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11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CITY OF FORT BRAGG,

15 Plaintiff,

16 v.

17 MENDOCINO RAILWAY,

18 Defendants.

Case No. 22-CV-06317-JST

*Assigned for all purposes to:  
Hon. Jon S. Tigar, Ctrm. 6*

**DECLARATION OF KRISTA  
MACNEVIN JEE IN SUPPORT OF  
ADMINISTRATIVE MOTION TO  
EXTEND TIME AND PAGE LIMIT  
FOR FILING OF EVIDENTIARY  
OBJECTIONS TO DECLARATION OF  
ROBERT PINOLI IN SUPPORT OF  
OPPOSITION TO MOTION TO  
REMAND, AND ACCOMPANYING  
DECLARATION OF KRISTA  
MACNEVIN JEE IN SUPPORT  
THEREOF**

Action Filed: October 20, 2022

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24 **DECLARATION OF KRISTA MACNEVIN JEE IN SUPPORT OF**  
25 **ADMINISTRATIVE MOTION TO EXTEND TIME AND PAGE LIMIT FOR FILING OF**  
26 **EVIDENTIARY OBJECTIONS TO DECLARATION OF ROBERT PINOLI IN**  
27 **SUPPORT OF OPPOSITION TO MOTION TO REMAND, AND ACCOMPANYING**  
28 **DECLARATION OF KRISTA MACNEVIN JEE IN SUPPORT THEREOF**

EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT CODE SECTION 6103



1 I, KRISTA MACNEVIN JEE, HEREBY DECLARE AS FOLLOWS:

2 1. I am a partner with Jones & Mayer, the attorneys of record for the City in the  
3 above-entitled action. I am the sole and principal counsel responsible for this matter. If called  
4 upon, I could and would competently testify to the following facts, of my personal knowledge.

5 2. On November 21, 2022, I attended a case management conference in a matter for  
6 which I represent the Defendant, in *Californians for Homeownership v. City of Fullerton*, Orange  
7 County Superior Court Case No. 30-2022-01281840. Since the matter was entitled to expedited  
8 trial by state statute, the Court set the matter for trial on January 23, 2022, and the parties agreed  
9 to an expedited briefing schedule: Petitioner’s Opening Brief due by December 19, 2022, City’s  
10 Opposition due by December 30, 2022, and the Reply due by January 6, 2023. On December 6,  
11 2022, I received a detailed settlement letter from opposing counsel. As soon as I received that  
12 letter and simultaneous with preparation of the Reply in this matter, I had to research and prepare  
13 a detailed memorandum relating to the proposed settlement terms and significant changes in state  
14 law set to take effect on January 1, 2023 relevant to the matter, for the City Council’s next closed  
15 session meeting – and its last regular meeting for the year. This required my urgent attention due  
16 to the expedited briefing and trial schedule in this matter and the upcoming holiday.

17 3. The week of November 28, 2022, I had to prepare for a bench trial in a matter that  
18 was set on December 2, 2022, *Harloff, et al. v. City of Encinitas*, San Diego Superior Court Case  
19 No. 37-2020-00009416. I also had to travel from out of state for that trial on December 1 and  
20 December 2, 2022. That week I also had to spend significant time meeting with an expert witness  
21 in another matter, in preparation for a rebuttal report that was required to be prepared no later  
22 than November 30, 2022, and expert witness depositions that were held on December 5 and 12,  
23 2022, for an expert discovery cutoff deadline on December 14, 2022 in *New Cingular Wireless,*  
24 *LLC dba AT&T Mobility v. City of West Covina*, United States District Court Case No. 2:22-CV-  
25 01642. Although I did not participate in the expert depositions, I had to spend significant time,  
26 including on the weekends, conducting research, meeting with the City’s designated expert  
27 witness, reviewing and revising expert witness reports, and preparing questions and subject  
28 matter for the depositions. Over the Thanksgiving holiday weekend, I also had to spend

1 significant time assisting another attorney in my office reviewing and finalizing a Respondent's  
2 brief due for a petition for writ of mandate trial that was held on December 16, 2022. This had  
3 been delayed due to a calendaring error requiring preparation of an answer to a petition for writ of  
4 mandate in a companion case, which I had to prepare on November 18, 2022, just prior to  
5 preparing and filing the Motion to Remand in this matter on November 21, 2022. I had to assist  
6 on the other matter because I was the only other attorney familiar with the four companion  
7 actions, and had previously become familiar with the facts and files in that matter, in order to  
8 cover for my colleague at appearances and preparing filings during his prior absence on vacation.

9 4. The week of November 28, 2022, I also had to address detailed settlement issues  
10 and research regarding the same, as well as negotiated continuances of mandatory deadlines,  
11 relating to a matter also entitled to expedited scheduling and statutory preference, *Whittier*  
12 *Conservancy v. City of Whittier*, Los Angeles Superior Court Case No. 22STCP03523.

13 5. Further, the week of December 5, 2022, I had to review, familiarize myself with,  
14 research and conduct fact gathering as to two new actions served against two clients, with which I  
15 was given primary responsibility: *9310 Towne Centre Drive Harrison-1, et al. v. Sunshine*  
16 *Encinitas; City of Encinitas, et al.*, San Diego Superior Court Case No. 37-2022-00046173; *Eyata*  
17 *Zi Suka Trust v. City of Palmdale*, Los Angeles Superior Court Case No. 22AVCV00873.

18 6. Due to the above matters and the filing and service of MR's Opposition and  
19 Declaration of Robert Pinoli late on December 5, 2022, as well as preparation for my vacation  
20 and court appearance, discussed below, I was only able to prepare the City's Reply for filing and  
21 service by December 12, 2022. I was not able to prepare Evidentiary Objections thereto for  
22 inclusion in the Reply and/or filing therewith. I also did not anticipate these difficulties  
23 sufficiently in advance to be able to have made the request beforehand. In addition, the  
24 Evidentiary Objections could not have been included within the page limit for the Reply in any  
25 event, due to verbatim recitation of specific evidence from the declaration to which objection was  
26 being made, the detailed nature of the objections and the inclusion of space for the Court's ruling  
27 as to each objections, which made the Evidentiary Objections 27 pages long,<sup>1</sup> whereas the Reply

28 <sup>1</sup> The City's Evidentiary Objections would actually have been several pages less, if the smaller font

1 was permitted to have included only five additional pages. This was the most clear method for  
2 presenting differing objections to particular matters within Mr. Pinoli's declaration, as well as  
3 providing clear space for the Court's ruling on each separate declaration. However, in the  
4 alternative, the motion seeks an extension of time and the opportunity to re-file the objections  
5 within the page limitations of the Reply, if the Court were to deny the requested additional page  
6 limit.

7 The earliest opportunity that I had to prepare and file the Evidentiary Objections and my  
8 declaration thereafter was December 20, 2022 [DOC. 20]. A true and correct copy of the  
9 Evidentiary Objections filed on that date are attached hereto as **Exhibit 1**, and a true and correct  
10 copy of the Declaration of Krista MacNevin Jee, filed in support thereof, is attached here as  
11 **Exhibit 2**. This was due to the fact that I had a pre-paid vacation scheduled to begin out of the  
12 continental U.S. early in the morning on December 14, 2022, through December 26, 2022, as well  
13 as a court appearance and the above-referenced expert witness deposition preparation on  
14 December 13th. The court appearance was a trial setting conference on the morning of December  
15 13, 2022, for which I spent several hours reviewing case files (for multiple related cases) and  
16 attending the appearance, in *City of Costa Mesa; People of State of Cal. v. D'Alessio Investments*  
17 *LLC, et al.*, Orange County Superior Court Case No. 30-2020-01170520, and *D'Alessio*  
18 *Investments LLC v. City of Costa Mesa*, OCSC Case No. 30-2020-01132646. Although I did  
19 spend significant time preparing the Evidentiary Objections and declaration while traveling,  
20 which was most of the day on December 14th and 15th, I was unable to complete them on those  
21 dates due to travel time restrictions, being in transit, and limited internet connectivity. And, from  
22 December 15 through December 17, I was camping in a location with limited internet  
23 connectivity, and which suffered a ten-year rain event during that time. I experienced significant  
24 rain conditions that were not safe for the use of my computer. In addition, when it was safe to use  
25 my computer, I also had to prepare the City Council closed session memo and research referenced

26 \_\_\_\_\_  
27 size permitted by the Court's Local Rules (12-point) had been used, rather than the 14-point font  
28 in the filed document. L.R. 3-4 (c)(2)(B). Without the verbatim quotations and blank marking  
spaces for the Court's rulings on each objection, the substance would have actually totaled  
approximately 14 pages.

1 above, which had to be completed prior to the Council’s meeting on December 20th in the  
2 preferential matter discussed above.

3 7. On December 21, 2022, I received an email from MR’s counsel, Paul Beard asking  
4 to meet and confer regarding objections and declaration, which he asserted untimely and  
5 improper, and requesting that I withdraw them. When he initially received my auto out-of-office  
6 message in response to that email, indicating that I was on vacation through December 26th, he  
7 forwarded his message to my assistant, who was also out of the office on that date. However, she  
8 nonetheless forwarded the message to me again on the same date.

9 Despite being on vacation, I responded to Mr. Beard’s email on that date, indicating that I  
10 would not withdraw the Evidentiary Objections, but that I would file a motion the following week  
11 when I returned to the office, to seek approval of the late and separate filing of the Evidentiary  
12 Objections and declaration. Mr. Beard responded to me by email later the same day, indicating  
13 that, “irrespective of [the] motion, [MR would] now [be] required under LR 7-3(d) to prepare –  
14 over the holidays and during a pre-planned vacation – objections” to the Evidentiary Objections  
15 and declaration, by December 26th.

16 I responded by email again, proposing a stipulation, which the comments to Local Rule 7-  
17 3 indicate is a method that can be used to modify deadlines for the filing and service of motion-  
18 related pleadings. I proposed that MR stipulate to the late and separate filing of the Evidentiary  
19 Objections and supporting declaration and/or that I would agree to extend the time for MR’s  
20 objections to the same – given the fact that I was already on vacation at that time, and that Mr.  
21 Beard had represented that he would also be on vacation. On the former, I expressed the fact that  
22 MR would not be prejudiced by the late and separate filing, if MR had an opportunity to object,  
23 that the hearing was not scheduled until February, and I very briefly stated the time constraints  
24 that I had experienced causing the late-filing. I did not want to withdraw the objections and re-  
25 file them unnecessarily.

26 Mr. Beard responded on December 22nd that the comments to Local Rule 7-3 only  
27 contemplated a stipulation as to “extensions for ‘notice, response, and reply to motions,’” –  
28 apparently taking the position that the stipulation could not address evidentiary objections at all,

1 whether they could be filed separately from a reply brief, and/or as to what he improperly  
2 characterized as “further briefing” after briefing had been “completed.” In fact, the City’s  
3 Evidentiary Objections and declaration – the latter of which simply authenticates matters for  
4 which the Court was being requested to take judicial notice in support of the Evidentiary  
5 Objections – did not constitute additional “briefing,” nor briefing after briefing had been  
6 completed. Mr. Beard never responded to my offer to stipulate to an extension of time for MR to  
7 file an objection to the Evidentiary Objections and declaration after his holiday vacation.

