturbed soils from eroding and or runoffs of soil in streams or tributaries.

(b) Other Agencies Input on Project Review

The proposed Project is included on the RTP. As such, the Project is fully consistent with and indeed would facilitate Mendocino County's future transportation plans. Because the tunnel work is less than one acre, the work does not trigger the need for a permit from the North Coast Regional Water Quality Control Board. Moreover, the Project dovetails neatly into

⁵⁴ MR is enclosing a draft of the FRA's CE worksheet as Exhibit 9.

relevant metropolitan and local planning, both of which envision reestablishing freight rail transportation in Mendocino County, CA. The Project is to be undertaken by the City, in partnership with a private railroad and there are no legislative approvals required or missing. The Project has all necessary approvals (for example, the support of federal, state, and local officials) and broad public official, shipper, and community support (See Exhibit 2). In sum, the Project enjoys broad political and community-based support.

(c) Environmental Studies/ Other Documents

Environmental consultants have already started environmental review activities for the various components of the Project (See Exhibit 8 & NEPA discussion, infra). ⁵⁵ Also attached as Exhibit 9 is the FRA CE worksheet. As discussed in §(V.)(C)(a), MR is committed to employing best practices to minimize the environmental implications of the Project.

(d) Discussions with FRA Environmental Staff

MR has exchanged e-mails with the FRA's environmental specialists concerning using either the Program comment or a CE to facilitate a faster environmental review. NEPA preparations have begun. Based on those discussions, it appears FRA CE #9 would be applicable for the tunnel component. The Section 106 Historic Preservation Program Comment is also likely applicable for the reasons explained in Exhibit 9.

(e) Public Engagement

The Project was discussed and approved at the City Council meeting on June 24, 2019, which was publicly attended. Members of the public spoke in favor of the Project. As indicated previously, the Project has long benefited from public support and the public has even contributed small sums of money to help save MR/CWR because of its inherent value to its community. Fort Bragg's Strategy 2.6 says supports the Skunk Train in its Economic Development Strategy 2014-2019.

D. State & Local Approvals

MR has also necessary state and local approvals. See $\S(V.)(C)(b)$.

E. Assessment of Project Risks and Mitigation Strategies

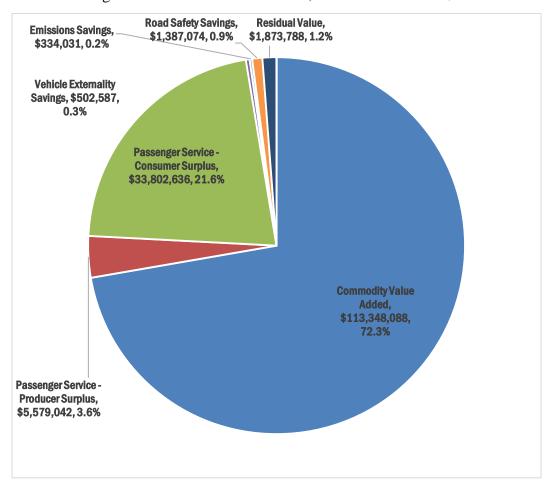
The Project is unlikely to encounter any significant environmental hurdles. MR already has an environmental consulting firm on retainer to assist MR with its NEPA review and MR is including a draft of the FRA's CE worksheet as Exhibit 9 with its BUILD application.

⁵⁵ See Exhibit 8 (Environmental Documentation).

MR owns the real estate upon which the Project will be performed. Thus, there will be no delays in real estate acquisition for the Project. MR stands ready and willing to execute and submit all documentation required as a condition of receipt of federal funds. MR is prepared to order the necessary materials immediately upon receipt of a BUILD 2020 grant to eliminate any delays associated with acquiring materials. MR has an environmental consultant and environmental counsel on retainer should the Project encounter environmental hurdles. As such, even if delays occur, the Project, with foreseeable contingencies, should be delivered on time. MR has already added an additional three months into schedule to account for any delays that should occur.

VI. RESULTS OF BENEFIT-COST ANALYSIS

MR retained the services of Michael Rodriguez to conduct the BCA. The BCA is attached as Exhibit 6 and demonstrates that the Project will yield many important benefits that far outweigh its cost of \$18,779,790.00.



BCA - Figure 5 - Distribution of Benefits, Present Value 2018 \$

The BCA analysis measures in dollar value the Project's benefits and costs to all members of society shows how the public will be better off as a result of the Project and justifies Project costs against the "baseline" or "no-build" case for not completing the Project (i.e., not

repairing Tunnel #1 and rehabilitating the Line). The BCA shows that the \$18,779,790.00 Project cost is relatively inconsequential when measured against the various societal and economic harms that would result from a "no-build," wherein goods and people would continue to be without passenger and freight service over the entirety of the Line. As shown in Table 3 of the BCA, at a 7 percent discount rate and a net present value of \$130,986,326 the Project generates an economic rate of return of 46.5%.

BCA – Table 3 - Summary of Benefit-Cost Analysis Metrics

Category	Value
Discount Rate	7%
Benefit-Cost Ratio	6.1
Net Present Value	\$130,986,326
Economic Rate of Return	46.5%
Break-Even Year	2027

See BCA, page iv.

To summarize, the benefits to be derived from the Project which will restore freight and passenger rail service over the entire Line by repairing a tunnel that collapsed in 2015 and rehabilitating and renewing MR's rural Line far outweigh the Project's costs. In addition to the benefits discussed in the BCA, the Project will generate other economic impacts, including creating a number of construction and permanent jobs. A separate analysis of the jobs to be created from expanding passenger rail service concludes that the economic impacts from the jobs to be created could result in \$47.9 MM in additional statewide economic output. See FN 40. These economic impacts are beyond the scope of the BCA, although they may inform the USDOT about the value of funding this Project.

Based on the methodologies outlined in the report, the benefit-cost ratio of the Project is 6.1 with a 7 percent real discount rate. This means that the project is beneficial to society in present value 2018 dollars at a 7 percent discount rate. Finally, this BCA is only capable of measuring certain benefits that can be monetized and with available data. A restored railroad service may have benefits that were not captured here. It is plausible that the restoration of freight service would yield greater tonnage on the railroad than included in this analysis. This would eliminate even more trucks off the road and provide additional benefits. Furthermore, the introduction of freight service may generate net new businesses for the region, and possibly real estate value appreciation above and beyond monetized transportation benefits. This BCA finds that the present value benefits of the Project exceed the present value Project costs through 2045 by a factor of 6.1. The Project stands to improve the economy of Mendocino County and the City of Fort Bragg. It would increase economic competitiveness by offering needed freight service, leading to the expansion of local industrial production, allowing for highly-demanded passenger rail service, and boosting local economic growth.

April 27, 2021

Email from Tabatha Miller to Fort Bragg City Council, whereby she notifies the Council of MRY's purchase of millsite south.

From: Miller, Tabatha
To: Miller, Tabatha
Bcc: ZZZ Elected Officials
Subject: FW: Checking In

Date: Tuesday, April 27, 2021 7:45:00 AM

Attachments: <u>image001.jpg</u>

Councilmembers (BCC):

Please see the email below from Dave Massengill. Additionally, in the recent conversations (including yesterday) with Mike Hart, he has made it clear that they are purchasing the South portion of the Mill Site and assuming the environmental liability from GP. The Skunk Train would be responsible for completing the Mill Pond final RAP. Mr. Hart has also indicated a desire and willingness to work with the City, including some sort of transaction that would provide portions of the property to the City. He indicated that the tribe was receiving the property where tribal members live and it sounded like there may be an additional smaller portion of the south end going to the tribe.

The only good news is the willingness of GP to donate the Pudding Creek properties to the City.

Tabatha Miller
City Manager
City of Fort Bragg
(707) 961-2829
TMiller@FortBragg.com



From: Massengill, Dave G < DGMassen@GAPAC.com>

Sent: Monday, April 26, 2021 10:39 AM **To:** Miller, Tabatha <TMiller@fortbragg.com>

Cc: Martin, Shannon C <Shannon.Martin@gapac.com>

Subject: RE: Checking In

Hi Tabatha.

GP is willing to begin discussions on donating Pudding Creek to the City. For the South Mill properties GP is still negotiating with other buyers. Thanks, Dave

From: Miller, Tabatha < TMiller@fortbragg.com>

Sent: Monday, April 26, 2021 11:13 AM

To: Massengill, Dave G < <u>DGMassen@GAPAC.com</u>>

Subject: Checking In

Sent by an external sender

Hi Dave,

I was just checking in to see if there are any updates you could share on the Pudding Creek or South Mill Site properties?

Thanks,

Tabatha Míller
City Manager
City of Fort Bragg
(707) 961-2829
TMiller@FortBragg.com



Email correspondence with the City of Fort Bragg (and attachments, if any) may be subject to the California Public Records Act, and as such may therefore be subject to public disclosure unless otherwise exempt under the Act.

June 7, 2021

Order of the Superior Court for the property at 476 Alger Street, signed by Judge Nadel.

