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February 28, 2023

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: Docket No. AB-1305 (Sub-No. 1) Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the Petition for Partial Waiver of Abandonment Regulations and for Exemption from Statutory Requirements, dated February 28, 2023. The Great Redwood Trail Agency is a state agency established by the Great Redwood Trail Agency Act, Government Code § 93000 et seq., to develop and manage the Great Redwood Trail and discharge the duties of a rail common carrier before the Board. The fee for the Petition should be waived pursuant to 49 C.F.R. § 1002.2(e)(1). However, in the interest of time, the Great Redwood Trail Agency has paid the filing fee and will await the decision on the fee waiver.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

FILED
February 28, 2023
SURFACE
TRANSPORTATION BOARD

Respectfully submitted,

FEE RECEIVED
February 28, 2023
SURFACE
TRANSPORTATION BOARD

/s/ Daniel R. Elliott

Daniel R. Elliott
Attorney for Great Redwood Trail Agency

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT -
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

PETITION FOR PARTIAL WAIVER OF ABANDONMENT REGULATIONS AND FOR EXEMPTION FROM STATUTORY REQUIREMENTS

Pursuant to 49 U.S.C. § 10502(a) and 49 C.F.R. § 1152.24(e)(5), the Great Redwood Trail Agency ("GRTA") hereby respectfully requests that the Surface Transportation Board ("STB" or "Board"):

(1) exempt it from requirements of certain statutory provisions whose application is not required to carry out the National Rail Policy, nor to protect shippers from abuse of market power; and

(2) waive certain Board regulations whose application is not required in a proceeding in which a party is seeking adverse abandonment of a rail line.

This proceeding is like *Colorado Landowners – Adverse Abandonment – Great Western Railway of Colorado, LLC in Weld County, Colorado ("Colorado Landowners")*, AB-857 (Sub-No. 2) (STB served Feb. 11, 2022), in which the Board granted exemptions from certain statutory provisions and waived certain regulatory requirements that normally apply when filing an application for abandonment authority, but are either unnecessary or would be difficult or impossible for a party without an ownership interest in the subject railroad to comply with if it

were to file an application for adverse abandonment. GRTA will be guided by that Board decision in its Petition in this case.

IDENTITY AND INTEREST OF GREAT REDWOOD TRAIL AGENCY

GRTA, formerly named North Coast Railroad Authority ("NCRA"),[1] is an agency of the State of California, and requests that the Board exercise its authority under 49 U.S.C. § 10903 to abandon any and all railroad line owned by Mendocino Railway ("MR") that extends between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California ("Line"). *See Mendocino Railway–Acquisition Exemption–Assets of The California Western Railroad,* FD 34465 (STB served Apr. 9, 2004).[2]

In 2018, legislation (Senate Bill 1029) provided that "the North Coast Rail Authority's (NCRA) railroad tracks, rights-of-way ("ROW"), and other properties provide an opportunity to create a Great Redwood Trail for hiking, biking, and riding, that may be **in the public and economic best interests of the north coast**." (Emphasis added). The legislation sought to assess the feasibility of turning the 316-mile historic rail line, known as the North Western Pacific ("NWP") railroad corridor ("GRTA Line"), into a long-distance recreational trail to be known as the Great Redwood Trail ("Trail"). This legislation provided that the legacy railway could be used to create a multi-use trail that would serve communities along the North Coast that would run from the San Francisco Bay in Marin County through Sonoma, Mendocino, Trinity, and Humboldt Counties to Humboldt Bay in the north. It would traverse the California redwoods, run

[1] The California Legislature through Senate Bill 69 renamed NCRA as GRTA, effective March 1, 2022. Cal. Gov. Code § 93010.
[2] The Line is shaded in yellow on a map of MR that is attached to this Petition as Appendix 1.

next to oak woodlands and vineyards of Sonoma and Mendocino Counties, wind through the Eel River Canyon next to the designated Wild and Scenic Eel River, and follow the shoreline of Humboldt Bay.

The Great Redwood Trail Agency Act[3] provided GRTA with various tasks and duties. Under Cal. Gov. Code § 93022, the California Legislature tasked GRTA, as a public agency, with various duties, which include, but are not limited to, seeking to railbank the GRTA Line in accordance with STB rules and the National Trails System Act ("Trails Act"), 16 U.S.C. § 1247(d), providing an environmental assessment of the GRTA Line, constructing a trail on the GRTA Line ("Trail"), and conducting community engagement regarding the Trail. In addition, under Cal. Gov. Code § 93024, GRTA has the powers, expressed or implied, necessary to carry out the purposes and intent of the Act, including, but not limited to, acquisition of property, management of rail rights-of-way, and adoption and enforcement of rules and regulations for the administration, operation, use, and maintenance of trails, excursion rail service, and other recreational facilities and programs. Specifically, for purposes of this proceeding, GRTA must file for abandonment of the GRTA Line and seek to railbank it as part of GRTA's statutory mandate.

Stepping into the shoes of NCRA, GRTA, by this legislation, inherited the property rights to the GRTA Line from NCRA. Initially, those rights included the same rights that NCRA had acquired through a series of transactions authorized by the STB or Interstate Commerce Commission in the 1990s,[4] which extended between milepost 295.5 near Arcata, California, and

[3] Cal. Gov. Code § 93000 et seq.
[4] *North Coast Railroad Authority – Acquisition and Operation Exemption – Eureka Southern Railroad*, FD 32052 (ICC served Apr. 23, 1992); *North Coast Railroad Authority – Purchase Exemption – Southern Pacific Transportation Company*, FD 32788 (STB served Mar. 20, 1996);

milepost 63.4 between Schellville and Napa Junction, California, as well as several branch lines. *Importantly, the only location where the Line at issue here connects to the interstate rail network is in Willits, California on the GRTA Line.*

Just as importantly, the GRTA Line, MR's only possible access to the interstate rail network, has been embargoed by the Federal Railroad Administration ("FRA") for public safety reasons since 1998. Operations on the GRTA Line were ordered shut down by the FRA, by its Emergency Order No 21. Notice No. 1, issued November 25, 1998. 63 Fed. Reg. 67976 (Dec. 9, 1998). The GRTA Line has not been restored to serviceable condition since the embargo because of the expense of over $100,000,000 to rehabilitate it, the lack of any need for rail service on it, the instability and flooding of the land in the right-of-way, and various tunnel collapses. In the meantime, the FRA's order remains in effect, and no interstate operations have been conducted on the GRTA Line in the last 24 years.[5] As a result of this embargo, MR has absolutely no access to the interstate rail network.

The FRA did grant partial relief from this emergency order embargoing the GRTA Line to allow the California Western Railroad ("CWR"), now MR,[6] to operate approximately 1.5 miles between its junction with the GRTA track and the Willits Depot.[7] 64 Fed. Reg. 30557

North Coast Railroad Authority – Lease and Operation Exemption – California Northern Railroad Company, FD 33115 (STB served Sept. 27, 1996).

[5] However, in May 2011, FRA lifted the embargo from Windsor (MP 62.9) south to the interchange at Lombard/Napa Junction. Because the interchange is located on a branch, which has a similar MP number to Windsor (interchange is at MP 63 .4), this can create confusion. This portion of the GRTA system is owned by the Sonoma-Marin Area Rail Transit District ("SMART"). 76 Fed. Reg. 27171 (May 11, 2011).

[6] *See Mendocino Railway – Acquisition Exemption—Assets of The California Western Railroad, supra*.

[7] In approximately, March 1999, CWR acquired the Willits Depot from NCRA and acquired some trackage rights "to operate over switching, yard, and other track that is excepted from this

(June 8, 1999) (emergency order no. 21, notice no. 2) (this modification permitted CWR, now MR, to operate its passenger excursion trains into the Willits Depot provided certain conditions were met.) In other words, GRTA is not only an adjacent landowner to the MR, but it is intricately involved in its tourist excursion passenger service on the Line as the owner of these tracks.