8 In any event, due to the delay in communications between us, at least in part due to my  
9 occasional limited internet connectivity, my continuing vacation, and time differences, as well as  
10 Mr. Beard’s vacation (which he did not indicate when it would begin), and most importantly, in  
11 order to avoid Mr. Beard having to prepare objections over the holiday and his stated vacation, I  
12 determined that the best course of action was to withdraw the Evidentiary Objections temporarily  
13 and re-file them with the within motion. I quickly prepared correspondence to Mr. Beard on the  
14 morning of December 22, 2022 as to this proposed course of action, as well as the notice of  
15 withdrawal, just prior to my being completely out of communication and without internet  
16 connectivity for the entirety of that day. I transmitted drafts of the same to my assistant, who  
17 forwarded the communication to Mr. Beard and filed the notice [DOC. 21]. I prepared the motion  
18 and this declaration during my return travel from vacation, and thereafter finalized and filed it as  
19 soon as time permitted after my return to the office from my vacation.

20 I declare under penalty of perjury under the laws of the State of California and the United  
21 States, that the foregoing is true and correct. Executed this 28th day of December, 2022.

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24 

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KRISTA MACNEVIN JEE

# **EXHIBIT 1**

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10 CITY OF FORT BRAGG

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12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CITY OF FORT BRAGG,

15 Plaintiff,

16 v.

17 MENDOCINO RAILWAY,

18 Defendants.

Case No. 22-CV-06317-JST

*Assigned for all purposes to:  
Hon. Jon S. Tigar, Ctrm. 6*

**EVIDENTIARY OBJECTIONS TO  
DECLARATION OF ROBERT PINOLI  
IN SUPPORT OF MENDOCINO  
RAILWAY'S CONSOLIDATED  
OPPOSITION TO PLAINTIFFS'  
MOTIONS TO REMAND**

Action Filed: October 20, 2022

DATE: February 2, 2023

TIME: 2 p.m.

CTRM: 6

1           **OBJECTIONS TO DECLARATION OF ROBERT PINOLI IN SUPPORT**  
2           **OF MENDOCINO RAILWAY’S CONSOLIDATED OPPOSITION TO**  
3           **PLAINTIFFS’ MOTIONS TO REMAND**

4           Plaintiff, City of Fort Bragg (“City”), submits the following objections to the  
5 Declaration of Robert Pinoli and exhibits thereto in support of Mendocino  
6 Railway’s Consolidated Opposition to Plaintiffs’ Motions to Remand [DOC 17].  
7

8           **OBJECTION NO. 1**

9           The City objects to and moves to strike that portion of Paragraph 2 which  
10 states:

11           “It is a Class III railroad subject to the jurisdiction of the Surface  
12 Transportation Board (“STB”).”

13           **GROUND FOR OBJECTION NO. 1**

14           The above-cited portion of Paragraph 2 is a statement not based on personal  
15 knowledge and is lacking in foundation. (Fed. R. Evid. 602.) The above-cited  
16 portion of Paragraph 2 assumes facts not in evidence, improperly states a legal  
17 conclusion, and actually conflicts with objective evidence. (Fed. R. Evid. 611.) The  
18 above-cited portion of Paragraph 2 is also testimony by an incompetent witness.  
19 (Fed. R. Evid. 601) The above-cited portion of Paragraph 2 contains improper  
20 opinion testimony. (Fed. R. Evid. 701.) To the extent of the claim of STB  
21 jurisdiction over MR and/or the operations, activities and/or legal obligations of  
22 MR, this is not a factual matter which the declarant can state, but a legal issue for  
23 court determination. Moreover, STB jurisdiction has been found lacking as to MR  
24 itself by the Railroad Retirement Board. (See Declaration of Krista MacNevin Jee  
25 in Support of City’s Motion to Remand [DOC. 15] (“Jee Decl.”), Exhibit B (B.C.D.  
26 06-42, Railroad Retirement Board (2006).)

27           Further, the above-cited portion of Paragraph 2 references matters that are  
28 irrelevant, pursuant to MR’s own assertions. (Fed. R. Evid. 401, 402.) The above-

1 cited portion of Paragraph 2 is provided by MR in direct contradiction of the claim  
2 in its Opposition that the “merits of the underlying dispute,” i.e., that “MR is not a  
3 federally regulated railroad [allegedly] within the STB’s exclusive jurisdiction,” are  
4 not relevant to the Court’s determination on the pending Motion to Remand. (See  
5 Defendant Mendocino Railway’s Consolidated Opposition to Plaintiffs’ Motions to  
6 Remand [DOC 16] (“Opp.”), at p. 34, lns. 11-15.)  
7  
8

9 **COURT’S RULING ON OBJECTION NO. 1**

10  
11 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

12  
13 \_\_\_\_\_ OVERRULED \_\_\_\_\_

14 **OBJECTION NO. 2**

15 The City objects to and moves to strike that portion of Paragraph 3 which  
16 states:

17 “MR owns and operates a line that runs 40 miles, from its main station in  
18 Fort Bragg to its eastern depot in Willits (‘Willits Depot’).”

19 **GROUND FOR OBJECTION NO. 2**

20 The above-cited portion of Paragraph 3 assumes facts not in evidence, and  
21 actually conflicts with objective evidence, to which MR itself has admitted in the  
22 above-referenced matter that: Tunnel No. 1 is currently collapsed and thus MR (or  
23 anyone else) cannot *currently operate* the 40-mile line *between* Fort Bragg and  
24 Willits. (Fed. R. Evid. 611.) See Verified Answer of Defendant Mendocino  
25 Railway, at ¶ 10.

26 Further, the above-cited portion of Paragraph 3 references matters that are  
27 irrelevant, pursuant to MR’s own assertions. (Fed. R. Evid. 401, 402.) The above-  
28 cited portion of Paragraph 3 is provided by MR in direct contradiction of the claim

1 in its Opposition that the “merits of the underlying dispute,” i.e., that “MR is not a  
2 federally regulated railroad [allegedly] within the STB’s exclusive jurisdiction,” are  
3 not relevant to the Court’s determination on the pending Motion to Remand. (*See*  
4 Defendant Mendocino Railway’s Consolidated Opposition to Plaintiffs’ Motions to  
5 Remand [DOC 16] (“Opp.”), at p. 34, lns. 11-15.)

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7 ///

8 **COURT’S RULING ON OBJECTION NO. 2**

9  
10 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

11  
12 \_\_\_\_\_ OVERRULED \_\_\_\_\_

13 **OBJECTION NO. 3**

14 The City objects to and moves to strike that portion of Paragraph 3 which  
15 states:

16 “Mendocino Railway’s Fort Bragg station is fully developed as a rail facility,  
17 with, among other things, passenger coaches and freight cars, an engine house, and  
18 a dry shed for storage of railroad equipment. Since acquiring the line in 2004 and  
19 up through the present, the Fort Bragg-Willits line owned by MR has operated  
20 tourist and non-tourist passenger services, as well as freight services. The line has  
21 never provided only a ‘sightseeing’ or ‘excursion’ service.”

22 **GROUND FOR OBJECTION NO. 3**

23 The above-cited portion of Paragraph 3 assumes facts not in evidence, is  
24 contrary to objective facts, and improperly states legal conclusions. (Fed. R. Evid.  
25 611.) Further, the above-cited portion of Paragraph 3 is irrelevant. (Fed. R. Evid.  
26 401, 402.) MR’s line does not actually connect for any through use or operations,  
27 and in any event any such use or operations along its line are irrelevant to any  
28

1 alleged federal jurisdiction of lines over which there is and/or has never been  
2 interstate commerce or transportation within the meaning of applicable law.

3 Further, the above-cited portion of Paragraph 3 references matters that are  
4 irrelevant, pursuant to MR’s own assertions. (Fed. R. Evid. 401, 402.) The above-  
5 cited portion of Paragraph 3 is provided by MR in direct contradiction of the claim  
6 in its Opposition that the “merits of the underlying dispute,” i.e., that “MR is not a  
7 federally regulated railroad [allegedly] within the STB’s exclusive jurisdiction,” are  
8 not relevant to the Court’s determination on the pending Motion to Remand. (*See*  
9 *Opp.*, at p. 34, lns. 11-15.)

10 **COURT’S RULING ON OBJECTION NO. 3**

11  
12 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

13  
14 \_\_\_\_\_ OVERRULED \_\_\_\_\_

15 **OBJECTION NO. 4**

16 The City objects to and moves to strike that portion of Paragraph 4 which  
17 states:

18 “MR’s Fort Bragg-Willits line connects to the national rail system via the  
19 North Coast Rail Authority line that is operated by Northwestern Pacific Railroad  
20 (‘NWP’). While the NWP segment that connects to MR has been temporarily  
21 embargoed pending track repairs, that segment has not been abandoned and remains  
22 a part of the national rail system.”

23 **GROUND FOR OBJECTION NO. 4**

24 The above-cited portion of Paragraph 4 assumes facts not in evidence,  
25 improperly states legal conclusions, and actually conflicts with objective evidence.  
26 (Fed. R. Evid. 611.) MR’s line does not actually connect to the national rail system  
27 for any through use or operations, and in any event any such hypothetical  
28 connection is irrelevant to any alleged federal jurisdiction of lines over which there



1 is and/or has never been interstate commerce or transportation within the meaning  
 2 of applicable law. (Fed. R. Evid. 401, 402.) Further, there has not “temporarily”  
 3 been an embargo of NWP tracks, and there are no “pending” line repairs -- in that  
 4 the line has, in actual and undisputed fact, been subject to a complete federal  
 5 embargo since in or about 1998, which is not and has not been “temporary.” (See  
 6 FRA Emergency Order No. 21.) In addition, abandonment proceedings *are*  
 7 currently pending, and thus there will be no repairs to the line. (See Surface  
 8 Transportation Board, Docket No. AB 1310X.)

9 The above-cited portion of Paragraph 4 is also testimony by an incompetent  
 10 witness. (Fed. R. Evid. 601) The above-cited portion of Paragraph 4 contains  
 11 improper opinion testimony. (Fed. R. Evid. 701.) The above-cited portion of  
 12 Paragraph 4 is a statement not based on personal knowledge and is lacking in  
 13 foundation, speculation. (Fed. R. Evid. 602.)

14 Further, the above-cited portion of Paragraph 4 references matters that are  
 15 irrelevant, pursuant to MR’s own assertions. (Fed. R. Evid. 401, 402.) The above-  
 16 cited portion of Paragraph 4 is provided by MR in direct contradiction of the claim  
 17 in its Opposition that the “merits of the underlying dispute,” i.e., that “MR is not a  
 18 federally regulated railroad [allegedly] within the STB’s exclusive jurisdiction,” are  
 19 not relevant to the Court’s determination on the pending Motion to Remand. (See  
 20 *Opp.*, at p. 34, lns. 11-15.)

21 **COURT’S RULING ON OBJECTION NO. 4**

22  
 23 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

24  
 25 \_\_\_\_\_ OVERRULED \_\_\_\_\_

26 **OBJECTION NO. 5**

27 The City objects to and moves to strike that portion of Paragraph 4 which  
 28 states:



1 “The Surface Transportation Board’s National Rail Network Map, showing  
2 the Fort Bragg-Willits line (running west-east) connecting to the NWP line  
3 (running north-south), is reproduced accurately and fully below. The image  
4 accurately represents my personal knowledge of the location of the intersecting  
5 lines.”

6 ///

7 **GROUND FOR OBJECTION NO. 5**

8 The above-cited portion of Paragraph 4 assumes facts not in evidence, and  
9 actually conflicts with objective evidence. (Fed. R. Evid. 611.) MR’s line does not  
10 actually connect to the national rail system for any through use or operations, and in  
11 any event any such hypothetical connection is irrelevant to any alleged federal  
12 jurisdiction of lines over which there is and/or has never been interstate commerce  
13 or transportation within the meaning of applicable law. (Fed. R. Evid. 401, 402.)