06/07/2021 EXEMPT FROM FILING FEES **GLENN L. BLOCK (SB#208017)** 1 ANDREW S. PARSLOW (SB#332916) ARTHUR J. HAZARABEDIAN (SB#137324) [Govt. Code § 6103] 2 KIM TURNER, CLERK OF THE COURT CALIFORNIA EMINENT DOMAIN LAW GROUP, APC SUPERIOR COURT OF CALFORNIA, 3429 Ocean View Blvd., Suite L 3 COUNTY OF MENDOOINO Glendale, CA 91208 Delgado, Samuel Telephone: (818) 957-0477 4 Facsimile: (818) 957-3477 DEPUTY CLERK 5 Attorneys for Plaintiff MENDOCINO RAILWAY 6 SUPERIOR COURT OF THE STATE OF CALIFORNIA 7 FOR THE COUNTY OF MENDOCINO 8 9 MENDOCINO RAILWAY, Case No. SCUK-SVED-2020-74846 10 Plaintiff. 11 [APN 008-130-02] ٧. 12 13 LORENA RUTH SHEA; MENDOCINO ORDER OF CONDEMNATION COUNTY TREASURER-TAX COLLECTOR: CALIFORNIA DEPARTMENT OF HEALTH 14 CARE SERVICES; All other persons unknown claiming an interest in the property; and DOES 1 through 100, 15 inclusivé, 16 Defendants. 17 18 Plaintiff MENDOCINO RAILWAY (hereinafter "Mendocino Railway") and 19 defendants LORENA RUTH SHEA and MENDOCINO COUNTY TREASURER-TAX 20 COLLECTOR (collectively, "Defendants") (parties hereto may be individually 21 referenced herein as "Party," or may be collectively referenced herein as 22 "Parties") having stipulated, a Judgment and Final Order of Condemnation as 23

FILED

IT APPEARING that on or about November 18, 2020, the Mendocino
Railway filed a Complaint in Eminent Domain, Mendocino County Superior Court

to the property described in the Complaint on file herein, (the "Subject

conditions and without further notice to any of the defendants.

Property"), may be made and entered in accordance with these terms and

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Case Number SCUK-SVED-2020-74846 against Defendants and others (the "Eminent Domain Action"), seeking to acquire all right, title and interest in and to the Subject Property located at 476 Alger Street, in the City of Fort Bragg, County of Mendocino, State of California, which property has been assigned Assessor's Parcel Number 008-130-02 and is more particularly described as follows:

Starting from 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 East, 3390 feet; and thence North 575 feet to and for the point of beginning, and thence on the exterior boundaries of said lot and parcel of land North 231 feet; thence South 63° East, 143 feet; thence South 34 1/2° East, 160 feet; thence South 13° East to a point due East of the point of beginning; thence West to the point of beginning.

IT FURTHER APPEARING that the Mendocino Railway's acquisition of the Subject Property is necessary for maintenance and safety of its railroad operations adjacent to the Subject Property ("Project"), a public use.

IT FURTHER APPEARING that on or about November 17, 2020, Mendocino Railway deposited with the State Treasurer the sum of one hundred fifty-five thousand dollars (\$155,000) as probable just compensation for the Subject Property pursuant to Code of Civil Procedure section 1255.010 (the "Deposit") based on an appraisal as reflected in the Summary of Appraisal Opinion filed November 18, 2020.

IT FURTHER APPEARING that, by Stipulation filed concurrent with this document, Mendocino Railway and Defendants have agreed on full and final

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settlement of any and all issues in this matter for the sum of one hundred fifty-five thousand dollars (\$155,000) ("Total Compensation"). Defendant LORENA SHEA and Defendant Mendocino County Treasurer-Tax Collector are entitled to compensation in this proceeding as set forth below.

IT FURTHER APPEARING that on or about November 24, 2020, Defendant LORENA SHEA was duly served with the Complaint, through her daughter and attorney-in-fact by virtue of the Power of Attorney executed by Lorena Shea on April 29, 2015. Defendant LORENA SHEA, as her sole and separate property, is the fee owner of the Subject Property, a single-family residence. Said Defendant is entitled to the Total Compensation in this proceeding as set forth below.

IT FURTHER APPEARING that on or about November 24, 2020, Defendant MENDOCINO COUNTY TREASURER-TAX COLLECTOR was duly served with the Complaint and filed its Answer on or about December 23, 2020. Defendant MENDOCINO COUNTY TREASURER-TAX COLLECTOR is the holder of a property tax lien against LORENA SHEA in the amount of \$5,335.24 through May 31, 2021 and any other amounts due thereunder. Said Defendant is entitled to payment from the Total Compensation in this proceeding as set forth below.

IT FURTHER APPEARING that Defendant CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES was duly served with the Complaint and filed a Disclaimer of Interest on or about March 1, 2021, disclaiming any interest in this proceeding.

IT FURTHER APPEARING that the dismissal of ALL PERSONS UNKNOWN CLAIMING AN INTEREST IN THE PROPERTY and the dismissal of Defendants DOE 1 through DOE 100 was entered by the court on May 26, 2021. Said defendants are accordingly entitled to no compensation in this proceeding.

IT FURTHER APPEARING that on January 29, 2021, the Court entered an Order for Prejudgment Possession effective 10 days after service of the Order.

The Order was served on Defendants on January 29, 2021 by electronic mail. Accordingly, Mendocino Railway was authorized and empowered to take possession of the Subject Property as of February 10, 2021.

IT FURTHER APPEARING that no other parties appearing in this action are entitled to compensation in this proceeding except as expressly set forth herein.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

- 1. The use for which the Subject Property is being acquired by Mendocino Railway in this action, maintenance and safety of rail operations adjacent to the Subject Property, is a public use authorized by law and the acquisition of such interest is necessary to such use.
- 2. The stipulating defendants have waived the right to a Statement of Decision, Notice of Entry of Judgment, Notice of Entry of Final Order of Condemnation and any and all right to appeal as to any and all issues related to the taking of the Subject Property. This Judgment and Final Order of Condemnation constitutes full and final resolution of all issues as between Mendocino Railway and all defendants related to Mendocino Railway's taking of the Subject Property and precondemnation activities, including without limitation all compensation, damages and benefits for real property, improvements pertaining to realty, personal property, fixtures and equipment, relocation benefits, pre- and post-condemnation damages, severance damages, loss of inventory, loss of business goodwill, pre- and post judgment interest, litigation expenses, and costs.
- 3. The total just compensation for Mendocino Railway's taking of the Subject Property is the sum of one hundred fifty-five thousand dollars (\$155,000) (the "Total Compensation"). The Total Compensation having been previously deposited by Mendocino Railway, no further sums are due and owing by Mendocino Railway.

- 4. The State Treasurer is hereby ordered to disburse said Total Compensation from the Deposit as follows:
 - a. The sum of **Five Thousand Three Hundred Thirty-Five Dollars and Twenty-Four Cents (\$5,335.24)** paid to Defendant MENDOCINO

 COUNTY TREASURER-TAX COLLECTOR, in full and complete satisfaction of its property tax lien identified and described herein, for the benefit of Defendant Lorena Shea. Said payment shall be made payable to the "Mendocino County Treasurer-Tax Collector" and shall be delivered to the following address:

Mendocino County Treasurer-Tax Collector C/O Brina Blanton, Deputy County Counsel 501 Low Gap Rd. #1060 Ukiah, CA 95482

- b. The remaining balance of the Deposit shall remain on deposit with the State Treasurer, after payment in full of any and all outstanding claims, liens and interests in the Subject Property as set forth above, until further Order of the Court.
- c. Mendocino Railway shall be entitled to all interest accrued on the funds previously deposited in this action in the California State Treasury. The State Treasurer is hereby ordered to disburse the accrued interest to "Mendocino Railway" and shall be delivered to the following address:

California Eminent Domain Law Group C/O Glenn L. Block 3429 Ocean View Blvd., Suite L Glendale, CA 91208

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	5.	The Subject Property is hereby condemned in fee simple for the
publi	c use c	and purposes stated in the Complaint, maintenance and safety of
rail o _l	peratic	ons adjacent to the Subject Property, and all uses necessary and
conv	enient	thereto. Mendocino Railway to take all right, title and interest in and
to the	e Subje	ct Property, together with any and all improvements thereon, free
and a	clear o	f any and all liens, encumbrances, easements, leaseholds, and
curre	nt and	defind entry axes and assessments of whatever kind or nature
withc	out furth	ner notice to any party.

DATED: 6/7/2021

Judge of the Superior Court

July 21, 2021

Master Plan (Map of Millsite)



October 15, 2021

Email from Fort Bragg City Attorney, R. Hilderbrand to Bob Merrill (California Coastal Commission). From: Russell A. Hildebrand
To: Merrill, Bob@Coastal

Subject: Dispute with the Mendocino Railroad

Date: Friday, October 15, 2021 8:33:59 AM

Attachments: Letter to Russel Hildebrand 1.22.19.pdf

Ltr to C Kenyon 1-17-19.pdf

Good Morning Bob,

Following up on my voice message, which you may not hear until after reading this. I am Russ Hildebrand, a Deputy City Attorney for the City of Fort Bragg. I was formerly the City Attorney. As you probably know the Mendocino Railroad purchased a portion of the former Georgia Pacific Mill Site, and based on their status as a public utility, has denied the need for a Coastal Permit from the City and Commission.