GRTA has begun to implement the changes that the California Legislature envisioned in the Act to the 316-mile GRTA Line starting its transformation from rail to a scenic public trail. First, in accordance with the Act,[8] SMART, a Class III rail carrier, filed a verified notice of exemption, which became effective shortly thereafter, under 49 C.F.R. § 1150.41 to acquire from NCRA and operate approximately 87.65 miles of the southern portion of the GRTA Line (the part of rail corridor in Sonoma and Marin Counties), consisting of: (1) the line of railroad and right-of-way in fee between the Sonoma/Mendocino County, California, border at NWP milepost 89 and Healdsburg, California, at NWP milepost 68.2; and (2) the freight rail operating easement between Healdsburg, at NWP milepost 68.2 and Lombard, California, at SP milepost 63.4.[9] SMART will be responsible for rail-with-trail development for the southern segment of the Trail.

GRTA also filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F — Exempt Abandonments to abandon 175.84 miles of the GRTA Line from milepost 139.5 at Commercial Street in Willits to milepost 284.1 near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, milepost 300.5 near

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Board's licensing regulation within the meaning of 49 U.S.C. § 10906." *Northwestern Pacific R.R. Co. – Change in Operators Exemption – North Coast R.R. Auth., et al.*, FD 35073, slip op. at 3 (STB served Sept. 2, 2007). The depot and trackage rights are now owned by MR.

[8] *See* Cal. Gov. Code § 93030.

[9] *Sonoma-Marin Area Rail Transit District—Acquisition and Operation Exemption— North Coast Railroad Authority*, FD 36481 (STB served Feb. 18, 2021).

Samoa, and milepost 301.8 near Korbel, in Mendocino, Trinity and Humboldt Counties, California. Concurrently with the filing of its verified notice, GRTA filed a request for issuance of a notice of interim trail use or abandonment (NITU) to establish interim trail use/rail banking on this rail line under the Trails Act and 49 C.F.R § 1152.29. In this proceeding, MR filed an offer of financial assistance to purchase a 13-mile portion of the line extending from milepost 139.5 in Willits to milepost 152.5, which was denied by the Board for failure to demonstrate financial responsibility.[10] On October 26, 2022, GRTA gave notice that GRTA consummated the interim trail/use railbanking authority as authorized by the Board.[11]

Consequently, GRTA now owns and has residual common carrier responsibility for this approximately 175.84 miles of the GRTA Line north of Willits railbanked in AB-1305X, and SMART now owns the portion of the GRTA Line in Sonoma and Marin Counties on the southern end. The remainder of the GRTA Line from Willits to NWP milepost 89 is still owned by GRTA and is subject to the jurisdiction of the STB. This is the portion of the GRTA Line where MR can connect to the interstate rail network by running south, via segments owned and operated by other carriers, eventually connecting to an interchange point with the Union Pacific Railroad in Fairfield, California. However, as noted, this part of the GRTA Line remains subject to the 1998 FRA embargo; consequently, it has not had any freight traffic on it in over twenty

[10] *Great Redwood Trail Agency – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, Cal.* AB-1305X (STB served Oct. 21, 2022). Tellingly, MR provided no evidence of any need for rail service on the connected Line in relation to this request.
[11] *Great Redwood Trail Agency – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, Cal.* AB-1305X, Filing ID 305567 (Oct. 26, 2022) (GRTA Consummation Notice).

years, and there is no realistic prospect for such use in the foreseeable future as shown in AB-1305X.

However, GRTA cannot seek abandonment of this remaining portion of the GRTA Line and railbank it in accordance with the Act based on STB precedent if it is attached to the MR in Willits; otherwise, it would leave the Line stranded from the interstate network.[12] Therefore, GRTA cannot satisfy its statutory mandate to railbank the GRTA Line and continue with its plans to develop the Trail in the most efficient and effective manner until this matter is resolved.

Moreover, GRTA, as the public agency designated to develop rail rights-of-way on the GRTA Line and examine other trail opportunities in the North Coast area, has the inherent role of protecting the public interest in California, especially in this region and on unused rail rights-of-way in the area.[13] It is axiomatic that the Board considers the public interest in determining

[12] Board precedent does not allow a segment of common carrier track to be "stranded" due to abandonment of an adjacent section of track: "It is well settled that so long as there is a common carrier obligation attached to a particular segment of track, the Board will not allow that segment to become isolated from the rail system as a result of the abandonment of the adjoining segment." *R.J. Corman R.R. Property, LLL – Aban. Exemption – in Scott, Campbell, and Anderson Counties, Tenn.* AB-1296X, slip op. at 3 (STB served Nov. 17, 2022) (cite omitted).

[13] *See, e.g., Chelsea Property Owners – Abandonment – Portion of the Consolidated Rail Corporation's W. 30th St. Secondary Track in NY, NY*, 8 ICC 2d 773 (ICC served August 28, 1992) (The line's abandonment and the viaduct's demolition would eliminate an obstacle to local development and appears otherwise to be consistent with the public interest. The statements of the four New York agencies, each responsible for the furtherance of the public interest in the State of New York, constitute strong evidence that the demolition of the viaduct would further the public interest in New York City. Because of the lack of an adequate showing that continued rail service here is feasible or likely to occur, there is no reason to allow our abandonment jurisdiction to interfere with the realization of these public interest objectives.); *Consol. Rail Corp. v. ICC*, 29 F.3d 706, 712 (D.C. Cir. 1994) ("the position of [the public agencies] in favor of abandonment was strong evidence that abandonment would serve the public interest because it would permit the possible development of other public projects"); *Norfolk & W. Ry.—Aban. Exemption—In Cinn., Hamilton Cnty., Ohio*, 3 S.T.B. 110, 118-20 (1998) ("[Board] will allow the displacement of rail service by other public purposes where the public interest justifies that end.").

whether to authorize an adverse abandonment. In its weighing of the public interest in adverse abandonment proceedings, the Board does not allow its jurisdiction to be used as a bar to state law remedies in the absence of an overriding federal interest. *See Kan. City Pub. Serv. Freight Oper.—Exemption—Aban. in Jackson Cty., Mo.*, 7 I.C.C. 2d 216 (1990). *See also CSX Corp. & CSX Transp., Inc.—Adverse Aban. Application— Can. Nat'l Ry. & Grand Trunk W. R.R.*, AB-31 (Sub-No. 38) (STB served Feb. 1, 2002). If an adverse abandonment is granted, the decision removes the agency's jurisdiction, enabling the state or others to pursue other legal remedies or clarifying STB jurisdictional issues against the incumbent carrier, if necessary. *See Consol. Rail Corp.*, 29 F.3d at\ 709; *Modern Handcraftt Inc.— Abandonment in Jackson County, MO*, FD 29330, 363 I.C.C 969, 972 (1981); *Denver & Rio Grande Ry Historical Foundation – Adverse Aban. – in Mineral Cty., CO*, AB-1014 (STB served May 21, 2008)*; Stewartstown R.R. Co. – Adverse Aban. – in York Cty., PA*, AB-1071 (STB served Nov. 16, 2012).

MR has abused its status as a rail carrier subject to STB jurisdiction in several ways. It has used the status to justify exercising eminent domain power to acquire property for purported freight rail uses, even though it has never shipped any freight on the Line.[14] It has asserted its status as a freight carrier in order to evade applicable state law, asserting that state and local government entities cannot regulate its commercial developments on the basis of the status. MR's misuse of federal law to serve its non-rail commercial interests is in contravention to the public interest of the people of the state of California. *A decision granting an adverse abandonment would serve the public interest by settling these questions of whether MR's actions in attempting*

[14] *See, e.g., City of Fort Bragg v. Mendocino Railway*, Case No. 21CV00850, Ruling on Demurrer (Superior Court of California, County of Mendocino, Apr. 28, 2022) (attached hereto as Appendix 2); Order of Condemnation, ¶ 2 (attached hereto as Appendix 3).

to take private property via eminent domain and avoid applicable state law in its real estate development activities are proper on the basis of preemption under 49 U.S.C. § 10501(b) and California law regarding railroad use of eminent domain, or, as GRTA asserts, abuses of their status as a rail carrier granted by STB.[15]

As a result, GRTA seeks a determination by the Board that, under these facts and circumstances, the public convenience and necessity ("PC&N") require and permit abandonment of the Line, thereby extinguishing the federal interest in the Line.

THE SUBJECT RAIL LINE

As noted, the Line owned by MR extends between Milepost 0.0 at Fort Bragg to Milepost 40 at Willits, a distance of approximately 40 miles in Mendocino County, California. Verified Reply in Opposition to North Coast Railroad Authority's Petition for Exemption from 49 U.S.C. § 10904, AB-1305X, Filing No. 302860 (Aug. 16, 2021), at 4. The Line is shaded in yellow on a map of MR that is attached to this Petition as Appendix 1.

