ROB BONTA
Attorney General of California
DAVID G. ALDERSON
Supervising Deputy Attorney General
PATRICK TUCK
Deputy Attorney General
State Bar No. 305718
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 879-1006
Fax: (510) 622-2270
E-mail: Patrick.Tuck@doj.ca.gov
Attorneys for Intervenor
California Coastal Commission

NO FEE REQUIRED PURSUANT TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MENDOCINO

CITY OF FORT BRAGG,

Plaintiff,

v.

MENDOCINO RAILWAY,

Defendant.

CALIFORNIA COASTAL COMMISSION,

Intervenor.

Case No. 21CV00850

INTERVENOR CALIFORNIA COASTAL COMMISSION'S OPPOSITION TO DEFENDANT'S MOTION FOR STAY

Date: October 19, 2023
Dept: TM
Judge: Honorable Clayton L Brennan
Trial Date: Not Assigned
Action Filed: October 28, 2021

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

COURT RULES

INTRODUCTION

The City of Fort Bragg ("City") filed its initial complaint in this action nearly two years ago, on October 28, 2021. Since then, Defendant Mendocino Railway ("Defendant") has made every effort to delay discovery and prevent this court from hearing this case, and now seeks a likely multi-year stay premised on its appeals of its losses in both state and federal court, as well as pure speculation on how each of the appellate courts might rule.

The *Mendocino Railway v. John Meyer, et al.* (Case No. SCUK-CVED 20-74939) ("*Meyer*") eminent domain appeal involves a dispute solely between Defendant and Mr. Meyer about property not located in the City of Fort Bragg nor in the coastal zone. Mr. Meyer successfully challenged Defendant's "public utility" status and attempted condemnation of his property, but there is little overlap between the *Meyer* case and the instant matter that would warrant a stay of all discovery here. Even in the unlikely event that the Court of Appeal finds that Defendant is a public utility, the court would only potentially do so within the context of eminent domain law and not opine as to the regulation of Defendant's activities under the Coastal Act, the City's Local Coastal Program ("LCP"), or the City's other local laws and regulations. To date, Defendant has provided no authority to support a finding that it would be automatically exempt from any such state and local regulation, even if deemed a public utility.

Additionally, with regard to the *Mendocino Railway v. Ainsworth, et al.* (N.D. Cal., August 9, 2022, No. 22-CV-04597-JST) ("*Ainsworth*") federal appeal, in its motion Defendant states that the Ninth Circuit is likely to reinstate the *Ainsworth* action in the district court and, for the first time, that the federal preemption issues at play in that case are broader than those at issue here. This amounts to pure speculation by Defendant. Defendant has provided virtually no details or analysis supporting these arguments and as such, this speculation does not provide a basis for the indefinite, and likely multi-year, stay that Defendant requests.

Critically, such a stay would directly prejudice both the City's and the Commission's enforcement efforts and mandate to protect coastal resources and prevent harm to the public. The Commission is informed and believes that Defendant's unpermitted and unregulated development in the coastal zone is ongoing and substantial. Staying this case would further prevent the City

and the Commission from determining the extent of the damage to the City and the coast being caused by Defendant's development activities.

Therefore, Defendant's Motion for Stay must be denied and discovery must be permitted to commence immediately.

BACKGROUND

After the City filed its complaint in October 2021, Defendant first sought to dispose of this case by demurrer in January 2022, which this court denied, and the Court of Appeal subsequently denied Defendant's writ seeking review of this Court's decision on its demurrer on June 9, 2022. (Order Denying Petition, filed June 9, 2022.) Not satisfied with that result, Defendant petitioned for review of the Court of Appeal's decision to the California Supreme Court, which was also denied, on June 23, 2022. Next, Defendant sought to relate this case to the *Meyer* eminent domain action, also in Mendocino County Superior Court, which did not involve either the City or the Coastal Commission. That attempted relation and relocation of this case to Ukiah was summarily denied by Presiding Judge Nadel on September 30, 2022, with Judge Nadel stating that the issues are not the same in the two cases. (Coastal Commission's Request for Judicial Notice ("RJN"), filed herewith, Exh. A.)