Recently, they filed a complaint in eminent domain to acquire the remaining portion and land around Pudding Creek, in total more than 300 acres. Though it has never been easy, or a particularly cooperative relationship between the City and the railroad, we feel they have now gone well beyond too far with this eminent domain action, and it's time to draw the line.

The City is not a direct participant in the eminent domain litigation, but has instructed me to file a complaint against the railroad to challenge their status as a public utility. In our view, there is a current and ongoing dispute between the City and the railroad as to their duty to comply with the City Municipal Code. I believe that same dispute exists for the Coastal Commission and compliance with the Coastal Act. I've attached a letter for your reference which provides some background.

I ask that the Commission consider joining this action against the railroad for declaratory relief setting aside the Mendocino Railroad's status as a public utility. Please consider this request and discuss with your legal department. If you would like more background information, please feel free to call me on my direct line at 916-207-8432.

Thank you,

Russ

Russell Hildebrand, Attorney Jones & Mayer 6349 Auburn Blvd. Citrus Heights, CA 95621 916-771-0635 (office) 916-207-8432 (direct) rah@jones-mayer.com This electronic transmission, and any documents attached hereto, may contain confidential and/or legally privileged information. The information is intended only for use by the recipient named above. If you have received this electronic message in error, please notify the sender and delete the electronic message. Any disclosure, copying, distribution, or use of the contents of information received in error is strictly prohibited.

November 18, 2021

Order of the Superior Court for former Millsite South and Pudding Creek Property, signed by Judge Nadel.

	CIV-130
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Glenn L. Block (208017)/Andrew Parslow (332916) California Eminent Domain Law Group, APC 3429 Ocean View Blvd., Suite L Glendale, CA 91208	FOR COURT USE ONLY
TELEPHONE NO.: 818-957-0477 FAX NO. (Optional): E-MAIL ADDRESS (Optional): glb@caledlaw.com/asp@caledlaw.com ATTORNEY FOR (Name): Plaintiff Mendocino Railway	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Mendocino STREET ADDRESS: 100 North State Street MAILING ADDRESS: CITY AND ZIP CODE:Ukiah, CA 95482 BRANCH NAME:Ukiah - Mendocino County Courthouse	
PLAINTIFF/PETITIONER: Mendocino Railway DEFENDANT/RESPONDENT: Georgia-Pacific LLC, et al.	
NOTICE OF ENTRY OF JUDGMENT OR ORDER (Check one): UNLIMITED CASE LIMITED CASE (Amount demanded (Amount demanded was exceeded \$25,000) \$25,000 or less)	CASE NUMBER: 21CV00595
TO ALL PARTIES: 1. A judgment, decree, or order was entered in this action on (date): November 18, 202	1

2. A copy of the judgment, decree, or order is attached to this notice.

Date: November 23, 2021	(R)	
Glenn Block	[()]	
(TYPE OR PRINT NAME ATTORNEY PARTY WITHOUT ATTORNEY)	 (SIGNATURE)	

PLAINTIFF/PETITIONER: Mendocino Railway
DEFENDANT/RESPONDENT: Georgia-Pacific LLC, et al.

CASE NUMBER: 21CV00595

PROOF OF SERVICE BY FIRST-CLASS MAIL NOTICE OF ENTRY OF JUDGMENT OR ORDER

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)						
1.		I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is <i>(specify):</i>				
	34	29 Ocean View Blvd., Suite L, Glendale, CA 91208				
2.	I served a copy of the <i>Notice of Entry of Judgment or Order</i> by enclosing it in a sealed envelope with postage fully prepaid and <i>(check one)</i> :					
a deposited the sealed envelope with the United States Postal Service.			al Service.			
	b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.					
3.	3. The Notice of Entry of Judgment or Order was mailed:					
	a.	on (date): November 23, 2021				
	b.	from (city and state): Glendale, CA				
4.	Th	e envelope was addressed and mailed as follows:				
	a.	Name of person served: Kevin Brogan/Hill, Farrer & Burrill LLP	C.	Name of person served:		
		Street address: 1 California Plaza, 300 S. Grand Ave, 37th		Street address:		
		City: Los Angeles		City:		
		State and zip code: CA, 90071-3147		State and zip code:		
	b.	Name of person served: Brina Blanton/Office of County Counsel	d.	Name of person served:		
		Street address: 501 Low Gap Road, Room 1030		Street address:		
		City: Ukiah		City:		
		State and zip code: CA, 95482		State and zip code:		
5		Names and addresses of additional persons served are at mber of pages attached:	tach	ed. (You may use form POS-030(P).)		
υ.	Mu	mber of pages attached.				
I d	ecla	re under penalty of perjury under the laws of the State of Califo	ornia	a that the foregoing is true and correct.		
Da	te: <u> </u>	November 23, 2021		Dalas Carlos		
Debi Carbon UVS COURS						
		(TYPE OR PRINT NAME OF DECLARANT)		(SIGNATURE OF DECLARANT)		

Page 2 of 2

FILED

11/18/2021

GLENN L. BLOCK (SB#208017) ANDREW S. PARSLOW (SB#332916) CALIFORNIA EMINENT DOMAIN LAW GROUP, A PC 3429 Ocean View Blvd., Suite L Glendale, CA 91208

SUPERIOR COURT OF CALFORNIA, COUNTY OF MENDOCINO

KIM TURNER, CLERK OF THE COURT

Telephone: (818) 957-0477

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Johnson, Tracy Jough **DEPUTY CLERK**

Facsimile: (818) 957-3477

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]

FROTOSED FINAL JUDGMENT

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 entered into the concurrently filed Stipulation Re: Settlement, Judgment, and Final Order of Condemnation ("Stipulation"), judgment may be made and entered in accordance with these terms and conditions and without further notice to any of the Defendants.

CALIFORNIA EMINENT DOMAIN LAW GROUP, APC

3429 Ocean View Blvd., Suite L Glendale, California 91208

[Proposed] FINAL JUDGMENT

IT APPEARING that on or about August 11, 2021, Mendocino Railway filed a Complaint in Eminent Domain, Mendocino County Superior Court Case Number 21CV00595 against Defendants (the "Eminent Domain Action"), seeking to acquire the fee simple interest in and to the real property which has been assigned Assessor's Parcel Numbers 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("Subject Property") as identified and described in the Complaint. The Subject Property is more particularly described, together with maps, in Exhibits "A" and "B" to the Complaint, true and correct copies of which are attached hereto as Exhibits "A" and "B."

IT FURTHER APPEARING that Mendocino Railway's acquisition of the Subject Property is necessary for 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 ("Project"), a public use.

IT FURTHER APPEARING Mendocino Railway is authorized and entitled to exercise the power of eminent domain for public purposes under Article 1, Section 19, of the California Constitution, California Public Utilities Code §§ 229, 230, 611 and 7526, et seq.; and California Code of Civil Procedure §§ Section 1230.010, et seq. The railroad uses for which Mendocino Railway seeks to condemn the Subject Property in connection with the Project is authorized by law and is a public use; the public interest, safety, and necessity require the Project; the Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury; and the Subject Property is necessary for the Project.

IT FURTHER APPEARING that Defendant Georgia-Pacific was duly served on or about August 12, 2021, and on or about September 8, 2021, filed its Answer. Defendant Georgia-Pacific is the fee owner of the Subject Property and successor in title to Defendant North American Timber Corp. and Defendant Hawthorne Timber Company. Said Defendant is entitled to compensation in this proceeding as set forth below.

IT FURTHER APPEARING that Defendant Mendocino County Treasurer-Tax Collector was duly served on or about August 12, 2021, and on or about September 10, 2021,

filed its Answer. Property taxes may remain outstanding for the Subject Property, thus Defendant Mendocino County Treasurer-Tax Collector may be entitled to compensation for outstanding property taxes incurred for the period up to November 14, 2021.

IT FURTHER APPEARING that Mendocino Railway and Defendants have agreed on a full and final settlement of any and all issues in this matter for the sum of One Million Two Hundred Thirty Thousand dollars (\$1,230,000.00) (the "Total Compensation").