MR is a wholly owned subsidiary of Sierra Railroad Company, a non-operating railroad carrier. The Line passes along the Pudding Creek estuary and through two tunnels: Tunnel No. 1 and Tunnel No. 2. Tunnel No. 1 at Milepost 3.5 has been collapsed for over 7 years and would cost approximately $5,000,000 to reopen for rail service. MR owns the "Skunk Train," which provides an intrastate tourist excursion service on the Line. The Line is strictly an excursion line

[15] In addition, when weighing the public interest, the Board considers all relevant factors, including costs avoidable by abandonment (such as maintenance and rehabilitation costs) and the opportunity costs incurred by forgoing more profitable use of assets elsewhere. *Kalo Brick*, 450 U.S. 311, 321 (1981); *see also* 49 CFR part 1152. Here, an adverse abandonment decision would allow GRTA to abandon the remaining portion of the GRTA Line, permitting it to cease the loss of opportunity costs by utilizing the rail right-of-way for its highest and best use as a trail.

and has been nothing more for the entire time of ownership by MR.[16] There has been no freight rail service on the Line in over twenty years. MR has attempted to paint itself as a bona fide freight operator. However, that is simply untrue based on the actual rail service on the Line.

GRTA will submit evidence to show that MR has not provided Board-regulated rail transportation over the Line at any time during its ownership and cannot plausibly do so in the future based on the numerous insurmountable conditions that prohibit such an operation. Thus, the absence of rail traffic subject to Board jurisdiction over the Line for over 20 years is convincing evidence that the PC&N requires and permits abandonment of the Line. *See Denver & Rio Grande Railway Historical Foundation, supra* (PC&N required adverse abandonment where the subject rail line had not been used for Board-regulated rail transportation for more than 30 years).

REGULATIONS TO BE WAIVED AND STATUTES TO BE EXEMPTED

1. System Diagram Map

Waiver is sought of the provisions of 49 C.F.R. § 1152.22(a)(5), and the related provisions of 49 C.F.R. §§ 1152.10-14 and 49 C.F.R. § 1152.24(e)(1). Those provisions require reference to inclusion of the Line in the carrier's System Diagram Map (SDM) and related provisions. Waiver of SDM requirements is customary in adverse abandonment proceedings because the noncarrier applicant generally does not have access to an SDM. *See Colorado Landowners*, slip op. at 3, and decisions there cited. Exemption from the SDM provisions of 49

[16] GRTA does not intend to impact the tourist excursion service and railbikes on the Line by seeking abandonment in this proceeding.

U.S.C. § 10903(c)(2) is also sought, as set forth, *infra*, providing statutory grounds for exemption. *See id.*

2. Notice to Significant Users

Waiver is sought of 49 C.F.R. § 1152.20(a)(2)(i) that requires that notice of intent to abandon be sent to significant users of the line on the ground that no shippers are using the Line. *See Colorado Landowners*, slip op. at 3, and the decisions there cited.

Exemption is also sought from the related provisions at 49 U.S.C. § 10903(a)(3)(D). *See id.*

3. Notice to Amtrak

Waiver is sought of 49 C.F.R. § 1152.20(a)(2)(x), which requires that a notice of intent be served on the National Railroad Passenger Corporation ("Amtrak"). Amtrak does not operate on the Line. *See Colorado Landowners*, slip op. at 3-4, and the decisions there cited.

4. Notice to Labor Organizations

Waiver is sought of 49 C.F.R. § 1152.20(a)(2)(xii), which requires that a notice of intent be served on the headquarters of all duly qualified labor organizations that represent employees of the affected rail line, on the ground that there are no such labor organizations that represent employees on the Line. *See Colorado Landowners*, slip op. at 4, and the decisions there cited.

5. Posting Notice at Agency Stations or Terminals

Waiver is sought of 49 C.F.R. § 1152.20(a)(3), which requires posting of the notice of intent at each agency station or terminal on the line to be abandoned, on the ground that there are

no agency stations on the Line at which the notice of intent could be posted. *See Colorado Landowners*, slip op. at 4, and the decisions there cited. Exemption is also sought from the related provisions of 49 U.S.C. § 10903(a)(3)(B). *See id*.

6. Content of the Notice of Intent

Waiver is sought of the prescribed form of the Notice of Intent to abandon found at 49 C.F.R. § 1152.21, and approval of a modified Notice of Intent set out in Appendix 4 of this Petition. *See Colorado Landowners*, slip op. at 4-5, and the decisions there cited. Waiver is sought on the ground that the modified Notice of Intent is in substantial compliance with the regulation. *Id*.

7. Line Attributes

Waiver is sought of 49 C.F.R. § 1152.22(b)-(d) and (e)(2)-(3), which require information regarding condition of the properties, service provided, revenue and cost data, and rural and community impact. That information is not typically available to adverse abandonment applicants or has otherwise not been required of them. *See Colorado Landowners, slip op. at 5*, and the decisions there cited.

9. Federal Register Notice

Waiver is sought of 49 C.F.R. § 1152.22(i) which provides wording for the draft Federal Register Notice. GRTA proposes to use alternative wording for that Notice that is reasonably acceptable in adverse abandonments set forth in Appendix 5 of this Petition. The Board should find that the alternative wording substantially complies with the applicable regulation. *See Colorado Landowners*, slip op. at 6, and the decisions there cited.

10. Offers of Financial Assistance

The Offer of Financial Assistance ("OFA") regulations at 49 C.F.R. § 1152.27 should be waived, and the OFA provisions at 49 U.S.C. § 10904 should be exempted because if the Board were to find that PC&N requires or permits adverse abandonment of the Line, it would be fundamentally inconsistent with the rationale underlying adverse abandonment to grant an OFA. *See Colorado Landowners*, slip op. at 7, and the decisions there cited.

11. Exemptions

Exemption of the provisions of 49 U.S.C. § 10903(c)(2)(A) and (B) (SDMs); 49 U.S.C. § 10903(a)(3)(D) (Notice to Shippers); 49 U.S.C. § 10903(a)(3)(B) (Posting), and 49 U.S.C. § 10904 (OFAs) is sought on the grounds that application of those provisions is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101 and those provisions are not necessary to protect shippers from abuse of market power because the record indicates that no shippers are using the Line. *See Colorado Landowners*, slip op. at 7, and the decisions there cited.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should waive compliance with the provisions of the cited regulations, and exempt compliance with the cited statutes.

Respectfully submitted,

/s/ Daniel R. Elliott

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Attorney for Great Redwood Trail Agency