In its Opposition to Defendant's Notice of Related Case, filed June 27, 2022, the City noted that the Commission was considering seeking to intervene in this action. (Opposition of City of Fort Bragg to Notice of Related Case, filed June 27, 2022, at pp. 5-6.) The next month, the City requested that the Commission assume responsibility for enforcement against Defendant. The Commission agreed to do so and sent a Notice of Violation letter to Defendant on August 10, 2022. (See Motion to Intervene, filed September 8, 2022, at pp. 21-25.) That same week Defendant filed the *Ainsworth* complaint against the Commission and the City in federal district court, asserting claims mirroring its federal preemption defense alleged in its demurrer and answer in this case, and served it on the Commission the day after the Commission sent its Notice of Violation. (See Defendant's Request for Judicial Notice ("Def's RJN"), Exh 1, at p. 13, § 1; see also Defendant's Memorandum of Points and Authorities in Support of Demurrer, filed

January 14, 2022, at p. 16; see also Defendant's Verified Answer, filed June 24, 2022, at p. 5 [all alleging broad federal preemption from state and local regulation].)

Then, on September 6, 2022, now more than a year ago, this court set trial in this matter for June 21, 2023. Two days after the court set that initial trial date, the Commission filed its motion seeking to intervene. The next week, and more than ten months after the City initiated this action, Defendant took the bold step to attempt to disqualify Judge Brennan from this case, which caused further delay until such time that an impartial judge from another county could deny that motion to disqualify at the end of September 2022. (Order on Motion to Disqualify Judge Brennan, filed September 29, 2022.)

On October 20, 2022, just a few hours after this court granted leave for the Commission to intervene, and before the Commission even had an opportunity to file its Complaint in Intervention, Defendant removed the City's case to federal court. (Notice of Removal, filed October 20, 2022.) Eight days later marked one full year since the City had filed its complaint alleging a single cause of action for declaratory relief against Defendant, and with its multiple unsuccessful motions and spurious appeals, Defendant had essentially prevented any substantive proceedings or discovery from occurring in this case, now forcing it into federal court. In April 2023, while the case was languishing in federal court, this court was forced to vacate its June 2023 trial date.

More than six months after Defendant removed the case, in May 2023, district court Judge Tigar confirmed that Defendant had improperly removed this matter to federal court and granted the City's and the Commission's motions to remand. (RJN, Exh. B.) Defendant did not challenge Judge Tigar's order granting the motions to remand. The next day, Judge Tigar granted the City's and the Commission's motions to dismiss the *Ainsworth* action as well.[1] (Def's RJN, Exh. 2.)

Once the instant case was back in this court, however, and facing the prospect of this action moving forward and discovery finally starting in earnest (more than 21 months after the filing of the City's complaint), Defendant suddenly raised the possibility of staying this case (and all discovery) for an indeterminate amount of time to allow Defendant to pursue appeals of its

[1] Both the *Ainsworth* action and this case, while removed, were assigned to Judge Tigar.

dismissed federal complaint and failed eminent domain action. After the City and the Commission alternatively requested that discovery finally commence, Defendant's current, baseless Motion for Stay of Proceedings ("Motion") followed.

ARGUMENT

I. DEFENDANT'S APPEALS IN THE EMINENT DOMAIN ACTION AND FORUM-SHOPPING FEDERAL ACTION DO NOT WARRANT A STAY.

The Commission agrees that this court has an inherent power and discretion "'to stay proceedings when such a stay will accommodate the ends of justice.'" (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141, quoting *People v. Bell* (1984) 159 Cal.App.3d 323, 329.)[2] As the California Supreme Court has provided, "[w]hen an action is brought in a court of this state involving the same parties and the same subject matter as an action already pending in a court of another jurisdiction, a stay of the California proceedings is not a matter of right, but within the sound discretion of the trial court." (*Farmland Irr. Co. v. Dopplmaier* (1957) 48 Cal.2d 208, 215.)[3]