IT FURTHER APPEARING that no other parties having appeared in this action are entitled to compensation in this proceeding except as expressly set forth herein.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

- 1. The use for which the Subject Property is being acquired by Mendocino Railway in this action, for 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, is a public use authorized by law and the acquisition of the Subject Property is necessary to such use.
- 2. Plaintiff is entitled to and shall take possession of the Subject Property effective November 15, 2021.
- 3. Defendant North American Timber Corp. and Defendant Hawthorne Timber Company, predecessors in title to Defendant Georgia-Pacific, are hereby dismissed from this action.
- 4. The stipulating Defendants have waived the right to a Statement of Decision,
 Notice of Entry of Judgment, Notice of Entry of Final Order of Condemnation and any and all
 right to appeal as to any and all issues related to the taking of the Subject Property.
- 5. Except as otherwise set forth in this Judgment and except for breach of any terms or conditions contained in the parties' Stipulation, all parties waive and forever release the other parties, including their successors, officers, employees, attorneys, agents, representatives, and anyone acting on their behalf or for them, of and from any and all claims made to date, demands, actions or causes of action, or liabilities, known or unknown, based upon or arising in connection

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with the Subject Property, Mendocino Railway's acquisition of the Subject Property or the Eminent Domain Action.

6. In connection with the release set forth in Section 5 above, Plaintiff expressly assumes any and all liability related to any Environmental Conditions (any circumstance or set of circumstances in, on, under or about the Subject Property that arise directly or indirectly out of or related to the presence, suspected presence, release or threatened release of any Hazardous Material (Any "hazardous waste", "hazardous substance", "extremely hazardous substance", "toxic chemical", "hazardous chemical", "toxic pollutants", "contaminants", "chemical", "chemical substance", "mold" or "asbestos", as such terms are defined in any of the Environmental Laws, or related substances, in such quantities or concentrations as are regulated by such Environmental Laws or other applicable laws, or which may be declared to constitute a material threat to human health or to the Environment.) on the Subject Property as of August 13, 2021 and any Hazardous Materials, and Plaintiff waives, relinquishes, releases, indemnifies and holds harmless Defendant Georgia-Pacific from any and all claims, demands, administrative orders, causes of action (including causes of action in tort), remedial actions, losses, damages, liabilities, judgments, settlements, penalties, fines, costs and expenses (including attorneys' fees and court costs actually incurred) of any and every kind or character, known or unknown, whether based upon negligence, strict liability or otherwise arising out of or related to the Environmental Condition of the Property, but excluding any claims or causes of action related to personal injury commencing prior to November 15, 2021. Plaintiff expressly acknowledges that the Subject Property is subject to the California Department of Toxic Substances Control Site Investigation and Remediation Order No. HAS-RAO 06-07-150 ("Order"). As of November 15, 2021, Plaintiff will expressly assume any and all obligations, requirements and liabilities solely and exclusively related to the Subject Property that arise from the Order, shall use its best efforts to obtain DTSC's approval to insert Plaintiff as a party subject to the Order. Plaintiff shall provide evidence of its best efforts with respect to obtaining DTSC's approval no later than December 31, 2021 and monthly thereafter until Plaintiff is added to the Order.

- 7. Plaintiff agrees to hold Defendant Georgia-Pacific harmless from any and all claims, causes of action, demands, damages or attorney's fees arising out of or relating in any way to claims or allegations by the City of Fort Bragg and/or any third party relating to this Eminent Domain Action and/or the Parties' Stipulation and this Judgment.
- 8. By such release, and subject to the above exclusions, the parties waive any rights under California Civil Code Section 1542, which provides, "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."
- 9. The total compensation for Mendocino Railway's taking of the Subject Property is One Million Two Hundred Thirty Thousand dollars (\$1,230,000.00). Said Total Compensation shall be disbursed and paid to Defendant Georgia-Pacific as set forth below.
- 10. Mendocino Railway shall tender payment directly to Defendant Georgia-Pacific the sum of One Million Two Hundred Thirty Thousand Dollars (\$1,230,000.00) paid by wire transfer to Hill Farrer & Burrill LLP Client Trust Account no later than November 20, 2021:

Kevin Brogan, Esq. Hill, Farrer & Burrill LLP One California Plaza 300 S. Grand Avenue, 37th Floor Los Angeles, CA 90071-3147

11. To the extent that there are any outstanding taxes due and payable to Defendant Mendocino County Treasurer-Tax Collector through and including November 14, 2021, said outstanding taxes shall be paid from the Total Compensation from Hill Farrer & Burrill LLP Client Trust Account to Defendant Mendocino County Treasurer-Tax Collector. Upon determining that no outstanding taxes are due and payable, or upon receiving payment of any outstanding taxes pursuant to this paragraph, Defendant Mendocino County Treasurer-Tax Collector shall immediately execute a Satisfaction of Judgment and return it to Mendocino Railway for filing with the Court.

- 12. Upon receipt of the payment as set forth in paragraph 9 above, Defendant Georgia-Pacific LLC shall immediately execute a Satisfaction of Judgment and return it to Mendocino Railway for filing with the Court.
- 13. Upon the filing of the Satisfaction of Judgments executed by Defendant Georgia-Pacific pursuant to paragraph 12, above, and Defendant Mendocino County Treasurer-Tax Collector pursuant to paragraph 11, above, Mendocino Railway shall forthwith be entitled to a Final Order of Condemnation condemning the Subject Property in fee simple for the public use and purpose stated in the Complaint, to wit, for 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. Mendocino Railway to take all right, interest, and title in and to the Subject Property, together with any and all improvements thereon, subject to all encumbrances, easements, rights-of-way, servitudes, covenants or other matters of record or as stated in the Stipulation for Entry of Judgment, as of August 13, 2021, whatever kind or nature, without further notice to any party.
- 14. Pursuant to Section 1268.410 et seq. of the Code of Civil Procedure, the property taxes on the Subject Property shall be prorated through November 14, 2021. Property taxes, if any, on the Subject Property for the period starting November 15, 2021 shall be payable by Plaintiff.

DATED: 11/18/2021

u lge of the Superior Court

ine B. Madel

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 comer 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 comer 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 comer 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 29.03 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 I 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" tiled 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 I 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 of21.09 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 of237.38 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

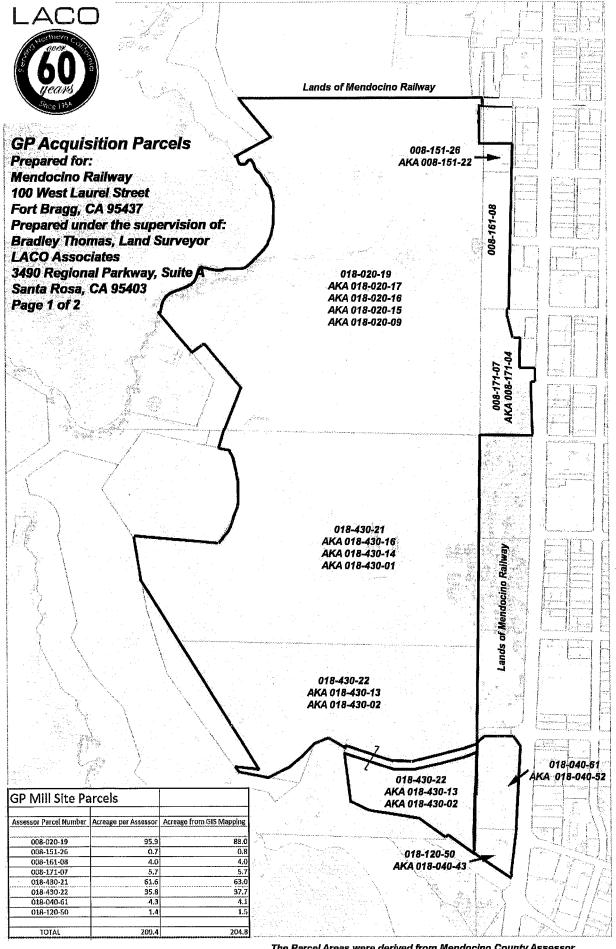






EXHIBIT "B"

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

Tract One:

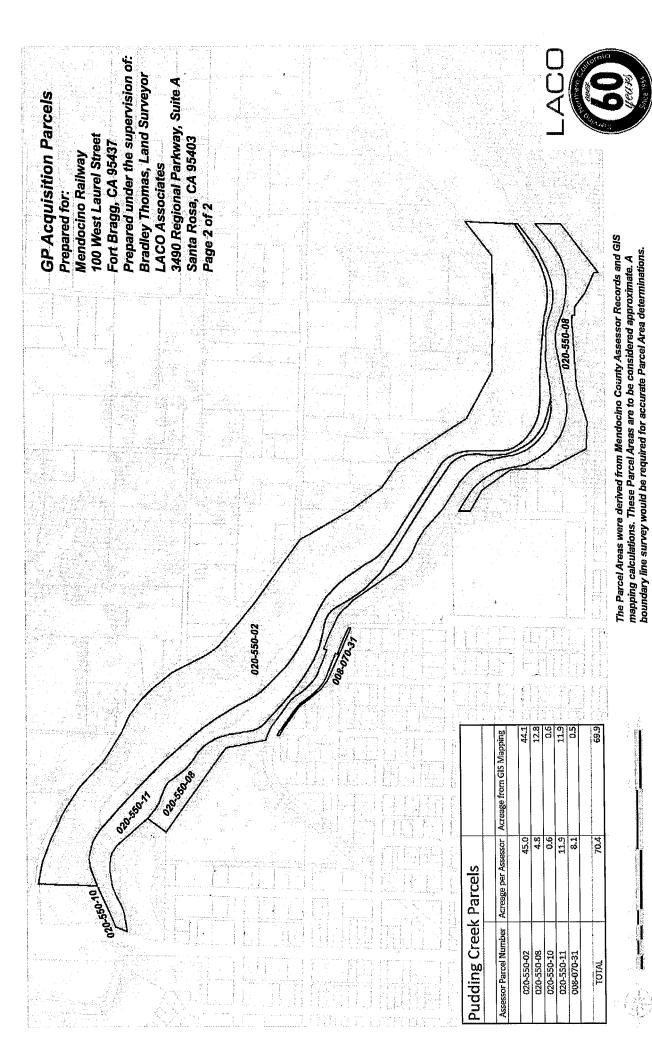
All that certain real property more particularly described in Exhibit B of the Grant Deed executed by Boise Cascade Corporation to Georgia-Pacific Corporation, under the heading of Fort Bragg Properties, Township 18 North, Range 17 West, M.D.M., Section 6" in Parcel One, Parcel Two, Parcel Three and Parcel Eight, which deed recorded March 25, 1974 in Book 957 of Official Records, Page I 08, Mendocino County Records, excepting therefrom that portion described in the Grant Deed executed by Georgia-Pacific Corporation to Michael S. Bennett, etal 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