Dated: February 28, 2023

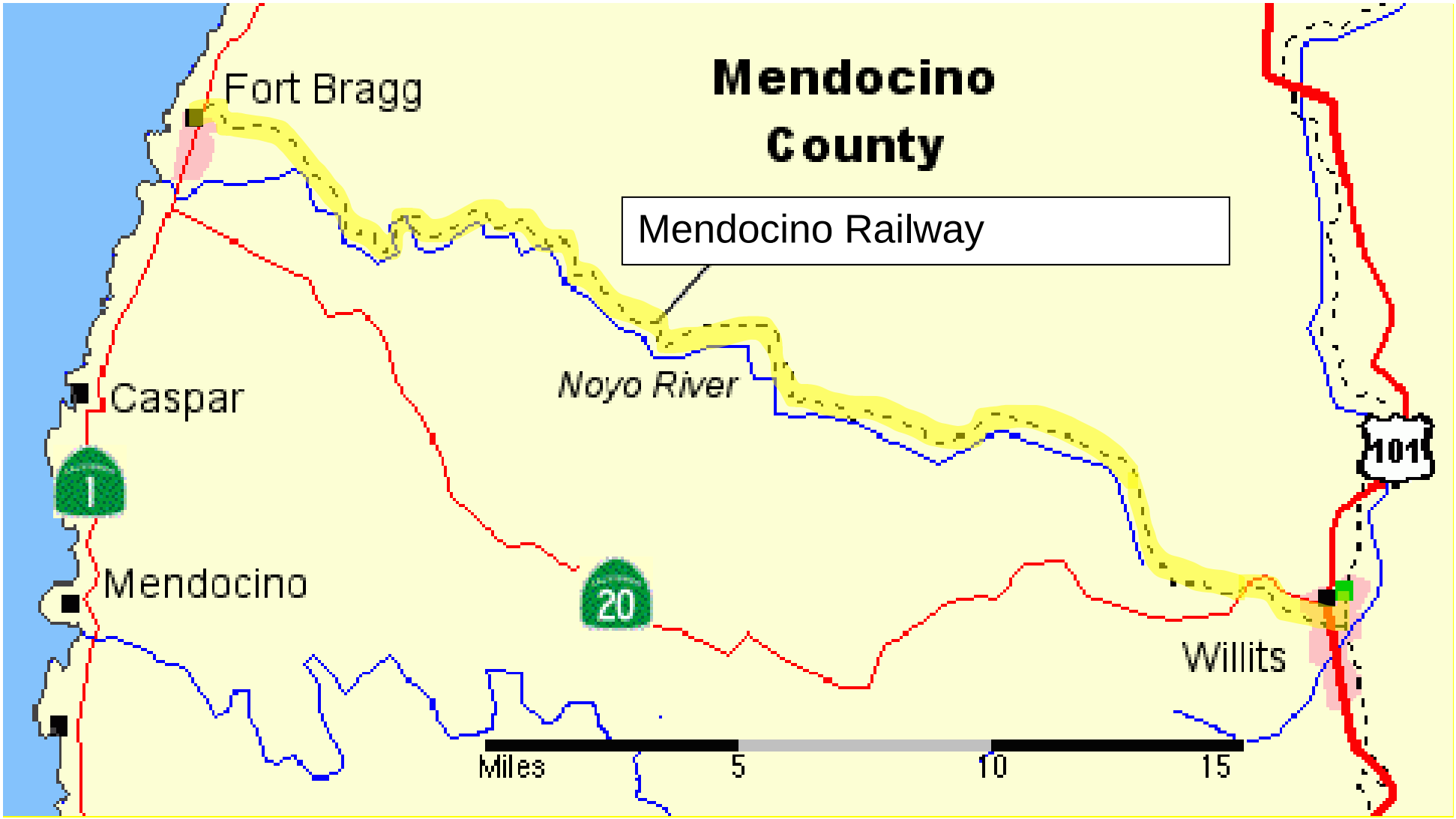
Certificate of Service

I certify that I have, on this 28th day of February 2023, served by email copies of the foregoing document on counsel for Mendocino Railway:

William A. Mullins
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
(202) 663-7823 (Direct)
wmullins@bakerandmiller.com

_/s/ Daniel R Elliott___
Daniel R. Elliott

APPENDIX 1


Mendocino County
Fort Bragg
Mendocino Railway
Noyo River
Caspar
Mendocino
Willits
1
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APPENDIX 2

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO, TEN MILE BRANCH

CITY OF FORT BRAGG, a California Municipal corporation **Plaintiff,** **vs.** **MENDOCINO RAILWAY and DOES 1-10, inclusive,** **Defendants.**	**Case No.: 21CV00850** **RULING ON DEMURRER TO THE COMPLAINT**

I. Standard of Review on Demurrer:

The function of a demurrer is to test the sufficiency of a pleading by raising questions of law. CCP §589(a); *Andal v. City of Stockton* (2006) 137 Cal.App.th 86, 90; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994. A demurrer is directed to the face of the pleading to which objection is made (*Sanchez v. Truck Ins. Exch.* (1994) 21 Cal.App.4th 1778, 1787; and to matters subject to judicial notice (CCP §430.30(a); *Ricard v. Grobstein, Goldman, Stevenson, Siegel, LeVine & Mangel* (1992) 6 Cal.App.4th 157, 160.

The only issue a judge may resolve on a demurrer to a complaint is whether the complaint, standing alone, states a cause of action. *Gervase v. Superior Court* (1995) 31 Cal.App.4th 1218, 1224. On a demurrer, a judge should rule only on matters disclosed in the challenged pleading. *Ion Equip. Corp. v Nelson* (1980 110 Cal.App.3d 868, 881.

A demurrer does not test the sufficiency of the evidence or other matters outside the pleading to which it is directed. *Four Star Elect. v F&H Constr.* (1992) 7 Cal.App.4th 1375, 1379. It challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. *Cundiff v GTE Cal, Inc.* (2992) 101 Cal.App.4th 1395, 1404-1405. A demurrer is not the proper procedure for determining the truth of disputed facts, such as the correct interpretation of the parties' agreement or its enforceability (*Fremont Indem. Co. v Fremont Gen. Corp.* (207) 148 Cal.App.4th 97, 114-115. A judge may not make factual findings on a demurrer, including "implicit" findings. *Mink v Maccabee* (2004) 121 Cal.App.4th 835, 839.

For purposes of ruling on a demurrer, a judge must treat the demurrer as an admission of all material facts that are properly pleaded in the challenged pleading or that reasonably arise by implication, however improbably those facts may be. *Gervase v Superior Court* (1995) 31 Cal.App.4th 1218, 1224; *Yue v City of Auburn* (1992) 3 Cal.App.4th 751,756. A demurrer does not admit contentions, deductions, or conclusions of fact or law alleged in the challenged pleading. *Harris v Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1149; *Hayter Trucking v Shell W. E&P* (1993) 18 Cal.App.4th 1, 12. For example, a demurrer does not admit the truth of argumentative allegations about the legal construction, operation, or effect of statutory provisions, or the truth of allegations that challenged actions are arbitrary and capricious or an abuse of discretion. *Building Indus. Ass'n v Marin Mun. Water Dist.* (1991) 235 Cal.App.3d 1641, 1645.

II. The Complaint:

The plaintiff's (City of Fort Bragg) complaint alleges a single cause of action for declaratory relief. Although the complaint denominates the cause of action as being for "Declaratory and/or Injunctive Relief," the court is construing the pleading as stating a cause of action for Declaratory Relief which seeks injunctive relief as a remedy if appropriate. Injunctive relief is a remedy—not a cause of action.

The City seeks a judicial determination that Defendant (Mendocino Railway), despite being a railroad subject to regulation by the California Public Utilities Commission ("CPUC"), is nevertheless "subject to the City's ordinances, regulations, codes, local jurisdiction, local control and local police power and other City authority." Fort Bragg contends that a judicial determination of these issues and of the respective duties of the parties is now necessary and appropriate because the Defendant continues to resist compliance with City directives to repair and make safe the dangerous building on its property, and to comply with the City Land Use and Development Codes, and/or other valid exercise of City governing authority.

III. The Demurrer:

Defendant, Mendocino Railway (hereinafter "MR"), raises two basic theories in support of its demurrer; namely, lack of subject matter jurisdiction, and preemption.

With regard to subject matter jurisdiction, MR contends that there is a decades long history of the CPUC recognizing and regulating its operations as a public utility. Moreover, MR argues that in the past, the City has vigorously defended MR's status as a "public utility" and thus should not be allowed to disavow those admissions now. More precisely, however, the gravamen of MR's contentions is that this court lacks subject matter jurisdiction based on Public Utilities Code Section 1759 which states:

> No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court. Pub. Util Code § 1759

In short, MR contends that "the CPUC has exclusive jurisdiction over the regulation and control of utilities and that jurisdiction, once assumed, cannot be hampered or second-guessed by a superior court action addressing the same issue." (citing, *Anchor Lighting v. Southern California Edison* (2006) 142 Cal.App.4th 541, 548). Thus, the City is barred from obtaining a declaration from this court which might nullify Mendocino Railway's status as a CPUC-regulated public utility.

With regard to preemption, Mendocino Railway contends there is no dispute that it is a federally recognized railroad. As such, it is regulated by the federal Surface Transportation Board under the Interstate Commerce Commission Termination Act ("ICCTA") which gives plenary and exclusive power to the STB to regulate federally recognized railroads. Mendocino Railway contends that the STB's exclusive jurisdiction over a federally recognized railroad means that state and local regulatory and permitting requirements are broadly preempted. Mendocino Railway argues that the injunctive relief sought would necessarily confer to the City plenary regulatory authority over railroad operations and facilities and thus is in direct conflict with STB's exclusive grant of jurisdiction pursuant to 49 U.S.C. § 10501(b).

As explained more fully below, the court rules that for the purpose of determining the merits of this demurrer, Mendocino Railway's contentions, embrace an overly broad interpretation of both the subject matter jurisdiction limitation of Public Utilities Code Section 1759 and how the operation of federal preemption that might arise pursuant to 49 U.S.C. § 10501(b) on the facts of this case.