Here, however, after two years of unsuccessful attempts by Defendant to prevent this court from hearing this case, justice would not be accommodated by further delaying the matter, including discovery, pending resolution of Defendant's appeals. As discussed below, neither Defendant's appeal of its defeat in the *Meyer* eminent domain case, of which neither the City nor the Commission is a party, nor its appeal of the district court's dismissal of its forum-shopping *Ainsworth* federal action (which the district court dismissed so that there would be no parallel

[2] In its Motion, Defendant incorrectly cites to Code of Civil Procedure section 128, subdivision (a)(8) multiple times in support of the court's power to issue a stay. This subdivision (a)(8) only speaks to the court's power "to amend and control its process and orders so as to make them conform to law and justice" and provides an appellate court with requirements for reversing a duly entered judgment. (Code Civ. Proc., § 128, subd. (a)(8).) This subdivision is inapplicable to Defendant's request for stay and is not relied upon in any of the cases cited by Defendant.

[3] Defendant also quotes from *Farmland Irrigation* in its motion (p. 7) but tellingly omits that Court's direction that it should be mindful of attempts at harassment. The full sentence says: "In exercising its discretion the court should *consider the importance of discouraging multiple litigation designed solely to harass an adverse party*, and of avoiding unseemly conflicts with the courts of other jurisdictions." (*Farmland Irr. Co.*, 48 Cal.2d at p. 215, emphasis added.) Defendant's forum-shopping federal complaint may be just such an attempt at harassment.

federal action while this remanded action moved forward), warrants a stay of discovery in this action.

A. The *Meyer* Eminent Domain Appeal Does Not Warrant a Stay.

1. The *Meyer* eminent domain action does not involve the same parties or issues, nor will it resolve any of the Commission's claims in this case.

Defendant's attempts to analogize the *Meyer* eminent domain action to the instant case are misguided in multiple ways. The *Meyer* action involves only Defendant and Mr. Meyer. Neither the City of Fort Bragg nor the Coastal Commission is a party to the *Meyer* action. The *Meyer* action involves a single piece of property controlled by Mr. Meyer that Defendant seeks to take from him. Mr. Meyer was successful in the trial court in defeating Defendant's attempt to take his property by eminent domain, even securing an order requiring Defendant to pay more than a quarter of a million dollars in attorney's fees to Mr. Meyer and his attorney. (See Def's RJN, Exh 3; see also RJN, Exh. C.) As such, Defendant's unsupported statement in its motion that "[t]he existence of a parallel state or federal court proceeding involving the **same parties** and **issues** will justify a stay" does not apply to the *Meyer* action, as it involves only one party from the instant case (Defendant) and is focused on the question of whether Defendant has eminent domain rights as to a particular property not located within the City nor in the coastal zone. (Motion, p. 7, emphasis added.)

In *Meyer*, in denying Defendant's attempt relate this case to *Meyer* and relocate it to Ukiah, Judge Nadel stated that "the court does not see the [] issues are the same in the two cases and [this] case being consolidated would stop the movement on [the *Meyer* case]." (RJN, Exh. A.) Then, in her Decision after Trial in *Meyer*, Judge Nadel clarified that "[t]he central issue in [the *Meyer*] case is whether [Defendant] can be deemed a public utility for purposes of this eminent domain proceeding." (Def's RJN, Exh. 3, at p. 3.) Ultimately, she found it could not, explaining that Defendant "concedes that [its] excursion service does not fall under the category of 'transportation' and does not qualify [Defendant] as a public utility" under sections 216 and 211 of the Public Utilities Code. (*Id.* at p. 5.) Even though Judge Nadel ultimately found that the evidence presented by Defendant in the *Meyer* trial did not support its claim that it is a public

utility, she spent multiple pages explaining why, even if Defendant were presumed to have public utility status, its attempt to use eminent domain to acquire Meyer's property fails. (*Id.* at pp. 5-7.) In the *Meyer* appeal, the Court of Appeal is just as likely to address the public utility question as it is to ignore it all together and find, as Judge Nadel did, that even if Defendant were a public utility, it did not satisfy the legal requirements to take Mr. Meyer's property.