14 To the extent STB jurisdiction over MR and/or the operations, activities  
15 and/or legal obligations of MR, this is not a factual matter which the declarant can  
16 state, but a legal issue for court determination. Moreover, STB jurisdiction has  
17 been found lacking as to MR itself, its lines or use and/or operations of its lines, by  
18 the Railroad Retirement Board. (*See* Jee Decl., Exhibit B (B.C.D. 06-42, Railroad  
19 Retirement Board (2006).) The above-cited portion of Paragraph 4 is also  
20 testimony by an incompetent witness. (Fed. R. Evid. 601) The above-cited portion  
21 of Paragraph 4 contains improper opinion testimony. (Fed. R. Evid. 701.)

22 The above-cited portion of Paragraph 4 contains hearsay not subject to any  
23 exception. (Fed. R. Evid. 801, 802.) The above-cited portion of Paragraph 4 also  
24 lacks foundation and is not properly authenticated. (Fed. R. Evid. 602, 901.)  
25 Indeed, notwithstanding the declarant’s statement about his “personal knowledge of  
26 the location of the intersecting lines,” this does not establish any knowledge  
27 whatsoever regarding the nature of the preparation by some other entity or intended  
28 use of the information in the map or the accuracy of its depictions on the scale and

1 in the manner presented, nor the date of its preparation or applicability to present  
2 times and circumstances. In any event, the information is irrelevant to any actual  
3 court determination to be made relating to the legal implications of such purported  
4 connection, the STB’s jurisdiction, or other relevant federal authority, etc.

5 Further, the above-cited portion of Paragraph 4 references matters that are  
6 irrelevant, pursuant to MR’s own assertions. (Fed. R. Evid. 401, 402.) The above-  
7 cited portion of Paragraph 4 is provided by MR in direct contradiction of the claim  
8 in its Opposition that the “merits of the underlying dispute,” i.e., that “MR is not a  
9 federally regulated railroad [allegedly] within the STB’s exclusive jurisdiction,” are  
10 not relevant to the Court’s determination on the pending Motion to Remand. (*See*  
11 *Opp.*, at p. 34, lns. 11-15.)

12 **COURT’S RULING ON OBJECTION NO. 5**

13  
14 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_  
15  
16 \_\_\_\_\_ OVERRULED \_\_\_\_\_

17 **OBJECTION NO. 6**

18 The City objects to and moves to strike the map on page 3 in its entirety.

19 **GROUND FOR OBJECTION NO. 6**

20 For the same reasons set forth in Objection No. 5 relating to testimony  
21 regarding the map, the map itself is also objectionable. The map assumes facts not  
22 in evidence, and actually conflicts with objective evidence. (Fed. R. Evid. 611.)  
23 The map is also irrelevant to the legal issues that may be determined by the Court.  
24 (Fed. R. Evid. 401, 402.) The map is not supported by evidence that is by a  
25 competent witness and/or is based upon improper opinion testimony. (Fed. R. Evid.  
26 601, 701.) The map is also inadmissible hearsay not subject to any exception. (Fed.  
27 R. Evid. 801, 802.) Further, the map lacks foundation and is not properly  
28 authenticated. (Fed. R. Evid. 602, 901.)



1 Further, the map is irrelevant, pursuant to MR’s own assertions. (Fed. R.  
2 Evid. 401, 402.) It is provided by MR in direct contradiction of the claim in its  
3 Opposition that the “merits of the underlying dispute,” i.e., that “MR is not a  
4 federally regulated railroad [allegedly] within the STB’s exclusive jurisdiction,” are  
5 not relevant to the Court’s determination on the pending Motion to Remand. (*See*  
6 *Opp.*, at p. 34, lns. 11-15.)

7 **COURT’S RULING ON OBJECTION NO. 6**

8  
9 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

10  
11 OVERRULED \_\_\_\_\_

12 **OBJECTION NO. 7**

13 The City objects to and moves to strike that portion of Paragraph 5 which  
14 states:

15 “In addition to its connection to the NWP line, the Fort Bragg-Willits line  
16 connects via Amtrak, which runs a thruway service at MR’s Willits Depot,  
17 connecting the line to Amtrak’s national railway system.”

18 **GROUND FOR OBJECTION NO. 7**

19 The above-cited portion of Paragraph 5 assumes facts not in evidence, and  
20 actually conflicts with objective evidence, to which MR itself has admitted in the  
21 above-referenced matter -- namely that Tunnel No. 1 is currently collapsed and thus  
22 MR cannot *currently operate* the 40-mile line *between* Fort Bragg and Willits. (Fed.  
23 R. Evid. 611.) *See* Verified Answer of Defendant Mendocino Railway, at ¶ 10.

24 MR’s line does not actually connect to the national rail system for any  
25 through use or operation, whether by Amtrak or otherwise, and in any event any  
26 such hypothetical connection is irrelevant to any alleged federal jurisdiction of lines  
27 over which there is and/or has never been interstate commerce or transportation  
28 within the meaning of applicable law. (Fed. R. Evid. 401, 402.) Indeed, as set



1 forth in Objection No. 4, the NWP line is subject to a long-standing federal  
2 embargo, and there are abandonment proceedings currently pending. Further, as set  
3 forth in Objection No. 2, there is no through service on the Fort Bragg-Willits line.

4 The above-cited portion of Paragraph 5 is also testimony by an incompetent  
5 witness. (Fed. R. Evid. 601) The above-cited portion of Paragraph 5 contains  
6 improper opinion testimony. (Fed. R. Evid. 701.) The above-cited portion of  
7 Paragraph 5 is a statement not based on personal knowledge and is lacking in  
8 foundation, speculation. (Fed. R. Evid. 602.)

9 Further, the above-cited portion of Paragraph 5 references matters that are  
10 irrelevant, pursuant to MR’s own assertions. (Fed. R. Evid. 401, 402.) The above-  
11 cited portion of Paragraph 5 is provided by MR in direct contradiction of the claim  
12 in its Opposition that the “merits of the underlying dispute,” i.e., that “MR is not a  
13 federally regulated railroad [allegedly] within the STB’s exclusive jurisdiction,” are  
14 not relevant to the Court’s determination on the pending Motion to Remand. (*See*  
15 *Opp.*, at p. 34, lns. 11-15.)

16 **COURT’S RULING ON OBJECTION NO. 7**

17  
18 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

19  
20 \_\_\_\_\_ OVERRULED \_\_\_\_\_

21 **OBJECTION NO. 8**

22 The City objects to and moves to strike that portion of Paragraph 6 which  
23 states:

24 “In furtherance of its freight operations, MR has pursued and continues to  
25 pursue a variety of much-needed rail-related activities on property and facilities  
26 located in the State’s coastal zone. These activities have included, without  
27 limitation: (a) improvements to side tracks; (b) repair and maintenance work on its  
28 rail station and engine house; (c) clean-up work in and around a dry shed and



1 elsewhere on railroad property; (d) improvements to the dry shed in order to  
 2 provide space for the storage of rail cars and other railroad equipment, such as tires  
 3 for steam locomotives, railcar axles, and other parts and components for steam and  
 4 diesel locomotives; (e) a lot-line adjustment related to the railroad’s acquisition of  
 5 historically rail-related property from Georgia-Pacific LLC; and (f) development of  
 6 the recently acquired land for rail-related uses. These rail-related activities—  
 7 pursued in furtherance of MR’s railroad operations—are the objects of the  
 8 Commission’s and City’s complaints that a land-use permit was not obtained for  
 9 those activities.”

### 10 **GROUND FOR OBJECTION NO. 8**

11 The above-cited portion of Paragraph 6 assumes facts not in evidence, and  
 12 actually conflicts with objective evidence. (Fed. R. Evid. 611.) The declarant  
 13 falsely states that “the object[ ] of the . . . City’s complaint” is MR’s “rail-related  
 14 activities,” but as expressly alleged in the City’s Complaint, MR refused to allow a  
 15 building official to inspect a dilapidated building that needs repair, is dangerous, is  
 16 in violation of law and a risk to public health and safety, as well as refusing to  
 17 obtain a special events permit. (Complaint, ¶¶ 12, 15.) Similarly, the Commission  
 18 has alleged that certain buildings and MR’s lot-line adjustment did not comply with  
 19 state or local law. (Commission Complaint, ¶ 4.) In fact, the Commission also  
 20 alleges that unspecified future activities of MR will be subject to state or local law.  
 21 *Id.* These are not *rail-related activities*, and even assuming *arguendo* that they  
 22 could be shown to be so, this does not render Plaintiffs without authority or  
 23 jurisdiction over MR. For instance, even if the building may be used for rail-related  
 24 activities, that would not exempt MR from compliance with building and safety  
 25 code provisions which the City has the valid right, obligation and authority to  
 26 enforce, including by way of inspection of MR’s property.

27 Similarly, “clean-up work” that involves, for instance, hazardous waste is  
 28 subject to valid local and state authority -- even as to purported “rail-related

1 activities.” Also, many other activities that incidentally affect “rail-related  
2 activities,” that are nuisances, or in other manners can be validly subject to local  
3 and state regulation, are subject to such authority notwithstanding the fact they  
4 purportedly are “rail-related. The declarant’s characterization of matters as “rail-  
5 related” is thus not determinative. In any event, the alleged claim that MR engages  
6 in *some* rail-related activities that *might* be allegedly exempt from local regulation  
7 does not support MR’s claim for removal, since this does not create federal  
8 jurisdiction. More importantly, the declarant and/or MR cannot circumscribe and  
9 define City’s and/or the Commission’s legal action/claims, which are still subject to  
10 proof and may not relate to the six specific categories that the declarant assumes.

11 On these bases, then, the above-cited portion of Paragraph 6 is also beyond  
12 the declarant’s personal knowledge and is improper opinion, to the extent he  
13 purports to define or state the nature of the claims made by the City and/or the  
14 Commission, which he cannot personally know and which has yet to be fully  
15 defined through the action. (Fed. R. Evid. 601, 602, 701.)

16 Further, the above-cited portion of Paragraph 6 references matters that are  
17 irrelevant, pursuant to MR’s own assertions. (Fed. R. Evid. 401, 402.) The above-  
18 cited portion of Paragraph 6 is provided by MR in direct contradiction of the claim  
19 in its Opposition that the “merits of the underlying dispute,” i.e., that “MR is not a  
20 federally regulated railroad [allegedly] within the STB’s exclusive jurisdiction,” are  
21 not relevant to the Court’s determination on the pending Motion to Remand. (*See*  
22 *Opp.*, at p. 34, lns. 11-15.)

23 **COURT’S RULING ON OBJECTION NO. 8**

24  
25 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

26  
27 \_\_\_\_\_ OVERRULED \_\_\_\_\_

28 **OBJECTION NO. 9**



1 The City objects to and moves to strike that portion of Paragraph 7 which  
2 states:

3 “Approximately 77 acres of the Georgia-Pacific land adjacent to the main rail  
4 station in Fort Bragg were previously used for more than a century to conduct and  
5 support freight and passenger operations. In 2019, after 15 years of discussions,  
6 MR acquired those 77 acres from Georgia-Pacific to further MR’s efforts to fully  
7 restore freight and passenger services on the Fort Bragg-Willits line. Subsequently,  
8 MR acquired another approximately 220 acres from GP at the mill site, another 70  
9 acres of pudding Creek, and (through MR’s sister company, Sierra Northern  
10 Railway) 14 acres from another entity (Harvest Market). In total, approximately  
11 300 acres of the former mill site were acquired.”