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A. Requests for Judicial Notice:

Mendocino Railway requests that the court take judicial notice of five documents, Exhibits A-E, attached to the declaration of Paul Beard II.

Although courts may notice various acts, law, and orders, judicial notice does not require acceptance of the truth of factual matters that might be deduced from the thing judicially noticed. e.g., from official acts and public records. *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1062 Often what is being noticed is the existence of the act, not that what is asserted in the act is true. Cruz v. County of Los Angeles (1985) 173 Cal.App.3d 1131, 1134.

There is a mistaken notion that taking judicial notice of court records means taking judicial notice of the existence of facts asserted in every document of a court file, including pleadings and affidavits. The concept of judicial notice requires that the matter which is the proper subject of judicial notice be a fact that is not reasonably subject to dispute. Facts in the judicial record that are subject to dispute, such as allegations in affidavits, declarations, and probation reports, are not the proper subjects of judicial notice even though they are in a court record. In other words, while we take judicial notice of the existence of the document in court files, we do not take judicial notice of the truth of the facts asserted in such documents. *People v. Tolbert* (1986) 176 Cal.App.3d 685, 690.

Furthermore, the hearsay rule applies to statements in judicially noticed declarations from other actions and precludes consideration of those statements for their truth absent a hearsay exception. *Magnolia Square Homeowners Ass'n v. Safeco Ins.* (1990) 221 Cal.App.3d 1049, 1056. A court cannot take judicial notice of the truth of hearsay statements simply because they are part of the record.

1. Exhibit A: Page from CPUC website listing railroads it regulates:

While the court might take judicial notice that the website exists, the court will not take judicial notice of the webpage for the purpose of establishing, as a fact beyond dispute, that Mendocino Railway is a common carrier, engaged in railroad operations in interstate commerce, and regulated in that capacity by the CPUC. Such a factual or legal conclusion is directly contradicted by the CPUC decision in the Matter of the Application of California Western Railroad, Inc. for Authority to Modify Scheduled Commuter Passenger Service and Seek Relief from Regulated Excursion Passenger Scheduling and Fares 1998 Ca. PUC LEXIS 384. Accordingly, the factual content of the website is not a proper subject for judicial notice, and the document is not otherwise relevant to the issues to be decided. Accordingly, request for the court to take judicial notice of Exhibit A is denied.

2. Exhibit B: CPUC Decision 98-01-050:

The court will take judicial notice of this decision pursuant to Evidence Code Section 451(a)

3. Exhibit C: January 17, 2019 Letter from Fort Bragg City Attorney to California Coastal Commission:

The contents of the proffered letter are hearsay statements of opinion with respect to a matter of law. The content of the letter is not a proper subject for judicial notice. A demurrer does not test the sufficiency of the evidence or other matters outside the pleading to which it is directed. *Four Star Elect. v F&H Constr.* (1992) 7 Cal.App.4th 1375, 1379. It challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. Accordingly, request for the court to take judicial notice of Exhibit C is denied

4. Exhibit D: August 1, 2019 Letter with Coastal Consistency Certification:

While the existence of the letter and certification may be judicially noticed, judicial notice is not proper as to their contents. Mendocino Railway requests the court take judicial notice of the documents because they are "relevant to, inter alia, the City's position on the history of Mendocino Railway's freight and passenger service as well as on whether the railroad is ready, willing, and able to resume full service upon the tunnel's reopening. For purposes of a demurrer, the court must assume the facts in the complaint as true. A demurrer does not test the sufficiency of the evidence or other matters outside the pleading to which it is directed. *Four Star Elect. v F&H Constr.* (1992) 7 Cal.App.4th 1375, 1379. It challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. Accordingly, Mendocino Railway's stated purpose for the court to take judicial notice is irrelevant for determining the merits of its demurrer and thus the document is irrelevant to the motion at bar. Accordingly, request for the court to take judicial notice of Exhibit D is denied.

5. Exhibit E: CPUC Decision No. 98-05-054:

The court will take judicial notice of this decision pursuant to Evidence Code Section 451(a).

6. Mendocino Railways's Supplemental Request for Judicial Notice filed April 13, 2022:

Mendocino Railway filed a Supplemental Request for Judicial Notice on April 13, 2022. This matter, however, was deemed submitted for decision on February 24, 2022 after the court had reviewed all of the parties' pleading and papers and heard oral argument. The supplemental request for judicial notice, coming 48 days after the matter was deemed submitted is untimely. The supplemental request for judicial notice is denied.

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IV. Discussion:

A. Public Utilities Code Section 1759:

By way of the instant demurrer, MR contends that the City is asking this court to "nullify Mendocino Railway's status as a CPUC-regulated public utility and thus empower the City to seize unfettered control over a state regulated, public-utility." MR characterizes the City's action as an "extraordinary" and "unlawful" attempt to "second guess" and "interfere with the agency's continuing jurisdiction...." In support of its allegations, MR argues that the Public Utilities Code "vests the commission with broad authority to supervise and regulate every public utility in the State and grants the commission numerous specific powers for [that] purpose." (citing, *San Diego Gas*, 13 Cal.4th at 915). MR notes that "to protect the CPUC's broad mandate and limit judicial interference with the CPUC's work, the Legislature enacted section 1759(a) of the Public Utilities Code which deprives the superior court of jurisdiction to entertain an action that could undermine the CPUC's authority." (citing Anchor Lighting v. Southern California Edison Co. (2006) 142 Cal.App.4th 541, 548.

While it is true that section 1749(a) grants the CPUC exclusive governing authority over public utilities, application of the jurisdictional limitations of 1749(a) is more nuanced and fact-driven than Mendocino Railway admits. For example, it is well established that a suit is not barred in superior court when it actually furthers the policies of the CPUC. (see, *North Gas Co. v. Pacific Gas & Electric* Company 2016 U.S. Dis.t LEXIS 131684 (N.D. Cal. 2016). In fact, there are several legal issues that need to be evaluated in determining the applicability of Section 1749. These issues include a "careful assessment of the scope of the CPUC's regulatory authority and [an]evaluation of whether the suit would thwart or advance... CPUC regulation." (See, *PegaStaff v. Pacific Gas & Electric Company* (2015) 239 Cal.App.4th 1303, 1318.)

As noted in *Vila v. Tahoe Southside Water Utility*, (1965) 233 Cal.App.2d 469, 477, California courts have frequently proclaimed concurrent jurisdiction in the superior court over controversies between utilities and others not inimical to the purposes of the Public Utility Act. For example, as the Vila court explained,

> "In *Truck Owners, etc. Inc. v. Superior Court, supra*, 194 Cal. 146, the court, after stating that the Legislature under the Constitution had full power to divest the superior court of all jurisdiction, and had exercised that power in denying jurisdiction to "'enjoin, restrain or interfere with the commission in the performance of its official duties,'" and had also vested in the Supreme Court sole power "to compel the commission to act," held that the superior court, nevertheless, had power to hear and determine a cause involving a complaint against a transportation company seeking to enjoin its transportation of freight as a public carrier with a certificate of public convenience. The court noted that the suit did not involve an interference with any act of the commission since the latter had not acted; that if it ever did act any conflicting injunction would be superseded. A contention that

recognition of concurrent jurisdiction in the court and the commission would cause confusion was rejected."

A three prong test to determine whether an action is barred by section 1759 was set forth by the California Supreme Court in *San Diego Gas & Electric Co. v. Superior Court* 13 Cal.4th 893 (*Covalt*). The test is as follows:

(1) Whether the commission had the authority to adopt a regulatory policy;

(2) Whether the commission had exercised that authority; and

(3) Whether the superior court action would hinder or interfere with the commission's exercise of regulatory authority.

Superior court jurisdiction is precluded only if all three prongs of the Covalt test are met.

As described in *Pegastaff, supra,* 239 Cal.App.4th at 1315,:

"The issue in *Covalt* was whether section 1759 barred a superior court action for nuisance and property damage allegedly caused by electric and magnetic fields from power lines owned and operated by a public utility. (citation) The court, considering the third prong of the test, concluded that a superior court verdict for plaintiffs would be inconsistent with the PUC's conclusion "that the available evidence does not support a reasonable belief that 60 Hz electric and magnetic fields present a substantial risk of physical harm, and that unless and until the evidence supports such a belief regulated utilities need take no action to reduce field levels from existing powerlines."