November 22, 2021

Letter from City of Fort Bragg to the US Department of Transportation asking it to not fund our RRIF Loan.



Incorporated August 5, 1889

416 N. Franklin Street Fort Bragg, CA 95437 Phone: (707) 961-2823 Fax: (707) 961-2802

November 22, 2021

VIA EMAIL AND U.S. MAIL

The Honorable Carlos Monje Under Secretary U.S. Department of Transportation 1200 New Jersey Avenue, SE Washington, D.C. 20590

Re: Mendocino Railway RRIF Loan Application

Dear Under Secretary Monje:

Although we have not received a copy of the application materials, it recently came to our attention that the Mendocino Railway has an outstanding application for a Railroad Rehabilitation & Improvement Financing loan (RRIF). The City of Fort Bragg (City) does not support Mendocino Railway's application and does not believe that its application is forthright or that granting the loan is in the best interest of our town.

The City of Fort Bragg is a small coastal community of 7,300 residents perched on the bluff tops overlooking the Pacific Ocean in northern Mendocino County. For well over a century, the town was dominated by the timber industry and the Timber Mill which was located on approximately 425 acres of ocean front property. For most of its existence, the Timber Mill was the primary employer in town and at its peak operations employed 2,000 local individuals. Closure of the Timber Mill by Georgia-Pacific, LLC (GP) in 2002 was devastating to the community in terms of the loss of good paying blue collar jobs with benefits. The possible silver lining was redevelopment of that Mill Site coastal property and an opportunity to diversify the local economy. This of course could only happen after the necessary clean up and remediation of the brownfield site left by the mill and early train operations on the site.

Located approximately 165 miles north of San Francisco and 185 miles west of Sacramento, Fort Bragg, while quite small, is the largest city on the coast between San Francisco and Eureka. The remoteness of Fort Bragg is one of its greatest assets. The

natural landscape is beautiful. The air is clean, the ocean wild, and traffic is a non-issue. From grants and donations, the City acquired 104 acres of parkland along the bluff tops of the former Mill Site and completed construction of a multiuse trail in 2018. The Coastal Trail created public access to 3.5 miles of scenic coastline and is value added for local residents and visitors alike. The City donated 11.5 acres of that coastal property to the Noyo Center for Marine Science¹. The Noyo Center is designing a marine science facility for that property devoted to innovative scientific research, hands-on education, and collaboration. The facility is part of transforming the former industrial Mill Site so that Fort Bragg is something other than a former mill town.

The City has also developed a "Blue Economy" movement which is about sustainable use of the ocean resources for economic growth, improved livelihoods and jobs, and healthy marine ecosystems. The Blue Economy offers a path for considering economic development and ocean health as compatible positions; emerging when economic activity is in balance with the long-term capacity of ocean ecosystems to remain resilient and healthy. This is an innovative sector that encompasses a broad range of activities from traditional ocean sectors to new businesses focused on ocean resiliency, and includes activities related to climate change, fisheries, renewable energy, tourism and transportation.

The City was in discussions with Georgia Pacific to purchase a portion of the Mill Site, as the home base for its Blue Economy, including ocean water intake/discharge infrastructure to support aquariums and research at the Noyo Center's Ocean Science Facility and a "Blue Economy Innovation Cluster." City Council has also been in active conversations with the Tribal Council of Sherwood Valley Band of Pomo to partner in future reuse of the former Mill Site. The City was poised to lay the foundations for housing, good paying jobs, and to perform the final remediation of Operable Unit E – specifically, the ponds and open space located in the center of the site. This project included removing the dam and beach berm, returning the tidal estuary, restoring wetlands and daylighting Maple and Alder Creeks in the process.

Prior to discussions about acquiring the southern Mill Site property, the City and Georgia Pacific had conversed regarding Georgia Pacific donating the parcels on and surrounding Pudding Creek. The City had pulled together a group of entities interested in removing the remaining dam and restoring the creek so that the property could be used as a public open space or park with trails. The group included the City of Fort Bragg, The Nature Conservancy (TNC), Trout Unlimited, California Department of Fish and Wildlife (CDFW), National Oceanic and Atmospheric Administration (NOAA) and California State Parks. By owning this property, Mendocino Railway can limit access to this scenic area to those who purchase tickets on its excursion train.

As you likely know, Mendocino Railway owns a scenic excursion train sentimentally known as the "Skunk Train" that operates from a train station located in the City of Fort

¹ https://noyocenter.org/about/

² https://www.skunktrain.com/

Bragg. Since the 1980s, the Skunk Train has operated primarily as an excursion train between Fort Bragg and Willits. The Skunk Train's mascot is a cartoon skunk dressed in a conductor's outfit and the train station carries a line of merchandise marketed for tourists to the City. In 2016, the tunnel between Fort Bragg and Willits collapsed and has been closed since. Excursion trips now originate from Fort Bragg and head east for several miles then return by putting the train in reverse and back tracking the same route. A similar "there and back again" route occurs on the Willits leg, where the train heads west stopping in North Spur before the collapsed tunnel and then returns to the Willits station.

The short excursion is popular with visitors, as are the railbikes that allow tourists to pedal the tracks themselves along the scenic Pudding Creek or along the Noyo River through the Redwoods. For many years, the City of Fort Bragg has supported the Skunk Train operation and recognized the Skunk Train's contribution to our local economy provided by the excursion train trips that attract tourists to our community. This support included submitting BUILD grant applications, for three years in a row, on behalf of the Skunk Train in hopes of repairing the tunnel and reinstating the excursion trips all the way to Willits.

However, the Fort Bragg City Council does not support Mendocino Railway's current RRIF loan application as it perpetuates the falsehood that the railway is a common carrier public utility, which allows it to strategically claim exemption from local and state regulations and use powers such as eminent domain to diversify its holdings well beyond railroad operations. On August 11, 2021, Mendocino Railway filed an Eminent Domain Complaint in Mendocino Superior Court against Georgia-Pacific LLC (Case No. 21CV00595). The action was brought to condemn 210 acres of coastal property, the former Timber Mill Site, and approximately 62 acres of property running along both the north and south banks of Pudding Creek. Both properties are located within Fort Bragg City limits.

This is in addition to the approximately 77 acres of coastal property on the northern portion of the Mill Site that it acquired from Georgia-Pacific in June of 2019. That property is contiguous to the Skunk Train's Fort Bragg Train Station, Round House and other operational facilities.³ The Mendocino County Assessor's Office lists the value of the transaction at \$1.5 million. The existing Fort Bragg Train Station, Round House and other operational facilities sit on little more than 4 acres of land.

The 77 acres remain undeveloped, except for a 70,000 square foot drying shed, the only remaining structure from the Mill Site. In Mendocino Railway's 2021 eminent domain complaint, the public interest and necessity was stated as "required in furtherance of Plaintiff's current ongoing and future rail operations and all uses necessary and

³ Mendocino County Assessor's Office lists the three parcels purchased by Mendocino Railway from Georgia Pacific on June 20, 2021 at a total acreage of 172 and a value of \$18.8 million. The Mendocino Railway reported the acreage at approximately 77 and the discrepancy is due to the refusal of Mendocino Railway to submit a lot line adjustment for the purchase of a portion of parcel # (APN) 008-020-17-00.

convenient thereto." The northern portion of the Mill Site acquired in 2019 increased the land available to Mendocino Railway for rail operations by a factor of 19 times raising the question why the excursion train would need the additional 272 acres (an increase 87 times the current facilities) acquired by the condemnation action for current ongoing and future rail operations?

On November 19, 2021, the City was informed by Georgia-Pacific that it had settled the eminent domain lawsuit brought by Mendocino Railway by agreeing to the condemnation. As a result of condemnation, Mendocino Railway was able to acquire prime ocean front and creek side property.