12 **GROUND FOR OBJECTION NO. 9**

13 The above-cited portion of Paragraph 7 references matters that are irrelevant.  
14 (Fed. R. Evid. 401, 402.) The manner of acquisition and alleged former use of  
15 certain property recently acquired by MR is wholly irrelevant to MR’s present use  
16 and/or legal rights to use such property. More importantly, nothing about such  
17 acquisition or prior use has any bearing on specific uses that may be validly subject  
18 to local or state jurisdiction, authority and/or regulation. The above-cited portion of  
19 Paragraph 7 is also testimony by an incompetent witness, and is a statement not  
20 based on personal knowledge, lacking in foundation, and speculative. (Fed. R.  
21 Evid. 601, 602) In particular, the declarant cannot state the nature of uses 100 years  
22 ago.

23 **COURT’S RULING ON OBJECTION NO. 9**

24  
25 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

26  
27 \_\_\_\_\_ OVERRULED \_\_\_\_\_

28 **OBJECTION NO. 10**



1 The City objects to and moves to strike that portion of Paragraph 8 which  
2 states:

3 “MR has not applied for land-use permits from any state or local land-use  
4 authority for any of its rail-related activities, because local land-use permitting  
5 requirements are federally preempted.”

6 ///

7 **GROUND FOR OBJECTION NO. 10**

8 The above-cited portion of Paragraph 8 assumes facts not in evidence --  
9 namely that MR’s “rail-related activities” are at issue in the action, or solely at  
10 issue, and the above-cited provision asserts a legal conclusion that is subject to  
11 court determination – namely that any and all local regulation of MR is “federally  
12 preempted.” (Fed. R. Evid. 611.) The above-cited portion of Paragraph 8 also  
13 contains improper opinion testimony. (Fed. R. Evid. 701.)

14 As set forth in Objection No. 8, the City and the Commission do *not* allege  
15 regulation of “rail-related activities,” and in any event this characterization by the  
16 declarant is not determinative, since the full scope of matters subject to the  
17 Complaints has not yet been determined. Indeed, the declarant has no personal  
18 knowledge and cannot limit or define the scope of the claims made by the City  
19 and/or the Commission. (Fed. R. Evid. 601, 602, 701.) And, even assuming  
20 *arguendo* that some of MR’s “rail-related activities” may be at issue, those are still  
21 subject to local and state regulation and authority, as set forth in detail in Objection  
22 No. 8.

23 Further, the above-cited portion of Paragraph 8 references matters that are  
24 irrelevant, pursuant to MR’s own assertions. (Fed. R. Evid. 401, 402.) The above-  
25 cited portion of Paragraph 8 is provided by MR in direct contradiction of the claim  
26 in its Opposition that the “merits of the underlying dispute,” i.e., that “MR is not a  
27 federally regulated railroad [allegedly] within the STB’s exclusive jurisdiction,” are  
28

1 not relevant to the Court’s determination on the pending Motion to Remand. (*See*  
2 *Opp.*, at p. 34, lns. 11-15.)

3 **COURT’S RULING ON OBJECTION NO. 10**

4  
5 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

6  
7 \_\_\_\_\_ OVERRULED \_\_\_\_\_

8 **OBJECTION NO. 11**

9 The City objects to and moves to strike that portion of Paragraph 9 which  
10 states:

11 “Plaintiff California Coastal Commission has for years argued to MR that it  
12 has plenary land-use authority over MR’s rail activities in the coastal zone, on the  
13 (mistaken) assumption that MR is not a railroad within the STB’s exclusive  
14 jurisdiction.”

15 **GROUND FOR OBJECTION NO. 11**

16 The above-cited portion of Paragraph 9 is a statement not based on personal  
17 knowledge and is lacking in foundation. (Fed. R. Evid. 602.) The above-cited  
18 portion of Paragraph 9 assumes facts not in evidence, improperly states a legal  
19 conclusion, and actually conflicts with objective evidence. (Fed. R. Evid. 611.) To  
20 the extent of the claim of STB jurisdiction over MR and/or the operations, activities  
21 and/or legal obligations of MR, this is not a factual matter which the declarant can  
22 state, but a legal issue for court determination. Moreover, STB jurisdiction has  
23 been found lacking as to MR itself by the Railroad Retirement Board. (See Jee  
24 Decl., Exhibit B (B.C.D. 06-42, Railroad Retirement Board (2006).) The above-  
25 cited portion of Paragraph 9 is also testimony by an incompetent witness. (Fed. R.  
26 Evid. 601) The above-cited portion of Paragraph 9 contains improper opinion  
27 testimony. (Fed. R. Evid. 701.)  
28



1           Moreover, the above-cited portion of Paragraph 9 is wholly irrelevant  
2 because the purported “argument” of the Commission -- purportedly “for years”  
3 and outside this action, has no bearing on legal claims the Commission asserts in its  
4 Complaint. Moreover, the declarant is not a competent witness with any personal  
5 knowledge as to the nature or scope of the Commission’s claims in this action.  
6 (Fed. R. Evid. 601, 602) Similarly, the above-cited portion of Paragraph 9 is not  
7 proper as to “rail-related activities” in that this is not a determinative factor for the  
8 reasons set forth in Objection No. 8. (Fed. R. Evid. 601, 602, 701.)

9           Further, the above-cited portion of Paragraph 9 references matters that are  
10 irrelevant, pursuant to MR’s own assertions. (Fed. R. Evid. 401, 402.) The above-  
11 cited portion of Paragraph 9 is provided by MR in direct contradiction of the claim  
12 in its Opposition that the “merits of the underlying dispute,” i.e., that “MR is not a  
13 federally regulated railroad [allegedly] within the STB’s exclusive jurisdiction,” are  
14 not relevant to the Court’s determination on the pending Motion to Remand. (*See*  
15 *Opp.*, at p. 34, lns. 11-15.)

16 **COURT’S RULING ON OBJECTION NO. 11**

17  
18 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

19  
20 \_\_\_\_\_ OVERRULED \_\_\_\_\_

21 **OBJECTION NO. 12**

22           The City objects to and moves to strike that portion of Paragraph 9 which  
23 states:

24           “The threat of formal enforcement or other action by the Commission  
25 loomed large during those years, causing substantial regulatory uncertainty for MR  
26 and potential disruption of MR’s railroad operations and projects. For those  
27 reasons, MR filed a federal action in this Court on August 9, 2022.”

28 **GROUND FOR OBJECTION NO. 12**



1           The above-cited portion of Paragraph 9 is a statement not based on personal  
2 knowledge and is lacking in foundation. (Fed. R. Evid. 602.) The above-cited  
3 portion of Paragraph 9 assumes facts not in evidence, actually conflicts with  
4 objective evidence, and constitutes improper opinion. (Fed. R. Evid. 611.) The  
5 declarant identifies no “threat of formal enforcement or other action by the  
6 Commission,” let alone any that purportedly “loomed large,” nor any purported  
7 potential uncertainty or disruption. The declarant’s self-serving opinion statement  
8 in the above-cited portion of Paragraph 9 also is contrary to undisputed facts, in that  
9 MR’s purported “reasons” for filing an action against the Commission in *August*  
10 *2022* – despite admitted Commission threats “loom[ing] large” against MR for  
11 “years,” creating “uncertainly for MR and potential disruption” – is directly belied  
12 by MR’s actions in the underlying action in state court. As detailed in the City’s  
13 motion, MR filed its federal action against the Commission *and the City* only *after*  
14 MR had *exhausted* all efforts to avoid a ruling adverse to it in the state court on  
15 demurrer, including a petition for writ of mandate to the California Court of Appeal  
16 and Petition for Review to the California Supreme Court, attempted transfer of the  
17 City’s action to another judge on a claim that the City’s action was related to an  
18 already-pending eminent domain action, and attempted disqualification of the judge  
19 assigned to the City’s action. In fact, MR specifically filed its action in *anticipation*  
20 of the Commission’s Complaint in Intervention, *after* the Commission had taken a  
21 “field trip” to MR’s property on July 15, 2022 with the City and had a briefing by  
22 the City relating to the Mill site purchased by MR, as well as *one day* prior to the  
23 Commission considering the City’s action in a previously agendaized closed session  
24 on August 10, 2022. (Fed. R. Evid. 401, 402, 601, 602, 701.) *See* attached Exhibits  
25 A and B, respectively, which are true and correct copies of California Coastal  
26 Commission agendas for July 15 and August 10, 2022 meetings, for which the  
27 Court make take judicial notice, and which are available at:  
28 <https://www.coastal.ca.gov/meetings/agenda/#/2022/7> and

1 <https://www.coastal.ca.gov/meetings/agenda/#/2022/8>, respectively. (Fed. R. Evid.  
 2 201 (b)(2).) See also, e.g., *Del Puerto Water Dist. v. United States Bureau of*  
 3 *Reclamation*, 271 F. Supp. 2d 1224, 1232, 1234 (E.D. Cal. 2003); (public and  
 4 quasi-public records properly subject to judicial notice); *United States v. Savannah*  
 5 *River Nuclear Sols., LLC*, 2016 U.S. Dist. LEXIS 168067, at \*22 (D.S.C. 2016)  
 6 (taking judicial notice of request for proposals issued by agency as matter of public  
 7 record); *San Francisco Baykeeper v. West Bay Sanitary Dist.*, 791 F. Supp. 2d 719,  
 8 732 (N.D. Cal. 2011) (“It is well established that records, reports, and other  
 9 documents on file with administrative agencies — such as the State Water  
 10 Resources Control Board — are judicially noticeable.”) (citing *Lee v. City of Los*  
 11 *Angeles*, 250 F.3d 668, 689-90 (9th Cir. 2001)); *Santa Monica Food Not Bombs v.*  
 12 *City of Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) (public records of  
 13 city, including permit applications on file with the City Clerk and accessible on  
 14 City’s official website properly subject to judicial notice); *Vincent v. City of Cal.*  
 15 *City*, 2018 U.S. Dist. LEXIS 121916, at \*9 (E.D. Cal. 2018) (“judicial notice is  
 16 proper of a City Council meeting’s agenda as a public record whose accuracy is not  
 17 in dispute”) (citing *Jonna Corp. v. City of Sunnyvale, CA*, 2017 U.S. Dist. LEXIS  
 18 93353, 2017 WL 2617983, at \*4 (N.D. Cal. 2017) (taking judicial notice of city  
 19 council minutes)); *Langer v. Taghavi*, 2020 U.S. Dist. LEXIS 128888, at \*5 n.1  
 20 (C.D. Cal. 2020) (taking judicial notice of agenda of city planning commission  
 21 meeting, available on city’s website).

22 **COURT’S RULING ON OBJECTION NO. 12**

23  
 24 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_  
 25  
 26 \_\_\_\_\_ OVERRULED \_\_\_\_\_

27 **OBJECTION NO. 13**

28



1 The City objects to and moves to strike that portion of Paragraph 10 which  
2 states:

3 “While superficially cloaked in allegations about MR’s past refusal to submit  
4 to the City’s land-use inspection and permit requirements, the City’s complaint is  
5 nothing more than a misguided vendetta against MR for purportedly employing its  
6 eminent domain power (as a public utility) to acquire the Georgia-Pacific land. City  
7 officials were interested in acquiring and controlling the 300 acres purchased by  
8 MR from Georgia-Pacific, but they failed. The City claims that the railroad  
9 somehow ‘stole’ that opportunity from the City. With its lawsuit, the City hopes to  
10 deflect public criticism for its failures and to gain substantial development control  
11 over the acquired property—through land-use permit oversight—without having to  
12 purchase it. While the City directly challenges only MR’s ‘public utility’ status, the  
13 City seeks an injunction compelling the railroad to submit to the City’s unfettered  
14 land-use authority.”