Since *Covalt* was decided, courts have had repeated occasion to apply the test it established. In *Hartwell Corp. v. Superior Court* (2002) 27 Cal.4th 256, residents brought actions against, among others, water providers regulated by the PUC for injuries caused by harmful chemicals in the water they supplied. Asserting tort and other causes of action, the plaintiffs sought damages and injunctive relief against those defendants. The water companies argued that section 1759 deprived the superior court of jurisdiction over the plaintiff's claims. The Supreme Court found that the first two prongs of the Covalt test were met: The CPUC had regulatory authority over water quality and safety and had exercised that authority. Applying Covalt's third prong, it held that adjudication of some—but not all—of the plaintiff's claims against the regulated water companies would hinder or interfere with the CPUC's exercise of regulatory authority. The plaintiff's injunctive relief claims would interfere with the PUC's exercise of its authority because the PUC had determined that the water companies were in compliance with state water quality standards and impliedly declined to take remedial action against those companies. "A court injunction, predicated on a contrary finding of utility noncompliance, would clearly

conflict with the PUC's decision and interfere with its regulatory functions in determining the need to establish prospective remedial programs." Plaintiff's damages claims were also barred by section 1759 to the extent they sought to recover for harm caused by water that met state standards but allegedly was unhealthy nonetheless."

As the Pegastaff court concludes,

"*Hartwell* demonstrates that application of the third prong of Covalt does not turn solely or primarily on whether there is overlap between conduct regulated by the PUC and the conduct targeted by the suit. The fact that the PUC has the power and has exercised the power to regulate the subject at issue in the case established the first and second prongs of *Covalt*, but will not alone establish the third. Instead, the third prong requires a careful assessment of the scope of the PUC's regulatory authority and evaluation of whether the suit would thwart or advance enforcement of the PUC regulation. Also relevant to the analysis is the nature of the relief sought—prospective relief, such as an injunction, may sometime interfere with the PUC's regulatory authority in ways that damages claims based on past harms would not. Ultimately, if the nature of the relief sought or the parties against whom the suit is brought fall outside the PUC's constitutional and statutory powers, the claim will not be barred by section 1759. (Emphasis added).

In the case at bar, it is clear that the superior court jurisdiction of the parties' dispute will not impair, hinder or interfere with the CPUC's exercise of regulatory authority. The reason is simple. As plaintiff contends, MR is not presently functioning as a public utility and is not subject to CPUC regulation in that capacity.

"The Legislature enacted the Public Utilities Act (§ 201 et seq.) which 'vests the commission with broad authority to "supervise and regulate every public utility in the State."' (*San Diego Gas & Electric v. Superior Court* (1996) 13 Cal.4th 893 (*Covalt*) This broad authority authorizes the commission to '"do all things, whether specifically designated in the Public Utilities Act or in addition thereto, which are necessary and convenient" in the exercise of its jurisdiction over public utilities." The commissions's authority has been liberally construed, and includes not only administrative but also legislative and judicial powers..." *Pegastaff, supra* at p. 620 .When the CPUC's determinations within its jurisdiction have become final they are conclusive in all collateral actions and proceedings." *People v. Western Air Lines , Inc.,* 42 Cal.2d 621, 629.

As emphasized by the City of Fort Bragg in their opposition, the CPUC has already made judicial findings regarding MR's predecessor, California Western Railroad (CWRR), regarding its status as a public utility. Simply put, the CPUC found that the

railroad is not functioning as a public utility. Its services are limited to sightseeing excursions and do not constitute "transportation under Public Utilities Code section 1007.

The CPUC writes,

> "The primary purpose of CWRR's excursion service is to provide the passengers an opportunity to enjoy the scenic beauty of the Noyo River Valley and to enjoy sight, sound and smell of a train. It clearly entails sightseeing.... [The Commission [has] also opined that public utilities are ordinarily understood as providing essential services... [But, CWRR's excursion service is not essential to the public in the way that utilities services generally are. In providing its excursion service, CWRR is not functioning as a public utility. Based on the above, we conclude that CWRR's excursion service should not be regulated by the CPUC." (1998 Cal. PUC LEXIS 189 (1998)

Obviously, if the CPUC has already found that the railroad should not be subject to its regulation, it is difficult to imagine how the superior court, by hearing the current dispute, would impair or hinder any exercise of the CPUC's regulatory authority.

City of St. Helena v. Public Utilities Commission (2004) 119 Cal.App.4th 793 lends further support to the conclusion that MR is not subject to regulation as a public utility in a manner that would deprive this court of subject matter jurisdiction. In that case, the City of St. Helena sought annulment of various decisions of the PUC conferring public utility status on the Napa Valley Wine Train. At issue in that case was whether the City was pre-empted, by reason of the Wine Train's public utility status, from exercising its local jurisdiction regarding the placement of a Wine Train station in downtown St. Helena. The case is strikingly similar to the case at bar in that, here, the MR has allegedly asserted any local regulatory authority of the City of Fort Bragg is also pre-empted.

The *City of St. Helena* court writes,

> The Wine Train is not subject to regulation as a public utility because it does not qualify as a common carrier providing "transportation." Additionally, even if an up-valley station were permitted, it could be argued that any transportation provided would be incidental to the sightseeing service provided by the Wine Train. The PUC has previously held that sightseeing is not a public utility function. (*Western Travel, supra*, 7 Cal.P.U.C>2d 132 1981 WL 165289.) In *Western Travel*, the PUC found sightseeing is "essentially a luxury service, as contrasted with regular route, point-to-point transportation between cities, commuter service, or home-to-work service." (*Id.* at p. 135 1981 WL 165289.) Relying in part on *Western Travel*, the PUC previously found the Wine Train was not a public utility. (See, *NVWT IV, supra*, 2001 WL 873020, 2001 Cal. PUC LEXIS 407.) We leave for another day the question of whether a sightseeing service is subject to regulation

under section 216. Rather, we note the PUC's decisions in NVWT IV and Western Travel to illustrate the PUC's internal inconsistency.

This inconsistency is also evident in the California Western Railroad decision, in which the PUC concluded the Skunk Train, providing an excursion service between Fort Bragg and Willits, did not constitute "transportation" subject to regulation as a public utility. (78 Cal. P.U.C.2d at p. 295, 1998 WL 217965.) It is difficult to differentiate this service from that provided by the Skunk Train. The Skunk Train's excursion service involves transporting passengers from Fort Bragg to Willits, and then returning them to the point of origin for purpose of sightseeing. (Ibid.) The PUC does little to distinguish the Wine Train from the Skunk Train. Rather, it simply states the Wine Train would not provide a continuous loop service due to its proposed up-valley stops. As previously discussed, the proposes stops may give rise to public utility status in the future, but presently do not mandate such a determination. Finally, to the extent the PUC has made express findings of fact that that Wine train is a public utility, such findings are not support by substantial evidence. Presently, the Wine Train provides a round-trip excursion that is indistinguishable from the Skunk Train.

It is quite clear from this decision that the correct finding of the CPUC regarding excursion service railroads, is that such railroads are not operating as public utilities and should not by regulated by the CPUC as such. Furthermore, as the City of St. Helena court noted, "The fact that the Wine Train could provide transportation in the future does not entitle it to public utility status now." The same holds true for MR. Accordingly, there is no basis for applying the jurisdictional bar of Section 1759 to the instant proceedings.

B. <u>The Application of Federal Preemption Requires a Case-by-Case Factual Assessment Which Cannot Properly be Determined on Demurrer</u>:

Mendocino Railway contends that the injunction sought in this case would grant the City unlimited power over a federally recognized railroad in that the injunction would require Mendocino Railway to submit to "all" local laws and regulations, as well as to the total "jurisdiction and authority of the City." MR claims that "with such vast power, the City could force Mendocino Railway to halt or delay rail-related activities pending compliance with local permitting and other preclearance requirements. Mendocino Railway asserts that the Surface Transportation Board, under the authority of the Interstate Commerce Commission Termination Act, has plenary regulatory power and exclusive jurisdiction over federally recognized railroads. Accordingly, any jurisdiction of this Superior Court is preempted.