Because the *Meyer* matter focused on the issue of Defendant's potential status as a "public utility" solely in an eminent domain context, whereas here the City and the Commission seek to regulate Defendant's development of its property within the City and the coastal zone, the issues and scope of discovery in this case will be considerably different than in *Meyer*, regardless of the outcome of the appeal in that case. (See Def's RJN, Exh 3; see also Commission's Complaint in Intervention, ¶¶ 6, 15.) For example, Defendant claims that it does not dispute that "its non-railroad-related activities are subject to City and Coastal Commission regulation," yet it has provided no examples of what activities it believes fall into this purported "non-railroad" category or of a single instance in which it has acquiesced to any of its activities being regulated on that basis. (Motion, fn. 1.) In addition, Defendant has, on multiple occasions, prevented inspection of the ongoing alterations of its buildings and properties in the coastal zone that might allow for such a determination. (See City's Complaint, ¶ 12.) This issue did not arise in the *Meyer* eminent domain case, (as that matter concerned solely the attempted acquisition of a private landowner's property in Willits), but will lead to discovery here which was unnecessary in the eminent domain context. Moreover, because the City and the Commission are not parties to the *Meyer* case, neither party had any ability to propound discovery or shape the requests propounded on Defendant by Mr. Meyer, and must not be prevented from doing so here.

Defendant has also proffered a federal preemption defense in the current case which further distinguishes it from the *Meyer* eminent domain appeal. This unique defense supports moving forward with discovery regarding Defendant's operations regardless of the status of that eminent domain appeal. As an example, because *Meyer* was rooted solely in state law and only considered Defendant's "public utility" status, the question of whether Defendant engages in interstate commerce that would subject it to federal regulation at all was not addressed in *Meyer*, but it will

be key to the court's analysis here and is a proper subject for immediate discovery. As discussed below, the district court's orders dismissing Defendant's federal complaint and remanding this case have expressly provided that this court is the proper venue for considering and deciding the relevant federal preemption questions, and allows for discovery on those issues to proceed here. (See Def's RJN, Exh 2, at p. 6.)

Finally, Defendant's argument regarding why the *Meyer* appeal merits a stay amounts to nothing more than speculation about what the Court of Appeal might do. There is no evidence that the law or the facts have changed in any significant way since Judge Nadel made her well-reasoned decision. The Court of Appeal is just as likely to affirm that decision as it is to rule in Defendant's favor. That is another reason why that appeal does not warrant a stay of this case.

2. A finding that Defendant is a public utility is unlikely and will not resolve any of the Commission's claims.

While Defendant seeks to hide behind its claimed "public utility" status to prevent the City and the Commission from regulating its land use activities in the City and coastal zone, it has provided no authority that, even if it is found to be a "public utility," its actions at issue in this case would be free from regulation under the Coastal Act and the City's local laws. Therefore, even if the Court of Appeal were to determine Defendant is a public utility, the scope and import of that designation and its potential preemptive effect will be an important question in this case, but was not considered in *Meyer*. In *Meyer*, all parties recognized that sections 610 et seq. of the Public Utilities Code automatically grant very specific eminent domain powers to all public utilities. No similar authority exists granting a blanket preemption from the enforcement of the Coastal Act regarding land use activities by public utilities along the coast, including railroads.

Even if the Court of Appeal were to find that Judge Nadel's decision was incorrect and Defendant provided sufficient evidence that it is a public utility, the Court of Appeal would still have to apply the case-specific facts to the eminent domain question at issue in *Meyer*, just as Judge Nadel did in her Decision After Trial. (See Def's RJN, Exh. 3, at p. 3.) In contrast, here, assuming arguendo that Defendant is deemed a public utility, the parties would still need to engage in the same amount of factual discovery to determine the significance of that

determination and whether any of Defendant's development activities might fall under the exclusive jurisdiction of the Public Utilities Commission (PUC). (See *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 944 ["It has never been the rule in California that the [PUC] has exclusive jurisdiction over any and all matters having any reference to the regulation and supervision of public utilities."].) Additionally, because the City and Commission were not in privity with Mr. Meyer in the *Meyer* action, the result in that case will not prevent the City and Commission from pursuing the action and related discovery here, nor will it bar this action based on res judicata or collateral estoppel. (See *Patel v. Crown Diamonds, Inc.* (2016) 247 Cal.App.4th 29, 39.)