15 **GROUND FOR OBJECTION NO. 13**

16 The above-cited portion of Paragraph 10 references matters that are irrelevant  
17 to the motion and the action, including the purported “hopes,” motives, interests or  
18 thoughts of the City or its officials in bringing a valid action against MR. (Fed. R.  
19 Evid. 401, 402.) Specifically, the nature or method of recent acquisition of property  
20 by MR is not at issue in this action. The above-cited portion of Paragraph 10 is also  
21 a statement not based on personal knowledge and is lacking in foundation, and  
22 merely speculative, in that the declarant cannot state the purported “hopes,”  
23 motives, intent or thoughts of the City or its officials. (Fed. R. Evid. 602.) The  
24 above-cited portion of Paragraph 10 is testimony by an incompetent witness. (Fed.  
25 R. Evid. 601) The above-cited portion of Paragraph 10 contains improper, self-  
26 serving opinion testimony that is merely argumentative and not fact-based. (Fed. R.  
27 Evid. 701.)

28 The above-cited portion of Paragraph 10 assumes facts not in evidence,

1 improperly states a legal conclusion, and actually conflicts with objective evidence.  
2 (Fed. R. Evid. 611.) The declarant may not properly state or define the nature of  
3 the City’s claims in the Complaint, and his characterization of the City’s basis for  
4 injunctive relief is incorrect, as set forth in the Complaint itself and/or as may be  
5 shown by the City through the course of those proceedings, which are yet to be  
6 determined. In addition, the declarant’s understanding or opinion of the City’s  
7 claims is irrelevant to the actual stated nature of Plaintiffs’ claim in this action  
8 and/or as may be shown throughout such proceedings. (Fed. R. Evid. 401, 402.)

9 ///

10 **COURT’S RULING ON OBJECTION NO. 13**

11  
12 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

13  
14 \_\_\_\_\_ OVERRULED \_\_\_\_\_

15 **OBJECTION NO. 14**

16 The City objects to and moves to strike that portion of Paragraph 11 which  
17 states:

18 “After sitting for years on its alleged concerns about MR’s compliance with  
19 its land-use permit requirements, the Coastal Commission reacted to MR’s federal  
20 action by moving to intervene in the City’s state-court action on September 8, 2022,  
21 which was about one month after MR filed its federal action.”

22 **GROUND FOR OBJECTION NO. 14**

23 The above-cited portion of Paragraph 11 references matters that are  
24 irrelevant. (Fed. R. Evid. 401, 402.) The above-cited portion of Paragraph 11 is a  
25 statement not based on personal knowledge, lacking in foundation, and speculative.  
26 (Fed. R. Evid. 602.) The above-cited portion of Paragraph 11 is testimony by an  
27 incompetent witness. (Fed. R. Evid. 601) The above-cited portion of Paragraph 11  
28 contains improper opinion testimony. (Fed. R. Evid. 701.) The above-cited portion



1 of Paragraph 11 assumes facts not in evidence and is contrary to objective evidence.  
2 (Fed. R. Evid. 611.)

3 The declarant does not and cannot establish that the Commission “sat” on  
4 “concerns” “for years,” nor even that such purported “sitting” is relevant or  
5 probative to any issues in this action. The declarant has no personal knowledge for  
6 his speculative opinion that the Commission supposedly “reacted” to MR’s federal  
7 action by moving to intervene in the City’s action, nor even that the Commission  
8 solely, or first, took action relating MR’s federal complaint by the filing of its  
9 motion to intervene one month after the filing of MR’s federal complaint. Nor are  
10 any of these baseless suppositions relevant to remand in any event. In fact, the  
11 declarant’s statements are patently false, as shown by objective evidence -- that the  
12 Commission even waited to intervene until the specified date, since the  
13 Commission had a field trip to Fort Bragg and the Mill site on July 15 2022,  
14 considered this action in closed session on August 10 2022, and the City  
15 represented to the State court in a case management conference statement filed on  
16 August 25, 2022, the fact that the Commission had *already* decided to intervene  
17 long before the filing of the Commissions’ Motion to Intervene. *See* Jee Decl., at  
18 ¶ 4; *see* Objection No. 12, Exhibits A and B hereto. In fact, the City informed MR  
19 as early as **June 27, 2022** in the “Opposition of City of Fort Bragg to [MR’s]  
20 Notice of Related Case” (at p. 3, lns. 3-5), filed with the State court in this action,  
21 that “the City is informed by counsel for the California Coastal Commission that  
22 the Commission intends to consider whether to seek to intervene in the *City* action  
23 [this action] at its next upcoming regular monthly meetings on July 13-15 [2022].”  
24 A true and correct copy of the City’s Opposition is attached hereto as Exhibit C, of  
25 which this Court may take judicial notice and which forms a part of the underlying  
26 action that MR has attempted to improperly remove to this Court. *See, e.g., IHS*  
27 *Concepts, Inc. v. Bonworth, Inc.*, 2018 U.S. Dist. LEXIS 199032, at \*5-6 (C.D. Cal.  
28 2018) (“Courts ‘may take notice of proceedings in other courts, both within and

1 without the federal judicial system, if those proceedings have a direct relation to  
2 matters at issue.”) (quoting *U.S. ex rel. Robinson Rancheria Citizens Council v.*  
3 *Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992)); *Harris v. County of Orange*, 682  
4 F.3d 1126, 1132 (9th Cir. 2012) (“We may take judicial notice of undisputed  
5 matters of public record, including documents on file in federal or state courts.”  
6 (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001); *Bennett v.*  
7 *Medtronic*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

8 ///

9 ///

10 **COURT’S RULING ON OBJECTION NO. 14**

11  
12 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

13  
14 OVERRULED \_\_\_\_\_

15 **OBJECTION NO. 15**

16 The City objects to and moves to strike that portion of Paragraph 12 which  
17 states:

18 “After MR acquired the assets of California Western Railroad in 2004, and  
19 until recently, MR itself did not perform the freight rail service on the on the Fort  
20 Bragg-Willits line. Instead, that freight rail service was performed by its sister  
21 company, Sierra Northern Railway. Recently, MR made application to the U.S.  
22 Railroad Retirement Board to take over the performance of the freight service from  
23 Sierra Northern Railway on the Fort Bragg-Willits line. Given the remote location  
24 of the Fort Bragg-Willits line and Sierra Northern’s other extensive obligations,  
25 MR began performing freight service on the line.”

26 **GROUND’S FOR OBJECTION NO. 15**

27 The above-cited portion of Paragraph 12 assumes facts not in evidence,  
28 conflicts with objective evidence, and improperly states legal conclusions. (Fed. R.



1 Evid. 611.) Further, the above-cited portion of Paragraph 12 is irrelevant. (Fed. R.  
2 Evid. 401, 402.) MR's line does not actually connect for any through use or  
3 operations, and in any event any such use or operations along its line are irrelevant  
4 to any alleged federal jurisdiction of lines over which there is and/or has never been  
5 interstate commerce or transportation within the meaning of applicable law. (Fed.  
6 R. Evid. 401, 402.) Moreover, the above-cited portion of Paragraph 12 is  
7 irrelevant. (Fed. R. Evid. 401, 402.) The meaning and import of the decision of the  
8 Railroad Retirement Board is not dependent upon *who* performed purported  
9 services upon MR's line, but the nature of the services -- which are not in interstate  
10 commerce and the Board concluded are *not* subject to STB jurisdiction.

11 Moreover, the above-cited portion of Paragraph 12 is also testimony by an  
12 incompetent witness. (Fed. R. Evid. 601) The above-cited portion of Paragraph 12  
13 contains improper opinion testimony. (Fed. R. Evid. 701.) The above-cited portion  
14 of Paragraph 12 is a statement not based on personal knowledge and is lacking in  
15 foundation, and is speculative. (Fed. R. Evid. 602.) The declarant cannot properly  
16 state the legal meaning of the Board's decision, and his personal opinion on its  
17 meaning and legal application is irrelevant and incompetent. Further, the purported  
18 application of MR to the Board to supposedly "take over" certain services along its  
19 line does not establish the nature of such services, that they are actually performed,  
20 nor that such application in any way impacts the meaning or nature of the Board's  
21 prior ruling as to the lack of STB jurisdiction over MR.

22 Further, the above-cited portion of Paragraph 12 references matters that are  
23 irrelevant, pursuant to MR's own assertions. (Fed. R. Evid. 401, 402.) The above-  
24 cited portion of Paragraph 12 is provided by MR in direct contradiction of the claim  
25 in its Opposition that the "merits of the underlying dispute," i.e., that "MR is not a  
26 federally regulated railroad [allegedly] within the STB's exclusive jurisdiction," are  
27 not relevant to the Court's determination on the pending Motion to Remand. (*See*  
28 Defendant Mendocino Railway's Consolidated Opposition to Plaintiffs' Motions to

1 Remand [DOC 16] (“Opp.”), at p. 34, lns. 11-15.)

2 **COURT’S RULING ON OBJECTION NO. 15**

3  
4 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

5  
6 \_\_\_\_\_ OVERRULED \_\_\_\_\_

7 ///

8 ///

9 **OBJECTION NO. 16**

10 The City objects to and moves to strike that portion of Paragraph 13 which  
11 states:

12 “True and correct copies of MR’s Freight Tariffs, CWR 9500, effective  
13 January 1, 2008, and January 1, 2022, respectively, are attached hereto as Exhibit  
14 1.”

15 **GROUND’S FOR OBJECTION NO. 16**

16 The above-cited portion of Paragraph 13 references matters that are  
17 irrelevant. (Fed. R. Evid. 401, 402.) The fact that MR may have made publicly  
18 available certain documents that it has self-servingly titled “freight tariffs” is not  
19 determinative of its status or other matters subject to court determination, or subject  
20 to the interpretation and application of applicable law by a court.

21 Further, the above-cited portion of Paragraph 13 references matters that are  
22 irrelevant, pursuant to MR’s own assertions. (Fed. R. Evid. 401, 402.) The above-  
23 cited portion of Paragraph 13 is provided by MR in direct contradiction of the claim  
24 in its Opposition that the “merits of the underlying dispute,” i.e., that “MR is not a  
25 federally regulated railroad [allegedly] within the STB’s exclusive jurisdiction,” are  
26 not relevant to the Court’s determination on the pending Motion to Remand. (*See*  
27 Defendant Mendocino Railway’s Consolidated Opposition to Plaintiffs’ Motions to  
28 Remand [DOC 16] (“Opp.”), at p. 34, lns. 11-15.)



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**COURT’S RULING ON OBJECTION NO. 16**

Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_  
  
OVERRULED \_\_\_\_\_

**OBJECTION NO. 17**

The City objects to and moves to strike Exhibit 1.

///

**GROUND’S FOR OBJECTION NO. 17**

Exhibit 1 is irrelevant. (Fed. R. Evid. 401, 402.) The fact that MR may have made publicly available certain documents that it has called “freight tariffs,” is not determinative of its status or other matters subject to court determination, or subject to the interpretation and application of applicable law by a court.

Further, Exhibit 1 references matters that are irrelevant, pursuant to MR’s own assertions. (Fed. R. Evid. 401, 402.) Exhibit 1 is provided by MR in direct contradiction of the claim in its Opposition that the “merits of the underlying dispute,” i.e., that “MR is not a federally regulated railroad [allegedly] within the STB’s exclusive jurisdiction,” are not relevant to the Court’s determination on the pending Motion to Remand. (See Defendant Mendocino Railway’s Consolidated Opposition to Plaintiffs’ Motions to Remand [DOC 16] (“Opp.”), at p. 34, lns. 11-15.)