This court finds that Mendocino Railways preemption argument is overbroad. It fails to recognize that not all state and local regulations that affect railroads are preempted. It further fails to account for the fact that Mendocino Railway's is not involved in any interstate rail operations. As discussed above, from a regulatory standpoint, Mendocino

Railway is simply a luxury sightseeing excursion service with no connection to interstate commerce. As a result, its "railroad activities", for the purposes of federal preemption, are extremely limited.

Not all state and local regulations that affect railroads are preempted. State and local regulation is permissible where it does not interfere with interstate rail operations. Local authorities, such as cities and/or counties, retain certain police powers to protect public health and safety. *Borough of Riverdale Petition for Decl. Order the New Yok Susquehanna and Wester Railway Corp.*, STB Finance Docket 33466, 1999 STB LEXIS 531, 4 S.T.B. 380 (1999). As the S.T.B. noted, "manufacturing activities and facilities not integrally related to the provision of interstate rail service are not subject to our jurisdiction or subject to federal preemption." (Ibid, at 23)

In the *Borough* decision the Surface Transportation Board issued a declaratory order regarding the "nature and effect of the preemption in 49 U.S.C. 10501(b) as it related to the appropriate role of state and local regulation (including the application of local land use or zoning laws or regulations and other state and local regulation such as building codes, electrical codes, and environmental laws and regulations.)" The Borough decision is particularly instructive because it specifically addresses how preemption might apply in analyzing local zoning ordinances, local land use restrictions, environmental and other public safety issues, building codes and non-transportation facilities. The question at the very core of the preemption analysis is whether local control would interfere with a railroad's ability to conduct its operations or otherwise unreasonably burden interstate commerce. If local control does not interfere with interstate rail operations, then preemption does not apply.

Borough makes clear that,

> "local land use restriction, like zoning requirements, can be used to frustrate transportation-related activities and interfere with interstate commerce. To the extent that they are used in this way (e.g., that restrictions are place on where a railroad facility can be located), courts have found that the local regulations are preempted by the ICCTA. Austell; City of Auburn. Of course, whether a particular land use restriction interferes with interstate commerce is a fact-bound question." (Emphasis added)

Mendocino Railway has already been the subject of a CPUC judicial determination that it is not engaged in interstate transportation related activities but rather simply provides a sightseeing excursion loop service. Accordingly, it is difficult to see how any of its non-railroad services could possibly trigger preemption.

Put another way, Mendocino Railway's it is far more likely that Mendocino Railways facilities and activities will be analyzed as "non-transportation facilities.

As noted in *Borough*,

"It should be noted that manufacturing activities and facilities not integrally related to the provision of interstate rail service are not subject to our jurisdiction or subject to federal preemption. According to the Borough, NYSW [the railroad] has established a corn processing plant. If this facility is not integrally related to providing transportation services, but rather serves only a manufacturing or production purpose, then, like any non-railroad property, it would be subject to applicable state and local regulation. Our jurisdiction over railroad facilities, like that of the former ICC, is limited to those facilities that are part of a railroad's ability to provide transportation services, and even then the Board does not necessarily have direct involvement in the construction and maintenance of these facilities"

Accordingly, the applicability of preemption is necessarily a "fact-bound" question, not suitable to resolution by demurrer.

V. Order:

For the reasons set forth above Mendocino Railways Demurrer is overruled. Pursuant to Cal. Rules of Ct. 3.1320(g) defendants shall have ten (10) days from service of this order to file their answer.

SO ORDERED.

DATED: 4/28/2022

Clayton L. Brennan
JUDGE OF THE SUPERIOR COURT

Superior Court of California, County of Mendocino

PROOF OF SERVICE

Case: **21CV00850** **CITY OF FORT BRAGG VS MENDOCINO RAILWAY**

Document Served: **RULING ON DEMURRER TO THE COMPLAINT**

I declare that I am employed by the Superior Court of California, in and for the County of Mendocino; I am over the age of eighteen years and not a party to the within action. My business address is:

☐ Mendocino County Courthouse, 100 North State Street, Ukiah, CA 95482
☒ Ten Mile Branch, 700 South Franklin Street, Fort Bragg, CA 95437

I am familiar with the Superior Court of Mendocino County's practice whereby each document is placed in the Attorneys' boxes, located in Room 107 of the Mendocino County Courthouse or at the Ten Mile Branch, transmitted by fax or e-mail, and/or placed in an envelope that is sealed with appropriate postage is placed thereon and placed in the appropriate mail receptacle which is deposited in a U.S. mailbox at or before the close of the business day.

On the date of the declaration, I served copies of the attached document(s) on the below listed party(s) by placing or transmitting a true copy thereof to the party(s) in the manner indicated below.

Party Served	Ukiah US Mail	Ten Mile US Mail	Ukiah Attorney Box	Ten Mile Attorney Box	Inter Office Mail	Fax	E-mail
JONES & MAYER Atty. Russell A. Hildebrand 3777 North Harbor Boulevard Fullerton, CA. 92835 rah@jones-mayer.com	☐	☒	☐	☐	☐	☐	☒
JONE & MAYER Atty. Krista MacNevin Jee 3777 North Harbor Boulevard Fullerton, CA. 92835 kmj@jones-mayer.com	☐	☒	☐	☐	☐	☐	☒
FISHERBROYLES LLP Atty. Paul J. Beard II 4470 W. Sunset Blvd., Suite 93165 Los Angeles, CA. 90027 paul.beard@fisherbroyles.com	☐	☒	☐	☐	☐	☐	☒
COUNTY COUNSEL COUNTY OF MENDOCINO Atty. Chrsitian M.Curtis 501 Low Gap Road, Room 1030 Ukiah, CA. 95482 curtisc@mendocinocounty.org cocosupport@mendocinocounty.org	☐	☒	☐	☐	☐	☐	☒
	☐	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐	☐

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed at:

☐ Ukiah, California ☒ Fort Bragg, California

4/28/2022 10:22:37 AM

Date: 4/28/2022

KIM TURNER, Clerk of the Court

By: DOROTHY JESS, Deputy Clerk

APPENDIX 3

EXHIBIT "A"

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

Tract One:

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

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

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

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

APN: 018-120-50

Tract Two:

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

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

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

APN: 018-040-52

Tract Three:

Parcel One:

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

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

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

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

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

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

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

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

ALSO EXCEPTING all that portion described as follows:

Commencing at the section corner common to Sections 6 and 7, Township 18 North, Range 17 West, and Sections 1 and 12, Township 18 North, Range 18 West, Mount Diablo Meridian; thence South 01°18'24" West along the range line, a distance of 460.05 feet to the POINT OF BEGINNING; thence continuing South 01°18'24" West along the range line, a distance of 237.38 feet; thence leaving said range line North 88°58'07" West, a distance of 29.03 feet; thence North 1° 18'24" East, a distance of237 .53 feet; thence South 88°41' 11" East, a distance of 29.03 feet to the POINT OF BEGINNING.

Parcel Two:

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

Beginning at the corner to Sections 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.