In sum, there is no eminent domain cause of action in this case, and the analysis here will, in contrast to *Meyer*, be specific to the applicability of the regulatory powers of the City and the Commission to the development activities of Defendant, far afield from the statutory power of eminent domain that Defendant claims it possesses and seeks to wield in *Meyer*.

Also, rulings of the PUC, relevant case law, and Judge Nadel's decision in *Meyer* all support the finding that Defendant's excursion service does not constitute "transportation" under the Public Utilities Code, and as such, Defendant "is not functioning as a public utility." (See RJN, Exh. D, at p. 3; see also Def's RJN, Exh. 3, at p. 5; see also *City of St. Helena v. Public Utilities Com.* (2004) 119 Cal.App.4th 793, 803-804, *disapproved of on other grounds by Gomez v. Superior Court* (2005) 35 Cal.4th 1125 [noting that same PUC decision wherein 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."].) Based on these precedents, the likelihood that the Court of Appeal will not find that Defendant is a "public utility," and that any such decision will not significantly alter the prosecution of this action, a stay is not warranted by the *Meyer* appeal, and discovery should proceed.

B. The *Ainsworth* Appeal Does Not Warrant a Stay.

As an alternative ground, Defendant Mendocino Railway seeks a stay based on its appeal of the U.S. District Court's order granting the City's and the Commission's motions to dismiss the

Ainsworth action in its entirety.[4] Because that case was dismissed at its earliest stage, (in conjunction with this case being remanded), specifically so that this court might hear and decide the lone federal preemption issue asserted in Defendant's complaint, Defendant's appeal in *Ainsworth* also does not warrant a stay of this case. Defendant's speculation regarding potential future events in *Ainsworth* is no basis for a stay either.

1. The district court intentionally dismissed the forum-shopping *Ainsworth* action so that this Court may hear and decide the preemption issues raised.

More than ten months after the City filed its complaint against Defendant in this case, and more than three months after this court overruled Defendant's demurrer (which argued federal preemption), and instead of filing a cross-complaint here, Defendant filed the *Ainsworth* action in federal court, seeking a declaration that the Commission's and City's attempts to regulate Defendant's actions are preempted under federal law. (Def's RJN, Exh. 1.) As discussed above, this was an attempt by Defendant to forum shop once it became aware that the Commission was planning to intervene in this case, but before it could file its complaint doing so. In response to Defendant's federal complaint, the City and Commission immediately filed motions to dismiss the *Ainsworth* action, arguing that the district court should refrain from hearing that federal lawsuit under the abstention principles of *Younger v. Harris* (1971) 401 U.S. 37, and that the district court lacked subject matter jurisdiction and should defer to this court by dismissing the *Ainsworth* case based on the principles described in *Colorado River Water Conservation District v. United States* (1976) 424 U.S. 800 ("*Colorado River*"). (RJN, Exh. E, at pp. 8-12; Exh. F, at pp. 21-22.) Judge Tigar agreed that *Colorado River* compelled dismissal of the *Ainsworth* action, as Defendant "has asserted [federal] ICCTA preemption as a defense in the state action, so there the state court must resolve that issue in the course of adjudicating the City's and the Commission's claims against [Defendant]." (Def's RJN, Exh. 2, at 7:28-8:3.) In his order

[4] Defendant failed to allege this ground in its Notice of Motion, in violation of Code of Civil Procedure section 1010 and California Rules of Court, Rule 3.1110, subdivision (a). (See *Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1277. ["A basic tenet of motion practice is that the notice of motion must state the grounds for the order being sought (Code Civ. Proc., § 1010; Cal. Rules of Court, rule 3.1110(a)), and courts generally may consider only the grounds stated in the notice of motion."].)