**COURT’S RULING ON OBJECTION NO. 17**

Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_  
  
OVERRULED \_\_\_\_\_

**OBJECTION NO. 18**

The City objects to and moves to strike that portion of Paragraph 13 which states:



1 “A true and correct copy of the Notice of Exemption dated March 12, 2004,  
2 from the U.S. Surface Transportation Board (Finance Docket No. FD34465) is  
3 attached hereto as Exhibit 2.”

4 **GROUND FOR OBJECTION NO. 18**

5 The above-cited portion of Paragraph 13 references matters that are  
6 irrelevant. (Fed. R. Evid. 401, 402.) The fact that MR may have obtained STB  
7 approval of a purchase in bankruptcy is not determinative of its status or other  
8 matters subject to court determination, or subject to the interpretation and  
9 application of applicable law by a court.

10 Further, the above-cited portion of Paragraph 13 references matters that are  
11 irrelevant, pursuant to MR’s own assertions. (Fed. R. Evid. 401, 402.) The above-  
12 cited portion of Paragraph 13 is provided by MR in direct contradiction of the claim  
13 in its Opposition that the “merits of the underlying dispute,” i.e., that “MR is not a  
14 federally regulated railroad [allegedly] within the STB’s exclusive jurisdiction,” are  
15 not relevant to the Court’s determination on the pending Motion to Remand. (*See*  
16 Defendant Mendocino Railway’s Consolidated Opposition to Plaintiffs’ Motions to  
17 Remand [DOC 16] (“Opp.”), at p. 34, lns. 11-15.)

18 **COURT’S RULING ON OBJECTION NO. 18**

19  
20 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

21  
22 \_\_\_\_\_ OVERRULED \_\_\_\_\_

23 **OBJECTION NO. 19**

24 The City objects to and moves to strike Exhibit 2.

25 **GROUND FOR OBJECTION NO. 19**

26 Exhibit 2 is irrelevant. (Fed. R. Evid. 401, 402.) The fact that MR may have  
27 obtained STB approval of a purchase in bankruptcy is not determinative of its status  
28 or other matters subject to court determination.



1 Further, Exhibit 2 references matters that are irrelevant, pursuant to MR’s  
2 own assertions. (Fed. R. Evid. 401, 402.) Exhibit 2 is provided by MR in direct  
3 contradiction of the claim in its Opposition that the “merits of the underlying  
4 dispute,” i.e., that “MR is not a federally regulated railroad [allegedly] within the  
5 STB’s exclusive jurisdiction,” are not relevant to the Court’s determination on the  
6 pending Motion to Remand. (See Defendant Mendocino Railway’s Consolidated  
7 Opposition to Plaintiffs’ Motions to Remand [DOC 16] (“Opp.”), at p. 34, lns. 11-  
8 15.)

9 **COURT’S RULING ON OBJECTION NO. 19**

10  
11 Dated: \_\_\_\_\_ SUSTAINED \_\_\_\_\_

12  
13 OVERRULED \_\_\_\_\_

14  
15 Dated: December 20, 2022 JONES MAYER

16  
17  
18 By: */s/Krista MacNevin Jee*  
19 Krista MacNevin Jee  
20 Attorneys for Plaintiff,  
21 CITY OF FORT BRAGG



## **EXHIBIT 2**

1 JONES MAYER  
2 Krista MacNevin Jee, Esq., SBN 198650  
3 kmj@jones-mayer.com  
4 3777 North Harbor Boulevard  
5 Fullerton, CA 92835  
6 Telephone: (714) 446-1400  
7 Facsimile: (714) 446-1448

8  
9 Attorneys for Plaintiff,  
10 CITY OF FORT BRAGG  
11

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CITY OF FORT BRAGG,  
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16 Plaintiff,  
17  
18 v.  
19  
20 MENDOCINO RAILWAY,  
21  
22 Defendants.

Case No. 22-CV-06317-JST

*Assigned for all purposes to:  
Hon. Jon S. Tigar, Ctrm. 6*

**DECLARATION OF KRISTA  
MACNEVIN JEE IN SUPPORT  
OF EVIDENTIARY  
OBJECTIONS TO  
DECLARATION OF ROBERT  
PINOLI IN SUPPORT OF  
MENDOCINO RAILWAY'S  
CONSOLIDATED OPPOSITION  
TO PLAINTIFFS' MOTIONS TO  
REMAND**

Action Filed: October 20, 2022

DATE: February 2, 2023  
TIME: 2 p.m.  
CTRM: 6



**DECLARATION OF KRISTA MACNEVIN JEE IN SUPPORT OF EVIDENTIARY OBJECTIONS TO DECLARATION OF ROBERT PINOLI IN SUPPORT OF MR’s CONSOLIDATED OPPOSITION TO PLAINTIFFS’ MOTIONS TO REMAND**

I, KRISTA MACNEVIN JEE, HEREBY DECLARE AS FOLLOWS:

1. I am a Partner with Jones Mayer, the City Attorney and the attorneys of record for the City of Fort Bragg in the above-entitled action. If called upon, I could and would competently testify to the following facts, of my own personal knowledge.

2. True and correct copies of the agendas of the public meetings of the California Coastal Commission for July 15, 2022 and August 10, 2022 are attached as **Exhibits A and B** to the City’s Evidentiary Objections to the Declaration of Robert Pinoli in Support of Mendocino Railway’s Consolidated Opposition to Plaintiffs’ Motions to Remand. These agendas are publicly available on the Commission’s official website, and are public records and posted in accordance with State law in advance of the public meetings of the Commission, pursuant to Cal. Govt. Code § 54954.2(a)(1). I was last able to access these agendas on December 20, 2022 as follows: <https://www.coastal.ca.gov/meetings/agenda/#/2022/7> and <https://www.coastal.ca.gov/meetings/agenda/#/2022/8>.

3. In the underlying State court action which Defendant Mendocino Railway has improperly attempted to remove to this Court and which is the subject of Plaintiffs’ pending Motions to Remand (*City of Fort Bragg v. Mendocino Railway*, Mendocino County Superior Court Case No. 21CV00850), the City filed an “Opposition of City of Fort Bragg to [MR’s] Notice of Related Case” on June 27, 2022, a true and correct copy of which is attached as **Exhibit C** to the City’s

//

//



1 Evidentiary Objections to the Declaration of Robert Pinoli in Support of  
2 Mendocino Railway’s Consolidated Opposition to Plaintiffs’ Motions to Remand.

3 I declare under penalty of perjury under the laws of the State of California  
4 and the United States, that the foregoing is true and correct. Executed this 20th day  
5 of December, 2022.

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KRISTA MACNEVIN JEE

# EXHIBIT A



# Meeting Agenda

## July 2022

This Coastal Commission meeting will be conducted in a hybrid format, with public participation possible both virtually through video and teleconference, and in person. The Commission strongly encourages continued participation virtually through video and teleconferencing due to changing Covid-19 conditions.

363 N. Main Street  
Fort Bragg, CA 95437

(415) 407-3211

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Last Updated  
July 15 @ 12:00 pm

English

Español

Live Stream

[Virtual Hearing Procedures](#)

[Virtual Hearing Procedures in Spanish](#)

[Submit Speaker Request Here](#)

**Wednesday**  
July 13, 9:00am

**Thursday**  
July 14, 9:00am

**Friday**  
July 15, 9:00am

## 1. CALL TO ORDER and ROLL CALL

## 2. VIRTUAL MEETING PROCEDURES

## 3. Agenda Changes

## 4. General Public Comment

Public comments that are not related to any of the items specifically listed on the agenda will be heard at approximately 9:00 am, for no more than one hour. At the discretion of the Chair, speakers may be given up to 2 minutes. Due to the transition to a virtual meeting platform, the Coastal Commission at this time will not allow for the ceding of time from one speaker to another speaker. Note: You may address the Commission on a specific topic one time only each month. Please submit a request to speak by 5:00 pm the day before the hearing to assist with meeting management sign up. We will stop taking speaker requests by 8:30 am on each day of the meeting. Please see the Coastal Commission's Virtual Hearing Procedures memo for submitting a request to speak.

## 5. Chair's Report

## Statewide

## 6. Executive Director's Report

### a. Executive Director's Report

Report

Submit Comment

### b.

#### Commission Correspondence

Consideration and potential action on Commission correspondence  
Submit Comment

### c. Legislative Report

Report

Status and possible action on pending legislation. (JA/SC-SF)  
Submit Comment

d. **Filing Fees Increase**

Report Exhibits

Schedule of filing fees to be adjusted for inflation effective July 1, 2022 and other minor changes to the regulations. For informational purposes only. No Commission action necessary. (CW-SF) Submit Comment

e. **2023 Schedule of Meeting Dates and Locations**

Report

For discussion and possible action. (JA/VM-SF) Submit Comment

## 7. Administrative Calendar

a. **Application No. 5-22-0058 (Charles Erwin, Newport Beach)**

Report Exhibits

Application by Charles Erwin to relocate and re-deck floating dock & gangway; remove and replace two pipe piles at 5 Balboa Coves, Newport Beach, Orange County. (AS-LB) Submit Comment

**CONCURRED**

b.

**Application No. 5-22-0188 (University of California-Irvine, Newport Beach)**

Application of University of California-Irvine to repair two dock pillars in kind on the existing Shellmaker boathouse dock, with no grading, soil import, or fill, at 600 Shellmaker Road, Newport Beach, Orange County. (AS-LB) Submit Comment

**POSTPONED**

c. **Application No. 5-21-0668 (NH Island, LLC, Newport Beach)**

Report Exhibits

Application of NH Island, LLC to replace 10', 4" x 5' cantilevered concrete deck like-for-like, located at 748 Harbor Island, Newport Beach, Orange County. (FSY-LB) Submit Comment

**CONCURRED**

d. **Application No. 5-22-0315 (Samaan Family Trust, Huntington Beach)**

Report Exhibits

Application of Samaan Family Trust to permanently remove structurally compromised 281 sq.ft. concrete deck that cantilevered 5 ft. beyond the

bulkhead approved under emergency CDP G-5-21-0053; and to construct new 48', 2" long concrete deck cantilevered 5 ft. beyond the bulkhead, located at 3575 Courtside Circle, Huntington Beach, Orange County(MV-LB)  
Submit Comment

**CONCURRED**

## 8. Consent Calendar

### a. Application No. 5-22-0115 (Brian Mullaly, Seal Beach)

Report Exhibits

Application of Brian Mullaly to demolish single home home and build new two-story, 20' tall, 1,573 sq.ft. single-family home and attached 2-story 491 sq. ft. ADU; 440 sq.ft. detached ADU will remain onsite and would be re-stuccoed to match new single-family home. at 156 12th Street, Seal Beach, Orange County (AS-LB)Submit Comment

**Postponed**

## 9. Consent Calendar (removed from Regular Calendar)

### North Coast District

## 10. Deputy Director's Report

Report by Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, local government acceptance of modifications for LCP certification and on comments from the public relating to the Deputy Director's report. For specific information contact the Commission's Arcata office at (707) 826-8950. Submit Comments

**CONCURRED**

### a. Progress Report on Caltrans Eureka-Arcata Hwy 101 Corridor Sea Level Rise Adaptation Plan

Report Exhibits Appendix

Informational update on Caltrans District 1's progress on preparing a comprehensive adaptation plan for protecting, relocating, or otherwise adapting the Eureka-Arcata Highway 101 Corridor improvements authorized under CDP No. 1-18-1078 to address anticipated sea level rise related flooding hazards. (MBK-A)Submit Comment