The City believes that Mendocino Railway wants to develop the coastal and creek side property with little or no local or state regulatory oversight. The Mendocino Railway's Fall 2021 newsletter, Volume 1, Issue I, "The Little Stinker," also delivered on November 19, 2021, describes its plans for the 77 acres on the northern portion of the Mill Site.

"[T]he 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."

By sprinkling tourist train rides into the development plans, the Railway appears to be ready to claim that its actions fall under that of a common carrier for transportation. As a common carrier, Mendocino Railway asserts that it is not subject to local and state regulations.⁵ In its demurrer to Georgia-Pacific's affirmative defenses to the eminent domain action for the 272 acres, Mendocino Railway asserts it "is a federally regulated railroad and, as such CEQA [California Environmental Quality Act] is preempted and CEQA is not applicable." The 272 acres, just acquired by condemnation, is subject to additional remedial action for the Operable Unit E under the California EPA's Department of Toxic Substances Control's (DTSC) Remediation Order HAS-RAO-06-07-150. If the Mendocino Railway does not consider the 272 acres subject to California environmental law, who is responsible for the final clean up?

Development without local zoning or environmental regulation is not in the best interests of the City. Georgia-Pacific reported spending more than \$50 million and almost 20 years

⁴ Mendocino Railway v. Georgia – Pacific LLC, Mendocino County Superior Court Case No. 21CV00595.

⁵ Letter dated April 9, 2020 from Paul J. Beard II, counsel for Mendocino Railway: "As we believe the federal preemption of Mendocino Railway's rail-related work on its properties is supported by black-letter law, we ask that the Coastal Commission confirm that it agrees with the analysis and conclusions contained in this letter." Letter dated November 2, 2020 from CA Coastal Commission to Paul Beard II: "Finally, even if MR's holdings were determined to be subject to STB jurisdiction, we believe that certain portions of the proposed development would also be subject to the federal consistency review by the Commission. Your letter has not changed our position on these matters."

⁶ Mendocino Railway v. Georgia – Pacific LLC, Mendocino County Superior Court Case No. 21CV00595.

on cleanup of the former Mill Site, which is not yet complete. It is unimaginable that Mendocino Railway intends to use this coastal property for current ongoing and future rail operations. The City of Fort Bragg is 1,869 acres or just 2.9 square miles. That would mean that nearly 15% (272+4 acres) of the land in the City will be converted to railway operations. What could it possibly haul from Willits to Fort Bragg to make this viable? If this is true, the City's treasured Coastal Trail would be bordered by a freight railroad. The best and most valuable use of this property is not as railroad operations.

As pointed out in the letter from the Friends of the Eel River, a plan to haul rock from the Eel River canyon to ship from Fort Bragg is not viable. The Noyo Harbor, which supports a small fishing industry, is not a deep water port and cannot accommodate barges or ships of any substantial size. For example, the Coast Guard's small boat station located in the Harbor is limited to boats up to 47 feet, despite the fact that it services 120 miles of northern California coast. Even if the Noyo Harbor could accommodate freight ships, the harbor is not accessible from Mendocino Railway's property, which means the freight would need to be unloaded from the train and transferred by truck to the harbor then reloaded onto ships. This seems impractical at best.

That said, Mendocino Railway could acquire, through purchase or condemnation, the already developed property between to extend the train tracks to the harbor. A final ludicrous option is for Mendocino Railway to build an entirely new port off of the property acquired from Georgia-Pacific, but this would require access over, under or through the City's beloved Coastal Trail that runs the length of the coastal bluffs. Of course any of these scenarios could only be possible if the development is not subject to local regulation, California environmental law or the state's Coastal Act.

On October 28, 2021, the City filed a complaint for declaratory and injunctive relief against Mendocino Railway, in Mendocino County Superior Court (Case No. 21CV00850) seeking a declaration that the railway is not a public utility and does not qualify as a federally regulated common carrier providing transportation. The local three-mile Skunk Train excursion service is not transportation or a public utility. The proposed repair of the collapsed tunnel, rebuilding of the North Coast Railroad Authority (NCRA) line and active freight and passenger service is simply a ruse to hold onto the designation as a common carrier so that Mendocino Railway can develop the 350 acres in Fort Bragg without having to comply with state and local regulation.

The railway's application and its efforts to obtain rights to the NCRA line are not for true rail operations but a way to hold onto the powers afforded a federally regulated railway that is connected and part of the national railway system. In conclusion, the Fort Bragg City Council does not support Mendocino Railway's Railroad Rehabilitation & Improvement Financing loan and encourages the Department of Transportation to review the application materials closely and consider the input from other agencies and organizations.

Respectfully,

DocuSigned by:

Bernie Norvell

Mayor

Jessica Worsell-Haye

Vice Mayor

DocuSigned by:

-DocuSigned by:

Jess Olvin-Smith

Teresa K. Albin-Smith Councilmember Lindy Peters

Councilmember

DocuSigned by:

Narcia Rafanan Councilmember

November 30, 2021

RT&S - "California City wants U.S. DOT to deny federal grant request for Skunk Train"

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California city wants U.S. DOT to deny federal grant request for Skunk Train

Written by Bill Wilson, Editor-in-Chief (https://www.rtands.com/author/bill-wilson/)

(https://www.rtands.com/author/bill-wilson/)

(https://www.rtands.com/author/bill-wilson/)

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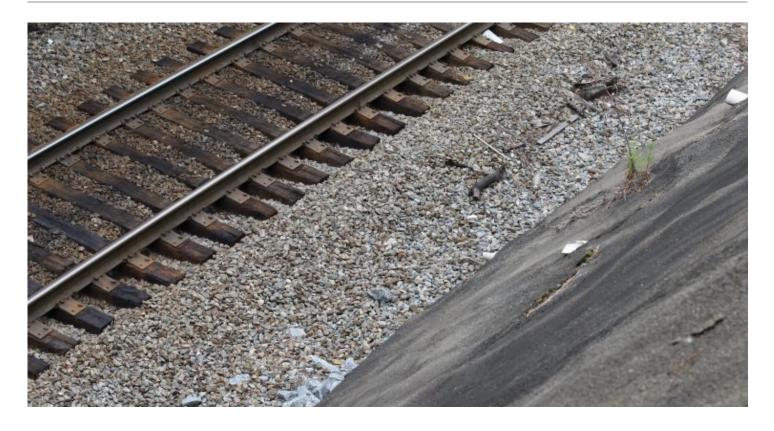












The owner of the Skunk Train claims it wants federal money to fix a rail tunnel.

The lity of Fort Bragg, Calif., is creating structure intentions of the owners of the Skunk Train. (https://www.rtands.com)

SUBSCRIBE (HTTPS://SBP.DRAGONFORMS.COM/RTS_NEW&PK=WBRTS921)

The city council voted to send a letter to the U.S. DOT asking the agency to deny Mendocino Railway's application for a Railroad Rehabilitation & Improvement Financing loan. The money would supposedly be used to repair a collapsed rail tunnel that sits between Fort Bragg and Willits. In the letter, city officials say Mendocino Railways, which has been running an excursion train called the Skunk Train, is not a public utility and does not qualify for federal funds.

However, the fight between the city and the railroad company is about land. On Nov. 19 Mendocino Railways purchased 272 acres of land from Georgia Pacific for \$1.23 million. The company wants to develop the site for tourists. The city wants to use the land for ocean water intake/discharge infrastructure to support aquariums and research at the Noyo Center's Ocean Science Facility. A complaint was filed with the Mendocino County Superior Court that stated the railway should no longer be considered a public utility because it is only an excursion train.

The city also wants to clean up the site, and says in its letter to the U.S. DOT that Mendocino Railways would used the federal loan to solidify its status as a public utility and would not clean up the site.

Read more articles on passenger rail. (https://www.rtands.com/category/passenger/)

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December 1, 2021

"City Council and Skunk Train battle over Mill Site"

NEWS > CALIFORNIA NEWS

City Council and Skunk Train battle over Mill Site



The City's letter argues Mendocino Railways is not a public utility and does not qualify for DOT funds because they are an excursion train that operates between Fort Bragg and Willits only. (Chris Pugh — Fort Bragg Advocate-News)

By MEGAN WUTZKE |

PUBLISHED: November 29, 2021 at 2:13 p.m. | UPDATED: November 29, 2021 at 2:14 p.m.



During the Fort Bragg City Council meeting on Monday, November 22, the City voted to send a letter to the U.S. Department of Transportation (DOT), requesting the DOT deny Mendocino Railway's application for a Railroad Rehabilitation & Improvement Financing Ioan. This \$31.3 million Ioan would be to repair the collapsed tunnel between Fort Bragg and Willits.

The City's letter argues Mendocino Railways is not a public utility, so it does not qualify for DOT funds. The letter calls the RRIF loan "a ruse to hold onto the designation as a common carrier so that Mendocino Railway can develop the 350 acres in Fort Bragg without having to comply with state and local regulation."