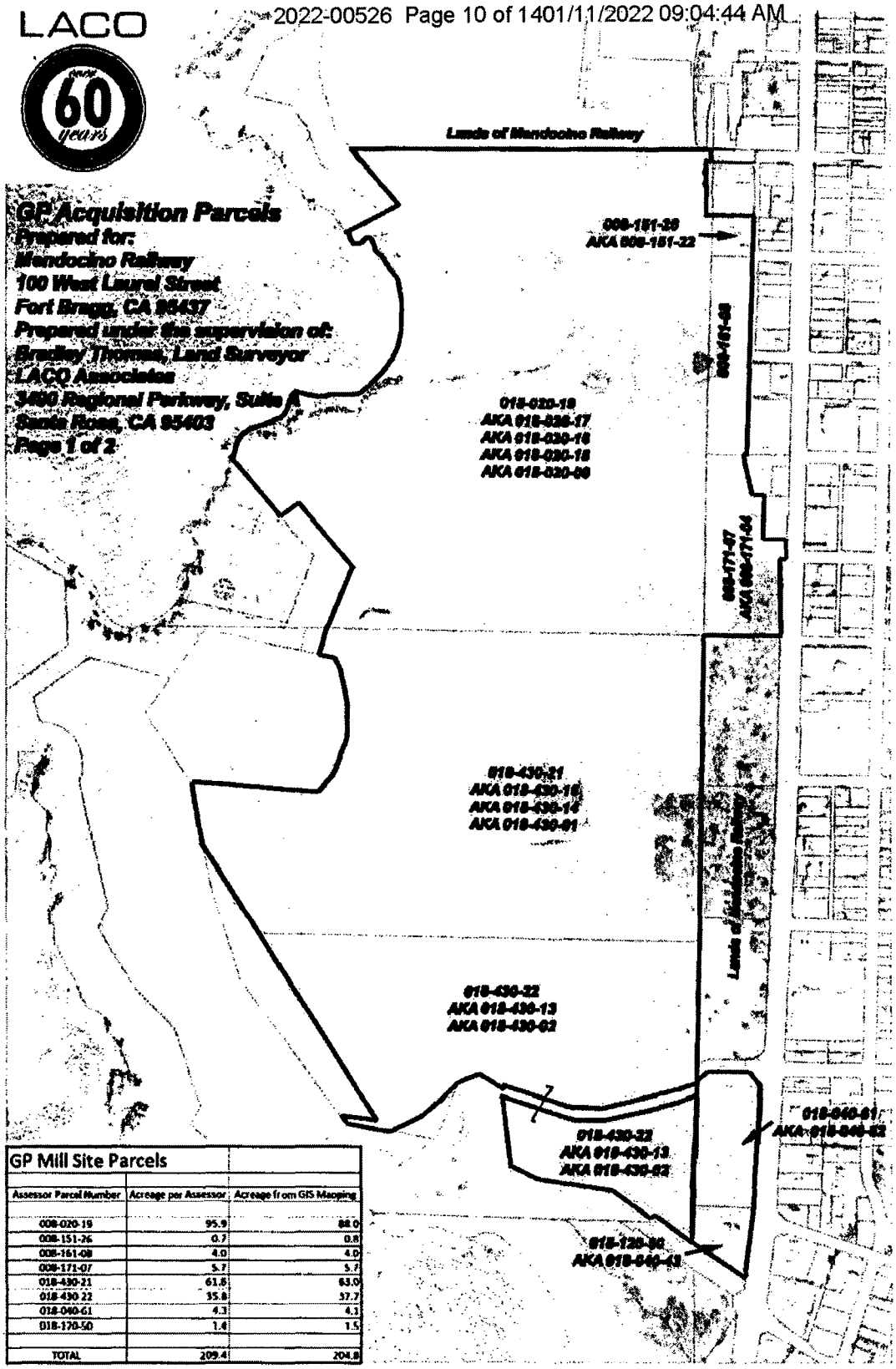
Basis of Bearings: That certain Record of Survey filed in Drawer 72 of Maps at Pages 58-64, Mendocino County Records.

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

LACO

over 60 years

GP Acquisition Parcels
Prepared for:
Mendocino Railway
100 West Laurel Street
Fort Bragg, CA 95437
Prepared under the supervision of:
Bradley Thomas, Land Surveyor
LACO Associates
3400 Regional Parkway, Suite A
Santa Rosa, CA 95403
Page 1 of 2



GP Mill Site Parcels		
Assessor Parcel Number	Acreage per Assessor	Acreage from GIS Mapping
008-020-19	95.9	88.0
008-151-26	0.7	0.8
008-161-08	4.0	4.0
008-171-07	5.7	5.7
018-430-21	61.8	63.0
018-430-22	35.8	37.7
018-040-61	4.3	4.1
018-170-50	1.4	1.5
TOTAL	209.4	204.8

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

APPENDIX 4

DRAFT NOTICE OF INTENT

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT -
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

The Great Redwood Trail Agency ("the Applicant") gives notice that on or about _____ __, 2023, it intends to file with the Surface Transportation Board ("STB" or "Board"), Washington, D.C. 20423, an Application for Adverse Abandonment of a line of railroad that extends between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California ("Line"), which traverses through United States Postal Service ZIP Codes 95437 and 95490. There are no stations on the Line.

The reason for the proposed abandonment is to obtain a determination that public convenience and necessity require and permit abandonment of the federal interest in the Rail Line. Applicant owns land adjacent to the right-of-way of and connects to the subject Line. Applicant claims that the land has not been used for Board-regulated rail transportation for over 20 years. Applicant claims that there is no reasonable prospect for such use in the foreseeable future. A determination by the Board that public convenience and necessity permits and requires abandonment of the Line in those circumstances would extinguish the federal interest in the Line and make the prospect of a beneficial non-freight-rail use more probable. In addition, there are significant environmental health and safety concerns associated with the current use of the property because of MR's abuse of its status as a rail carrier. Moreover, abandonment of the Line will make other public projects in the area more feasible.

There are no documents in Applicant's possession that the Line contains federally granted rights-of-way. Any such documentation that might come into Applicant's possession will be made available promptly to those requesting it. To the extent that any railroad employees would be adversely affected by this action, their interest would be protected by the conditions imposed in *Oregon Short Line Railroad-Abandonment, Goshen Branch,* 360 I.C.C. 91 (1979).

The application will include the Applicant's entire case for abandonment. The application, when filed, can be viewed on the Board's webpage, www.stb.gov, or a copy can be secured from Applicant's counsel, whose name and address appear below. Any interested person, after the application is filed on _____ __, 2023, may file with the STB written comments concerning the proposed abandonment or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. § 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. § 1247(d) (§1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application.

Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition (case in chief) including the following: (1) Protestant's name, address, and business. (2) A statement describing protestant's interest in the

proceeding including: (i) A description of protestant's use of the Line; (ii) If protestant does not use the Line, information concerning the group or public interest it represents; and (iii) If protestant's interest is limited to the retention of service over a portion of the Line, a description of the portion of the Line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the Line profitably, including an appropriate return on its investment for those operations. (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)]. (4) Any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding: (i) Environmental impact; (ii) Impact on rural and community development; (iii) Recommend provisions for protection of the interests of employees; (iv) Suitability of the properties for other public purpose pursuant to 49 U.S.C. § 10905; and (v) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C.§ 1247(d) and § 1152.29.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition

case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, should indicate the proceeding designation STB No. AB-1305 (Sub-No. 1) Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the Applicant, Daniel Elliott, GKG Law, 1055 Thomas Jefferson Street, NW, Suite 620, Washington, DC 20007, delliott@gkglaw.com. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Comments or protests need to be notarized or verified, and are required to be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, at 395 E Street, S.W., Washington, DC 20423, together with a certificate of service attesting that copies of the comments or protests have been served on Applicants' counsel in this matter, no later than ___ __, 2023.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Comments and protests will be

considered by the Board in determining what disposition to make of the Application. A commenting party or protestant may participate in the proceeding as its interests may appear.

Persons seeking further information concerning abandonment procedures may contact the Board's Rail Customer and Public Assistance program at (202) 245-0238 or refer to the text of the abandonment regulations at 49 C.F.R. part 1152.

APPENDIX 5

DRAFT FEDERAL REGISTER NOTICE

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT -
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

On (insert date application was filed with the Board), Great Redwood Trail Agency ("Applicant") filed with the Surface Transportation Board ("Board"), Washington, D.C. 20423, an application seeking adverse abandonment of the authority of Mendocino Railway ("MR") to operate over its a line of railroad extending between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California. The Line traverses through United States Postal Service ZIP Codes 95437 and 95490.

There is no documentation in Applicant's possession that indicates that the Line contains federally granted rights-of-way. Any documentation in the Applicant's possession will be made available promptly to those requesting it. The application can be viewed on the Board's webpage, www.stb.gov, or a copy can be obtained from Applicant's counsel, whose name and address appear below. The applicant's entire case for abandonment was filed with the application.

The interest of railroad employees will be protected by *Oregon Short Line Railroad-Abandonment Portion Goshen Branch Between Firth and Ammon, in Bingham & Bonneville Counties, ID,* 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), within 45 days after the application is filed. All interested persons should be aware that following any abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must be filed within 45 days after the application is filed. Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide:

(i) Recommended provisions for protection of the interests of employees;

(ii) A request for a public use condition under 49 U.S.C. 10905; and

(iii) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and § 1152.29.

Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB No. AB-1305 (Sub-No. 1) and should

be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001, no later than 45 days after the date Applicant files its application. Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the Applicant Daniel Elliott, GKG Law, 1055 Thomas Jefferson Street, NW, Washington, D.C. 20007, phone: (703) 863-9670; email: delliott@gkglaw.com. Every comment or protest shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR § 1104.12(a).

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.