## 11. Local Coastal Programs (LCPs)

a. **City of Eureka LCP Amendment No. LCP-1-EUR-20-0072-2 (Sign Regulations).**

Report Exhibits Appendix

Public hearing and action on request by City of Eureka to amend certified LCP Implementation Program (IP) to (1) repeal and replace Municipal Code Title 10 Chapter 5 Article 17 "Signs" with updated regulations pertaining to type, size, dimensions, placement, number, and design of signs and (2) amend related sections of IP Articles 1, 18, 22, 26, and 29 pertaining to signs. (TRG-A)Submit Comment

**APPROVED WITH MODIFICATIONS**

## 12. Coastal Permit Applications

a. **Application No. 1-20-0539 (Pacific Gas & Electric Co., Arcata)**

Report Exhibits Appendix

Application of PG&E to remove major vegetation along electrical lines near Arcata Sports Complex and Jacoby Creek in City of Arcata, including follow-up authorization for emergency vegetation removal in 2020 and 2021 and 10 years of ongoing vegetation maintenance within project maintenance area of up to ~11 acres along 2 mile stretch of its facilities, with offsite mitigation for riparian habitat impacts proposed at Cock Robin Island Unit of Eel River Wildlife Area, 4 miles west of Loleta, Humboldt County. (TLG-A)Submit Comment

**Postponed**

b. **Application No. 1-22-0064 (Sequoia Investments X, LLC, Humboldt County)**

Report Exhibits

Application by Sequoia Investments X, LLC to renovate coastal dependent industrial dock currently leased to Hog Island Oyster Co. for mariculture operations by replacing up to 100 failing and damaged wooden piles with 46 new steel piles, including follow-up authorization for emergency repairs undertaken in 2021 including removal of 12 damaged wood piles and installation of six steel piles on the Samoa Peninsula, western shore of Humboldt Bay, Humboldt County (BJ-A)Submit Comment

**Moved to Consent Calendar, APPROVED WITH CONDITIONS**

c.

**Application No. 1-22-0446 (Caltrans District 1, Mendocino County)**

Application by California Department of Transportation to demolish and replace two-lane Highway 1 bridge over Elk Creek with new, wider, two-lane bridge with standard bridge railings and shoulders, separated bicycle and

pedestrian path, and other roadway and bridge improvements and replace rock slope protection with root wad bank support revetment, located approx. 2.5 miles south of unincorporated town of Elk, Mendocino County.  
(AL-A) Submit Comment

Postponed

## South Coast District (Orange County)

### 13. Deputy Director's Report

Correspondence

Report by Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, local government acceptance of modifications for LCP certification and on comments from the public relating to the Deputy Director's report. For specific information contact the Commission's Long Beach office at (562) 590-5071. Submit Comments

CONCURRED

### 14. Local Coastal Programs (LCPs)

a.

#### **City Of Dana Point LCP Amendment No. LCP-5-DPT-20-0080-2**

Public hearing and action on request by City of Dana Point to amend the City's Implementation Plan (IP) for the '1996' LCP: Chapter 9.31 Flood Plain Overlay District and Chapter 9.75 Definitions and Illustrations of Terms. The proposed amendment is intended to conform the City's Flood Plain Overlay District to FEMA requirements, in Dana Point, Orange County. (MV-LB)  
Submit Comment

Withdrawn

### 15. New Appeals

a. **Appeal No. A-5-NPB-22-0022 (Park Newport Land LTD)**

Report Exhibits Correspondence Addendum

Appeal by Juliette & Todd Worthe from City of Newport Beach decision granting permit with conditions to Gerson Bakar & Associates for permanent installation of work conducted under Emergency CDPs CD2021-001 and CD2021-066 for rock fall mitigation consisting of anchored mesh, K-rail barriers, and temporary plastic tarps at select locations on coastal bluffs along Back Bay Drive below the Park Newport community, and authorizing new development consisting of on-going annual installation of plastic tarps from October through April on select bluff face locations and two new sections of soldier pile walls to protect two residential structures (Building 4

and Unit 4830) of Park Newport community at 5000 Park Newport Drive, Newport Beach, Orange County. (LR-LB) Submit Comment

**SUBSTANTIAL ISSUE FOUND, de Novo Hearing CONTINUED**

b. **Appeal No. A-5-LGB-22-0025 (Gray, Laguna Beach)**

Report Exhibits Addendum Correspondence

Appeal by Mark & Sharon Fudge from City of Laguna Beach decision granting permit with conditions to Mike & Lori Gray for new 3,552 sq.ft. single-family home and attached 489 sq. ft., two-car garage at 1007 Gaviota Drive, Laguna Beach, Orange County. (JD-LB) Submit Comment

**SUBSTANTIAL ISSUE FOUND, de Novo Hearing CONTINUED**

## 16. Permit Amendments

a. **Application No. 5-95-230-A3 (Scaife, San Clemente)**

Report Exhibits

Request by Joshua J. Scaife to amend previously approved permit to add 893 sq.ft. of living space on the 1st and 2nd floor of 1,756 sq.ft. single-family home, install new decks, extended entry, 2nd floor storage area, and new pool, and restore the canyon slope with native vegetation at 407 W. Avenida De Los Lobos Marinos, San Clemente, Orange County. (VL-LB) (Note: The Commission's enforcement division has opened an investigation into potential Coastal Act violations associated with this item and site, as is explained further in the staff report.) Submit Comment

**Moved to Consent Calendar, APPROVED WITH CONDITIONS**

## San Diego Coast District

### 17. Deputy Director's Report

Report by Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, local government acceptance of modifications for LCP certification and on comments from the public relating to the Deputy Director's report. For specific information contact the Commission's San Diego office at (619) 767-2370. Submit Comments

**CONCURRED**

### 18. Local Coastal Programs (LCPs)

a. **City of Encinitas LCP Amendment No. LCP-6-ENC-22-0014-1 (ADU and JADU Update Resubmittal).**

Report Exhibits

Public hearing and action on resubmittal by the City of Encinitas to amend its certified LCP Implementation Plan to modify regulations for accessory dwelling units and junior accessory dwelling units consistent with state law. (KC-SD) Submit Comment

**Moved to Consent, Approved as Recommended**

b. **City of San Diego LCP Amendment No. LCP-6-SAN-21-0092-3 (Airport Amendment).**

Report Exhibits Addendum

Public hearing and action on request by the City of San Diego to amend its certified Land Development Code (IP) to update various sections of its certified implementation plan to add San Diego International Airport, Naval Outlying Field Imperial Beach, and Naval Air Station North Island to the Airport Land Use Compatibility Overlay Zone. (ML-SD) Submit Comment

**Moved to Consent, Approved as Recommended**

## 19. New Appeals

a. **Appeal No. A-6-OCN-22-0019 (Dillon, Oceanside)**

Report Exhibits Correspondence Addendum

Appeal by Commissioners Brownsey and Hart, Surfrider Foundation and Citizens for Preservation of Parks and Beaches from decision of City of Oceanside granting permit with conditions to Mark Dillon to augment and repair rock revetment along 20 separate parcels at 909-1027 S. Pacific Street, Oceanside, San Diego County. (TR-SD) Submit Comment

**SUBSTANTIAL ISSUE FOUND, de Novo Hearing CONTINUED**

## 20. Coastal Permit Applications

a. **Application No. 6-20-0375 (Nachassi, San Diego)**

Report Exhibits Correspondence Addendum

Application of Elan Nachassi to demolish existing 410 sq. ft. 1-story residence, 408 sq. ft. 1-story residence, and 397 sq. ft. garage and construct 2,347 sq. ft. 2-story duplex on 3,498 sq. ft. lot at 5162 Cape May Avenue, Ocean Beach, San Diego, San Diego County. (CB-SD) Submit Comment

**APPROVED WITH CONDITIONS**

b. **Application No. 6-21-0353 (Northeast MB, LLC, San Diego)**

Report Exhibits Correspondence

Application of Northeast MB, LLC to expand existing Mission Bay RV Resort; demolish approx. 150 vacant mobile home sites adjacent to resort and

convert into recreational vehicle spaces with utility hookups, and repair internal roads, landscaping, and waterfront public pedestrian path, at 2727 De Anza Rd, Mission Bay Park, San Diego, San Diego County. (AL-SD) Submit Comment

**APPROVED WITH CONDITIONS**

c. **Application No. 6-22-0106 (San Diego North Torrey Pines Fire Station No. 52, San Diego)**

Report Exhibits

Application of City of San Diego to subdivide existing 240-acre lot to create a new 34,447 sq.ft. parcel and construct an approx. 14,664 sq.ft., 2-story, 3-bay fire station, southeast of the intersection of North Torrey Pines Road and Genesee Avenue, San Diego, San Diego County. (SL-SD) Submit Comment

**Moved to Consent Calendar, APPROVED WITH CONDITIONS**

## 21. Permit Amendments

a. **Permit No. 6-05-072-A2 (Las Brisas HOA, Solana Beach)**

Report Exhibits Correspondence

Request by Las Brisas Homeowners Association to amend permit for seawall to add approx. 60' long return wall extension perpendicular to southern end of 120' long, 35' high seawall, on bluff face below, at 135 South Sierra Avenue, Solana Beach, San Diego County. (KC-SD) Submit Comment

**Moved to Consent Calendar, APPROVED WITH CONDITIONS**

## Statewide

### Closed Session

At a convenient time during the meeting, the Commission (CCC) will have a closed session to discuss items of pending litigation, including:

AMJT Capital LLC, et al. v. CCC, Govt. Code § 11126(e)(2)(A)

Bode v. City of Encinitas, et al., Govt. Code § 11126(e)(2)(A)

California Coastal Commission v. North County Transit District, Govt. Code § 11126(e)(2)(A)

Casa Mira Homeowners Association, et al. v. CCC, Govt. Code § 11126(e)(2)(A)

Cave Landing v. CCC, Govt. Code § 11126(e)(2)(A)

Cotsen, et al. v. CCC, Govt. Code § 11126(e)(2)(A)

Env'tl Defense Center v. Bureau of Ocean Energy Management, Govt. Code § 11126(e)(2)(A)

Friends, Artists, & Neighbors of Elkhorn Slough, et al. v. CCC, Govt. Code § 11126(e)(2)(A)

Laguna Beach Historic Preservation Coalition, et al., v. CCC, Govt. Code § 11126(e)(2)(A)

Levy, et al. v. City of Los Angeles, et al., Govt. Code § 11126(e)(2)(A)

North Coast Railroad Authority, Govt. Code § 11126(e)(2)(A)

North County Transit District v. CCC, Govt. Code § 11126(e)(2)(A)

Pappas, et al. v. State Coastal Conservancy, et al., Govt. Code § 11126(e)(2)(A)

Ramirez Canyon Preservation Fund v. CCC, Govt. Code § 11126(e)(2)(A)

Ramirez Canyon Preservation Fund v. County of Los Angeles, Govt. Code § 11126(e)(2)(A)

Samuel Lawrence Foundation v. CCC, Govt. Code § 11126(e)(2)(A)

Tibbitts v. CCC, Govt. Code § 11126(e)(2)(A)

The Commission is authorized to discuss these matters in a closed session pursuant to Government Code Sections 11126(e)(2)(A) and (2)(C). In addition, the Commission may consider matters which fall under Government Code Section 11126(e)(2)(B) or (2)(C). The Commission may also consider personnel matters which fall under Government Code Section 11126(a).