The City's letter is in response to the news received on November 19, Georgia Pacific had ceded the Mill Site, with 272 acres of land, to Mendocino Railways for \$1.23 million. On the same day, Mendocino Railways distributed a newsletter titled "The Little Stinker" to Fort Bragg residents, detailing their plans into developing the Mill Site for tourists.

"I don't know on what planet it's in our community's best interest to have that property—20% of our town—owned by another private company," Vice Mayor Jessica Marcell-Haye said.

The Mill Site has a contentious history. Originally part of GP's timber mill that closed in 2002, this previously industrial site needs clean up and remediation before any development can occur. The Pudding Creek Watershed is a part of this parcel as well.

In 2003, Mendocino Railways bought the Skunk Train, an excursion train between Fort Bragg and Willits. However, in 2016, a tunnel collapsed, and the Skunk Train became a short "there and back" journey.

In June of 2019, Mendocino Railways bought 77 acres of the northern portion of the Mill Site from GP, and on August 11, 2021, they sued GP for eminent domain of the Mill Site. However, the City of Fort Bragg had also expressed interest in the Mill Site. On October 28, the City filed a complaint in Mendocino County Superior Court, arguing that the railway should no longer be considered a public utility, as it is only an excursion train.



The Mill Site has been the focus of the City's envisioned "Blue Economy," which focuses on the sustainable use of the ocean for economic growth. According to the letter sent to the DOT, the Mill Site was the planned site for ocean water intake/discharge infrastructure to support aquariums and research at the Noyo Center's Ocean Science Facility. During the Town Hall meeting on May 21, City Manager Tabatha Miller explained how the unique location of the Mill Site provided economic and housing opportunities for the City—even suggesting that the land could help meet the City's goal of 200 new housing units within the next five years.

On October 12, the City also authorized the sale of lease revenue bonds to restructure Fort Bragg's debt with CalPERS and to possibly acquire the Mill Site; however, the City did not make final decisions on the Mill Site at that time. At that meeting, Mayor Bernie Norvell was hesitant to make a final decision on the Mill Site due to the strong community concerns.

According to the City's letter to the DOT, the City was working with The Nature Conservancy (TNC), Trout Unlimited, California Department of Fish and Wildlife (CDFW), National Oceanic and Atmospheric Administration (NOAA), and California State Parks to clean up the Mill Site, as well as Tribal Council of Sherwood Valley Band of Pomo to plan the future of this site. According to the City, they are now concerned that the necessary clean-up and remediation is not going to happen.

The City's letter argued that Mendocino Railways would use the RRIF loan to solidify their status as a public utility, and as such, would not be responsible for certain aspects of the Mill Site clean up. According to the letter, Mendocino Railways asserts that it "is a federally regulated railroad and, as such CEQA [California Environmental Quality Act] is preempted and CEQA is not applicable."

The City's letter is joined by letters from the Friends of the Eel River, the Coastal Commission, the Humboldt Trails Council, and the North Coast Railroad Authority, expressing their concern over the RRIF loan.

Chris Hart, President of Mendocino Railways, defended the RRIF loan during public expression. "You guys supported this for three years, and now you're opposing it," Hart said. "It feels like retaliation."



February 17, 2022

Letter to Editor

OPINION COMMENTARY

Community Column: Merging tracks on the millsite

February 17, 2022 at 6:00 a.m.

Last week Fort Bragg city councilmembers Albin-Smith and Peters asked Mendocino Railway to "get on board" with local permitting. This is a surprising request given that Mendocino Railway has been doing exactly that since 2019, following its purchase of the northern portion of the millsite, until the city abandoned its development process in January 2021 and told us to create our own plan.

We did as requested, meeting with the city ten times in 2021 while also focusing — with city approval — on acquiring millsite south. In May, after we told the city we had reached a deal with GP, the city suddenly and without explanation ceased all communications with us and, apparently, tried to take our deal with GP for itself, forcing us to file our eminent domain action to ensure we simply had a seat at the table. But GP's discussion with the city went nowhere, and GP contacted us in October to tell us that their discussions with the city had ended and asking how we could close our original deal. As settling the eminent domain action was easier than closing the deal via a purchase and sale agreement, that is what we did.

Unbeknownst to us, the city – which for some reason ignored our eminent domain action – in October filed a lawsuit challenging our public utility status. And the city then in November, after learning we had closed our original deal with GP, sought out of pure spite to block a \$21 million loan we seek to improve our railroad with more ties, to improve bridge safety, and to reopen Tunnel #1 (improvements the council bizarrely claims to still support today despite its efforts to prevent us from making them). Councilmembers have also made knowingly false claims about us in meetings and in the press that have caused enormous harm not just to our company but also to the many local residents and businesses who depend on us, at least in part, for their livelihoods.

The council – without reason – questions whether we will abide by local development regulations and CEQA (California Environmental Quality Act). This is despite our consistent statements over many years that we always do our best to follow all applicable laws and will continue to do so. We submitted our proposed plan for the 77-acre millsite north for city approval within three months of purchasing that property. We agreed that the housing, hotel, commercial, and light industrial elements the city wanted built were all subject to local regulation. And we also set aside 40% of the property as open space and parks, not to mention the extensive setbacks from the Coastal Trail. The city knows we are in our third year working with the Department of Toxic Substance Control on environmental remediation of the property, despite not having caused any of the contamination ourselves. We planned to work just as closely with the city and environmental regulators as to millsite south.

Anyone who has walked the city's beautiful Coastal Trail can see the unique opportunity presented by the millsite. Ideally, we should work together with the city on a plan that builds upon our community's strong working-town history, our hospitality and tourism industry, and our potential to attract high-paying technology, green energy, healthcare, and blue economy jobs. And though the millsite is a brownfield that needs redevelopment, we can't lose sight of the fact that it borders an amazing environmental gem that needs protection. Nor can we lose sight of the need to retain Fort Bragg's identity and authenticity.

We need to work together with local agencies to achieve these goals, to develop a vision that everyone can support. But the city has refused to speak with us, preferring to hold closed-door meetings while making knowingly false claims about us in public. We thus welcome councilmembers Albin-Smith's and Peters' interest in moving forward in a more productive manner and will gladly meet with them if they are willing.

Rail switches merge parallel train tracks into one, serving as a good metaphor for our relationship with the city. Currently, we seem to be heading in a similar direction but on separate tracks. But we share the common goal of ensuring that millsite development provides the maximum opportunities and benefits for our community so I'm hopeful we can find a switch that will bring us onto the same track.

I look forward to a time when the rest of the council joins councilmembers Albin-Smith and Peters in seeking to work towards a more promising future together.

— Chris Hart, Mendocino Railway

March 10, 2022

It's Time for the City Council to Board the Train



Community Column:

It's Time for the City Council to Board the Train

By SUBMITTED |

March 10, 2022 at 6:00 a.m.

In recent weeks, there have been dueling columns in this newspaper between some members of the Fort Bragg City Council and Mendocino Railway, which operates the iconic Skunk Train. The primary reason is city leaders will not meet with us to discuss the future of the former George Pacific mill site.

It's time for city leaders to abandon an unwarranted lawsuit and replace the saber-rattling with productive dialogue. The current political discourse could discourage private investment, leading the land to remain fallow, as it has for decades.

With the closing of the mill in 2002, there came the opportunity to repurpose the land. For nearly 20 years nothing was done with this premium property until Mendocino Railway purchased the northern portion of the waterfront property. Recognizing the potential of the land and value to the community, Mendocino Railway wasted no time to release a conceptual land use plan, even before acquiring the balance of the property to the south. The project will conform to environmental laws and local building standards, and environmental remediation will continue to remove toxins from the former mill site.

Like any large land-use project, it requires significant private investment and considerable public input, and our company is uniquely positioned to provide both. The conceptual plan will evolve as the project attracts interest from potential development partners and from those who live and work in Fort Bragg. The public is invited to join our collaborative process, not by riding the caboose, but by helping us drive the train.

There is also a real opportunity to transition the community from one that was once dependent on one major employer for jobs and tax revenue to another that is economically diverse and sustainable. While portions of the property will build upon the area's strong and vibrant hospitality and tourism industry, it has even greater potential to attract high-paying jobs in the areas of technology, green energy, and medical/healthcare.

There are also public benefits to consider, many of which will appeal to residents and visitors alike, including new housing and public access to the beaches, parks, and trails, all the while ensuring that portions of the land is protected as open space for wildlife. Some have proposed a golf course or outdoor amphitheater. While the possibilities are endless, connectivity is important for this waterfront property. Additional train stations and rails could connect visitors and residents from Main Street to work and home, hotels and restaurants, and all the public amenities the property has to offer.

Unfortunately, while the court considers the city's lawsuit, Fort Bragg City Council members are lobbying federal authorities to deny the railway a loan that is intended to improve and enhance existing railroad infrastructure along the 40-mile Redwood RouteTM including refurbishments to Tunnel #1, which would restore the severed connection between the communities of Willits and Fort Bragg. Should the \$21.5 million loan be granted, millions of dollars in labor and material will be invested in the region. Ironically, the loan has no connection to the mill site project. However, it is critically important for sustaining the railway's operations and its ability to attract visitor dollars to both communities. We sincerely hope the city and those they encouraged to do the same withdraw their objections before it is too late.