dismissing Defendant's federal complaint, Judge Tigar explained that because federal preemption "is the sole issue in this [*Ainsworth*] case, it is difficult for the Court to conceptualize [the *Ainsworth*] action as anything but a spinoff of the state court action." (*Id.* at 8:3-6.) Additionally, Judge Tigar noted that "the state court action is largely past the pleading stage . . . the state forum gained jurisdiction first, and because the state court action has progressed further than the federal court action, the fourth [*Colorado River*] factor weighs in favor of dismissal." (*Id.* at 5:22-27.) This is in direct contrast to Defendant's claim in its motion that the instant case should be stayed in favor of the *Ainsworth* appeal because this case is at an early stage (pleading is complete), discovery has not commenced (due to Defendant's delay tactics), and no trial date has been set (although this court set trial for June 2023 but was forced to vacate it because of Defendant's actions). (Motion, p. 3.)

Similarly, after Defendant improperly removed this matter to federal court, the City and Commission immediately filed motions to remand based on lack of federal question jurisdiction. (RJN, Exh. B, at 1:15-17, 3:8-11, 6:6-10.) Judge Tigar again agreed, and in his order remanding this case back to this Court found that "the question of whether the ICCTA and its preemption provision apply at all, which turns on whether [Defendant] is, in fact, engaged in interstate commerce" is "fact-bound and situation-specific" and noted that this court reached the same conclusion in overruling Defendant's demurrer. (*Id.* at 5:25-6:5.) Defendant did not challenge Judge Tigar's order remanding this case back to Mendocino County Superior Court.

Judge Tigar's back-to-back orders granting the dismissal of the *Ainsworth* action and remanding this case demonstrate that this Court should hear all issues alleged by the City and the Commission regarding Defendant's land use activities within the City and the coastal zone, as well as the federal preemption defense that Defendant raised in its demurrer and answer more than a year ago.

2. Defendant's speculation about future events in the *Ainsworth* action does not support a stay.

Notwithstanding the district court's orders, Defendant requests a stay on the grounds that (1) the Ninth Circuit will likely reinstate the *Ainsworth* action, and (2) the *Ainsworth* action,

should it be reinstated, will likely adjudicate broader federal preemption questions than in the case at bar. These two grounds are matters of utter speculation and are unsupported, and they do not merit a stay of this case. Regarding the first ground, the parties are currently briefing Defendant's appeal of the *Ainsworth* appeal, and Mr. Ainsworth, on behalf of the Commission, will vigorously defend the district court's decision dismissing Defendant's complaint. Defendant can hardly be assured of victory on appeal. Regarding the second ground, Defendant offers virtually no supporting details or explanation. At best, Defendant asserts the Commission can use its authority under the federal Coastal Zone Management Act (CZMA) to review and "potentially" thwart a future project that requires federal licensing or funding. (Motion, at p. 5:6-8 and n. 2). Defendant leaves to the imagination how this assertion demonstrates a likely preemption adjudication by the federal court, much less a basis for staying this case.

In sum, all of Defendant's descriptions regarding what the two appellate courts are likely to consider and how they might potentially rule amount to pure speculation. Defendant lost in the trial court in both the *Meyer* and *Ainsworth* cases and now speculates in its motion that both of those appeals are likely to result in reversals in its favor. In the *Meyer* case, a briefing schedule has not yet even been set as the parties wait for the reporter's transcript. It is just as likely that the Court of Appeals will do what Judge Nadel suggested could be done in the trial court and find that even if Defendant were a public utility, it would still lose under the applicable eminent domain procedures. In the *Ainsworth* appeal, briefing has just begun and a panel has not yet been assigned or a hearing date determined. Again, the sole issue in that appeal will be the propriety of the district court's granting of the City's and Commission's motions to dismiss. Defendant's speculation and hopes for what the appellate courts might do does not provide sufficient basis for staying all discovery in this case at this time.

II. THE COMMISSION AND THE CITY WILL BE PREJUDICED BY ANY PROTRACTED STAY, AND DEFENDANT'S ONGOING DEVELOPMENT RELATED TO THIS CASE MAY HARM COASTAL RESOURCES AND THE PUBLIC.