Working together with the Fort Bragg community we can grow the local economy by increasing visitor spending for existing and future businesses, create quality jobs and expand waterfront access and outdoor activities that appeal to residents and visitors alike. Despite the past interaction we sincerely desire a better relationship with the Fort Bragg City Council. It is time for Mendocino Railway and the city's leaders to get on the same track, moving towards a more promising future together. We are prepared to meet.

— Robert Jason Pinoli, Mendocino Railway

https://www.advocate-news.com/2022/03/10/community-column-its-time-for-the-city-council-to-board-the-train/

May 2, 2022

Press Release - Railway Calls on Fort Bragg City Council to Stop Wasting Taxpayer Money on Frivolous Lawsuit.

City Council Determined to Destroy Mendocino Railway Despite Negative Impact on Local Economy and other Local Businesses and Workers

MENDOCINO RAILWAY

FOR IMMEDIATE RELEASE May 2, 2022

Railway Calls on Fort Bragg City Council to Stop Wasting Taxpayer Money on Frivolous Lawsuit

City Council Determined to Destroy Mendocino Railway Despite Negative Impact on Local Economy and other Local Businesses and Workers

(FORT BRAGG, CA) Judge Clayton L. Brennan, of the Mendocino County Superior Court, announced on Thursday that he would allow the City of Fort Bragg to proceed with its lawsuit to end Mendocino Railway's status as a public utility regulated primarily by federal and state law (rather than local law). The City hopes by its baseless lawsuit to wrest control over Mendocino Railway away from the California Public Utilities Commission (CPUC) and the U.S. Department of Transportation ("DOT") and to obtain that control for itself. Mendocino Railway has argued that the Superior Court has no jurisdiction to hear challenges against CPUC-regulation of public utilities.

"We are obviously disappointed by the Court's ruling and have pursued an emergency request to the Court of Appeal to review Judge Brennan's ruling," said Robert Pinoli, president of Mendocino Railway. "Sadly, the City Council is determined to waste hundreds of thousands of taxpayer dollars to pursue its relentless quest to destroy the railway and the visitor spending it generates for small businesses and workers in our community. We firmly believe that our community benefits when our City Council works together with local businesses to create jobs rather than engaging in senseless political battles that appear only to benefit our councilmembers' private business interests."

The City's lawsuit is but one of a series of unjustly hostile actions carried out by Fort Bragg's City Council. The City Council's vindictive actions also include trying to sabotage Mendocino Railway's efforts to obtain a \$21 million Railway Rehabilitation and Improvement Financing Express (RIFF) loan intended to replace ties and rail and refurbish Tunnel #1, repairs that are essential to restoring the historical connection and the movement of freight and passengers between Fort Bragg and Willits. The City Council's effort to sabotage this loan amounts to pure vindictiveness as the loan has no connection to any prospective mixed-use development project on the former millsite. In addition, the Fort Bragg City Council has also repeatedly defamed Mendocino Railway in an effort to reduce the number of visitors to the Skunk Train, one of the region's top tourist attractions, which reduces visitor spending at local stores, restaurants and hotels, and other businesses even more so than it does at the Skunk Train.

"If Fort Bragg's City Council manages to derail Mendocino Railway's federal loan application, not only will Fort Bragg's historic railroad connection to Willits remain closed, more than \$20

million in materials and labor will not be invested into the local economy," said Mr. Pinoli. "It's hard to understand why any city council, anywhere, would do their best to deny their community a fully-functioning transportation network and local investment that would increase the movement of freight and passengers, and benefit so many residents dependent on tourism and visitor spending for jobs. When the City Council's bizarre actions do not serve the public's interest, one must question whether their actions benefit their personal business interests."

About Mendocino Railway

Mendocino Railway is a Class III common carrier that operates both freight and passenger service. It owns the assets of the California Western Railroad (CWR) / Skunk Train that has been operating through the redwood forest of Northern California's Mendocino County since 1885. Trains depart from the railroad's headquarters in the coastal town of Fort Bragg, as well as from the frontier town of Willits, which connects to the interstate rail system. The railroad has offered a variety of services to the public, transporting commuters, freight, and (through its "Skunk Train" operation) excursions for tourists.

As revealed in Mendocino Railway's recent demographic analysis, over a five-year period (2016-21) the railroad helped generate more than \$67 million in visitor spending with local merchants, restaurants, and lodges, as well as tax revenue to support local public services. According to the Mendocino County Tourism Agency, the Skunk Train and its railbikes, are the top internet searches by prospective visitors to Mendocino County.

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May 19, 2022

The City Council's legacy: Derailing redevelopment of the former mill site



Community Column:

The City Council's legacy: Derailing redevelopment of the former mill site

By SUBMITTED |

May 19, 2022 at 6:00 a.m.

It appears as if a once-in-a-lifetime opportunity to redevelop Fort Bragg's former mill site into something that promises economic growth and quality jobs may have come and gone.

Over the past several years, Mendocino Railway, the operators of the Skunk Train, purchased portions of the former mill site to support current and future rail operations, and to restore the railway's historical connection to the land. With these purchases came the first opportunity in 20-years to redevelop the blighted property into something far more promising. A conceptual plan called for growing the community's hospitality and tourism industry and attracting businesses in the area of technology, energy, and healthcare; new housing, open space, and providing greater public access to beaches and trails.

Unfortunately, thanks to the current Fort Bragg City Council it is now an opportunity lost as they chose not to work in partnership with the railway. Their limited perspective and headstrong objective to stop the conceptional plan is denying the community significant improvements and economic growth. To make things worse they are wasting taxpayer dollars to fight this purely vindictive battle. Their strategy is twofold; 1) use taxpayer dollars to finance a lawsuit that aims to give the city greater control over the railway's operations superseding state and federal laws, and 2) lobby federal authorities to deny a federal loan intended to restore the movement of freight and passengers between Fort Bragg and Willits. If they are successful, the combined effect will result in over \$21 million not being invested in local jobs and materials, and the railway's full potential to move passengers and freight will never be realized.

The railway announced this month that they have abandoned its redevelopment plan, but not because the council threatened its bottom line. Rather, it was investors and prospective employers who reached the conclusion that the city council was outright hostile to forward progress and economic opportunity, making any potential redevelopment project on the former mill site virtually impossible so long as they're in office.

While they may be celebrating at City Hall, some Main Street business owners believe the council failed to consider the broader economic implications of their actions. While Skunk Train passengers spend millions of dollars annually in local shops, restaurants, and hotels, the city continues to deny the value of economic generation. Damages by the city against the railway are mounting and these costly attacks on

our operations come as rising inflation and fuel prices are limiting how much tourists are willing to spend on travel and outdoor recreation.

The city council, in particular Mayor Norvell and Vice-Mayor Morsell-Haye, were so focused on derailing the redevelopment project that they never considered what to do once they achieved that goal. But for railroad operations, the land will now remain fallow. How is that a win for the city council?

Now, they must consider the political benefits of continuing their frivolous lawsuit and sabotaging schemes. Voting residents should realize that this City Council tends to give more weight to someone living outside of the city limits than to those who live within the boundaries actually paying property taxes. Just look what they've done to other well-established businesses or those wishing to start up.

As residents watch the sunset over 300 acres of blighted property sink into the sea, they will be reminded of the council's colossal failure to act and what could have been. They are unwilling to set aside that the development of 'railroad' items is pretty small as compared to the overall project scope. We repeat, but for a very few 'railroad' items the entire project is subject to the city's jurisdiction. Unfortunately, inaction and squandered opportunities will be this city council's legacy. New leadership on the council is needed to restore trust and to bring real economic opportunity to the city.

— Robert Pinoli, President of Mendocino Railway

https://www.advocate-news.com/2022/05/19/community-column-the-city-councils-legacy-derailing-redevelopment-of-the-former-mill-site/

July 12, 2022

Letter from Karen Shea regarding the use of eminent domain at 476 Alger Street (her mother's property).

Mr. Mayor, Fort Bragg City Council, and Whomever Else It May Concern,

I am aware that much misinformation, rumors and accusations are circulating about the property at 476 Alger Street, which was acquired by Mendocino Railway in an eminent domain proceeding.

I am the daughter of the former property owner. I want to make it very clear that Mendocino Railway did nothing wrong. They did not "steal" the property from my mother.

Their acquisition of the property actually provided a perfect solution to an ongoing problem. My mother was in no position to maintain or sell her own property. Mendocino Railway was kind, considerate and respectful throughout the entire process, and the family was completely on board with the proceeding. I, personally, am very happy to see it owned by the railroad, who appreciates natural beauty and wildlife, and are in the business of sharing that, instead of destroying and developing it.

Thank you,

Karen Shea

Kaven Shea