Defendant dismissively states in its motion that the City and Commission will not suffer any prejudice from an indefinite stay and cannot cite to any exigent circumstances requiring immediate resolution of their claims. (Motion, at p. 3.) Not so. In its complaint in intervention,

the Commission alleged that Defendant has undertaken development activities in the coastal zone, and likely will undertake more unpermitted development activities in the near future, which may harm the coastal zone environment and its natural and artificial resources. (Complaint in Intervention, ¶¶ 4-6, 12, 17.) In their complaints, both the City and the Commission seek to enjoin Defendant from continuing with these ongoing development actions, which violate state and local law. (Complaint in Intervention, Prayer, ¶ 4; City's Complaint, ¶¶ 15-21.) The actions by Defendant constitute ongoing harms, and yet the parties have been stifled in their attempts to begin discovery for nearly two years by Defendant's multiple unsuccessful challenges to this Court hearing this case, including the instant motion.

It is unknown what evidence may have been destroyed or is being destroyed by Defendant as we speak, or what detrimental activities Defendant may undertake in the coastal zone while this case is stayed. Only with timely discovery in this case will the parties be able to understand the extent of Defendant's development within the coastal zone and the City. Conversely, if granted, Defendant's motion may ultimately, and unnecessarily, thwart the ability of the State to enforce its laws and regulations designed to protect coastal resources and the residents living along the coast. Beyond the Commission's legitimate opposition to an indefinite stay, there is a presumption that Defendant's activities in violation of the Coastal Act and their potential harm to the public outweigh any harm to Defendant and may justify the issuance of an injunction to halt those ongoing activities. (See *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72.) Without the ability to engage in discovery due to a multi-year stay, the extent of those potential harms cannot be determined and the likelihood of substantial harm to the public will almost certainly increase.

Importantly, in the unlikely event that Defendant is successful in the *Ainsworth* appeal (which will likely take six months to a year to decide), the best case scenario for Defendant is that the Ninth Circuit will simply reinstate the *Ainsworth* action. If not immediately stayed by the district court, that action would likely take at least another year to complete discovery and go to trial in the district court, or be decided on dispositive motions, and if Defendant is not satisfied with that outcome, it would likely appeal the decision to the Ninth Circuit again and potentially

seek review by the U.S. Supreme Court, which again is likely to take more than a year. Essentially, in requesting a stay until the district court "enters a final, non-appealable judgment," Defendant is seeking a complete stay of this case for **at least two more years**, and possibly **up to four years**, on top of the two years that have already transpired with no discovery. (Motion, p. 3.) Such an extended delay is the antithesis of speedy justice and would allow Defendant to continue to flaunt state and local law in its use and development of its property in the City and the coastal zone, potentially harming the local environment and the health of the City's residents, and prejudicing the Commission and the City in this case.

CONCLUSION

Accordingly, the Commission respectfully requests that the Court deny Defendant's request to stay this case in its entirety and order that discovery may immediately commence.

Dated: October 6, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
DAVID G. ALDERSON
Supervising Deputy Attorney General

PATRICK TUCK
Deputy Attorney General
Attorneys for Intervenor
California Coastal Commission

OK2022303294

DECLARATION OF SERVICE BY ELECTRONIC MAIL

Case Name: **City of Fort Bragg v. Mendocino Railway**
No.: **Superior Court of California, County of Mendocino, Case No. 21CV00850**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On October 6, 2023, I served the attached **INTERVENOR CALIFORNIA COASTAL COMMISSION'S OPPOSITION TO DEFENDANT'S MOTION FOR STAY** by transmitting a true copy via electronic mail addressed as follows:

Krista MacNevin Jee
Jones & Mayer
3777 North Harbor Boulevard
Fullerton, CA 92835
E-mail Address: km@jones-mayer.com
Attorneys for Plaintiff
City of Fort Bragg

Paul J. Beard II
FisherBroyles, LLP
4470 W. Sunset Blvd., Suite 93165
Los Angeles, CA 90027
E-mail Address: paul.beard@fisherbroyles.com
Attorneys for Defendant
Mendocino Railway

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on October 6, 2023, at Oakland, California.

Teri Duenas Digitally signed by Teri Duenas Date: 2023.10.06 09:57:18 -07'00'

Teri Dueñas
Declarant

Signature

OK2022303294
91688127.docx