## Statewide

### **22. Approval of Minutes**

**APPROVED**

### **23. Commissioners' Reports**

### **24. Commission Sub-Committee Reports**

### **25. Conservancy Report**

26. Santa Monica Mountains Conservancy Report

27. Santa Monica Bay Restoration Report

28. Deputy Attorney General's Report

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## **EXHIBIT B**



# Meeting Agenda

## August 2022

This Coastal Commission meeting will be conducted in a hybrid format, with public participation possible both virtually through video and teleconference, and in person. The Commission strongly encourages continued participation virtually through video and teleconferencing due to changing Covid-19 conditions.

King Gillette Ranch 26800 Mulholland Hwy  
Calabasas, CA 91302

(415) 407-3211

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Last Updated  
August 15 @ 5:00 pm

English

Español

Live Stream

[Virtual Hearing Procedures](#)

[Virtual Hearing Procedures in Spanish](#)

[Submit Speaker Request Here](#)

**Wednesday**  
August 10, 9:00am

**Thursday**  
August 11, 9:00am

**Friday**  
August 12, 9:00am

## 1. CALL TO ORDER and ROLL CALL

## 2. VIRTUAL MEETING PROCEDURES

## 3. Agenda Changes

## 4. General Public Comment

Public comments that are not related to any of the items specifically listed on the agenda will be heard at approximately 9:00 am, for no more than one hour. At the discretion of the Chair, speakers may be given up to 2 minutes. Due to the transition to a virtual meeting platform, the Coastal Commission at this time will not allow for the ceding of time from one speaker to another speaker. Note: You may address the Commission on a specific topic one time only each month. Please submit a request to speak by 5:00 pm the day before the hearing to assist with meeting management sign up. We will stop taking speaker requests by 8:30 am on each day of the meeting. Please see the Coastal Commission's Virtual Hearing Procedures memo for submitting a request to speak.

## 5. Chair's Report

### Statewide

## 6. Executive Director's Report

### a. Executive Director's Report

Report

Submit Comment

b.

### Commission Correspondence

Consideration and potential action on Commission correspondence  
Submit Comment

### c. Legislative Report

Report

Status and possible action on pending legislation. (JA/SC-SF)  
Submit Comment

d.

**Informational Presentation on the State Parks Sea Level Rise Adaptation Strategy**

Presentation by California State Parks staff on the newly released State Parks' Sea Level Rise Adaptation Strategy Submit Comment

e.

**Informational Presentation on MRCA's two new Malibu public access improvement projects**

Presentation by Mountains Recreation and Conservation Authority staff on new public accessways at Malibu Pier and Maritime Rocks/Big Rock Beach, Malibu. Submit Comment

## 7. ADMINISTRATIVE CALENDAR

a. **Application No. 1-90-210-A1 (Moat Creek Managing Agency, Pt. Arena)**

Report Exhibits

Application by Moat Creek Managing Agency to amend permit originally granted for public access facilities to add ADA improvements for trail, parking, and restroom access and to authorize ongoing trail maintenance activities, at Moat Creek Beach, 27150 South Highway 1, approx. 2 miles south of Point Arena, Mendocino County. (BJ-A) Submit Comment

**CONCURRED**

## 8. Consent Calendar

## 9. Consent Calendar (removed from Regular Calendar)

## Enforcement

## 10. Enforcement Report

Report by Chief of Enforcement on Statewide Enforcement Program. (LAH-SF)  
Submit Comments

## Energy, Ocean Resources & Federal Consistency

## 11. Energy, Ocean Resources & Federal Consistency

Report by the Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, negative determinations, matters not requiring public hearings, and status report on offshore oil & gas exploration & development. For specific information contact the Commission's Energy, Ocean Resources, and Federal Consistency Division office at (415) 904-5240. Submit Comments

### a. Poseidon Carlsbad Desalination Mitigation Program.

Report Exhibits

Review and possible Commission action on the proposed 2022-2023 Work Plan and Budget for technical oversight and independent monitoring under the Poseidon Carlsbad Desalination mitigation program required as condition of Permit No. E-06-013 (Poseidon Resources (Channelside) LP), San Diego County. (AB-SF) (Note: The Commission's enforcement division has opened an investigation into potential Coastal Act violations associated with this item and site, as explained further in the staff report.) Submit Comment

APPROVED

## 12. Coastal Permit Applications

### a. Application 9-19-1242 (Tomales Bay Oyster Company, Marin Co.)

Report Exhibits Correspondence Addendum

Application by Tomales Bay Oyster Company for after-the-fact authorization of approx. 33-acres of existing oyster and mussel aquaculture operations and associated activities on 160-acre lease of state water bottoms in the southwestern portion of Tomales Bay between Millerton and Tomasini points, Marin County. (AC-SF) (Note: The Commission's enforcement division has opened an investigation into potential Coastal Act violations associated with this item and site, as explained further in the staff report.) Submit Comment

Moved to Consent Calendar, APPROVED WITH CONDITIONS

## North Coast District

## 13. Deputy Director's Report

Report by Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, and on comments from the public relating to the Deputy Director's report. For specific information contact the Commission's Arcata office at (707) 826-8950. Submit Comments

CONCURRED

## 14. Coastal Permit Applications

a. **Application No. 1-20-0539 (Pacific Gas & Electric Co., Arcata)**

Report Exhibits Appendix Correspondence Addendum

Application by PG&E to remove major vegetation along electrical lines near Arcata Sports Complex and Jacoby Creek in the City of Arcata, including follow-up authorization for emergency vegetation removal in 2020 and 2021 and 10 years of ongoing vegetation maintenance within a project maintenance area of up to ~11 acres along 2 mile stretch of its facilities, with offsite mitigation for riparian habitat impacts proposed at the Cock Robin Island Unit of the Eel River Wildlife Area, 4 miles west of Loleta, Humboldt County. (TLG-A)Submit Comment

**APPROVED WITH CONDITIONS**

b. **Application No. 1-22-0446 (Caltrans District 1, Elk)**

Report Exhibits Addendum

Application of California Department of Transportation to demolish and replace existing two-lane Highway 1 bridge over Elk Creek with new, wider, two-lane bridge with standard bridge railings and shoulders, separated bicycle and pedestrian path, and other roadway and bridge improvements and replace existing rock slope protection with a root wad bank support revetment, located approximately 2.5 miles south of the unincorporated town of Elk, Mendocino County. (AL-A)Submit Comment

**APPROVED WITH CONDITIONS**

## San Diego Coast District

### 15. Deputy Director's Report

Report by Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, local government acceptance of modifications for LCP certification and on comments from the public relating to the Deputy Director's report. For specific information contact the Commission's San Diego office at (619) 767-2370. Submit Comments

**CONCURRED**

### 16. Local Coastal Programs (LCPs)

a. **City of Carlsbad LCP Amendment No. LCP-6-CAR-21-0087-3 (LCP Update). Time Extension.**

Report

Public hearing and action to extend the 90-day time limit for Commission action for up to one year on request by City of Carlsbad to replace the Land Use Plans (LUPs) for five LCP segments with a single new LUP; amend Village and Barrio Master Plan and Poinsettia Shores Master Plan; and amend land use and zoning designations for two parcels. (CB-SD) Submit Comment

Moved to Consent, Approved as Recommended

b. **City of San Diego LCP Amendment No. LCP-6-SAN-21-0090-3 (Moderate Income Housing)**

Report Exhibits

Concurrence with the Executive Director's determination that the request by the City of San Diego to amend its LCP Implementation Plan to expand affordable housing incentives to moderate income housing is de minimis. (AL-SD) Submit Comment

Moved to Consent, Approved as Recommended

c. **City of San Diego LCP Amendment No. LCP-6-SAN-22-0023-1 (2020 Code Update) Time Extension.**

Report

Public hearing and action to extend the 60-day time limit for Commission action for up to one year on request by City of San Diego to amend its certified Land Development Code (IP) with the 2020 update to various chapters consisting of changes and corrections. (AL-SD) Submit Comment

Moved to Consent, Approved as Recommended

d. **City of San Diego LCP Amendment No. LCP-6-SAN-22-0025-1 (2021 Code Update) Time Extension**

Report

Public hearing and action to extend the 60-day time limit for Commission action for up to one year on request by City of San Diego to amend its certified Land Development Code (IP) with the 2021 update to various chapters consisting of changes and corrections. (AL-SD) Submit Comment

Moved to Consent, Approved as Recommended

e. **City of Imperial Beach LCP Amendment No. LCP-6-IMB-22-0011-1 (ADU Update). Time Extension**

Report

Public hearing and action to extend the 60-day time limit for Commission action for up to one year on request by City of Imperial Beach to amend its certified LCP Implementation Plan to revise regulations related to accessory dwelling units consistent with state law. (CB-SD) Submit Comment

Moved to Consent, Approved as Recommended

**Items W17a & W18d, below will share a combined staff report and hearing**

**17. PUBLIC WORKS PLAN**

- a. **Notice of Impending Development No. NCC-NOID-0002-22 (Caltrans Interstate 5 Improvements Stage 4C, Encinitas and Carlsbad).**

Report Exhibits

Public hearing and action on NOID by California Department of Transportation, pursuant to NCC PWP/TREP, to repair eroded northern embankment of Interstate-5 at Agua Hedionda Lagoon with fill and rock slope protection covering two acres; placement of excess fill at the Poinsettia Avenue-Interstate-5 freeway gore site; bridge rail replacements at Agua Hedionda and Buena Vista Lagoons; southbound shoulder and slope repair between Carlsbad Village Drive and Chestnut Avenue; sound wall installation near Chinquapin Avenue; and ADA curb ramps at various locations within the cities of Encinitas and Carlsbad, San Diego County. (ME-SD) Submit Comment

**Moved to Consent, Approved as Recommended**

**18. Coastal Permit Applications**

- a. **Application No. A-6-LJS-20-0008 (Abbott, San Diego)**

Report Exhibits Correspondence Addendum

Application of Roger Abbott to demolish 5,524 sq.ft. 1-story single-family home and construct new approx. 9,176 sq.ft. home; remodel two detached garages on 1.37-acre blufftop lot, at 6340 Camino de la Costa, La Jolla, San Diego, San Diego County. (AL-SD) Submit Comment

**CONTINUED**

- b. **Application No. 6-20-0593 (Kimmich, Imperial Beach)**

Report Exhibits

Application of Ben Kimmich to construct new detached 1,188 sq.ft. 2-story accessory dwelling unit (ADU), new detached 1,144 sq.ft. office and storage structure, and 383 sq.ft. addition to existing 1,828 sq.ft. duplex; convert 625 sq.ft. detached garage to ADU; and after-the-fact construction of two detached 625 sq.ft. garages on 11,250 sq.ft. lot at 529-531 9th Street, Imperial Beach, San Diego County. (CB-SD) (Note: the Commission's enforcement division has opened an investigation into potential Coastal Act violations associated with this item and site, as explained further in the staff report.) (CB-SD) Submit Comment

**Moved to Consent Calendar, APPROVED WITH CONDITIONS**

c. **Application No. 6-21-0602 (SeaWorld, San Diego)**

Report Exhibits Correspondence

Application of SeaWorld San Diego to construct new 30 ft. high roller coaster and 14 ft. high electrical building in parking area and Wild Arctic building on 2.76-acre area within the SeaWorld leasehold at 500 SeaWorld Drive, Mission Bay Park, San Diego, San Diego County. (CB-SD) Submit Comment

Moved to Consent Calendar, APPROVED WITH CONDITIONS

d. **Application No. 6-22-0578 (Caltrans Interstate 5 Slope Stabilization at Agua Hedionda, Carlsbad)**

Report Exhibits

Application of California Department of Transportation to repair eroded northern embankment of Interstate-5 with fill and rock slope protection covering 2 acres adjacent to Agua Hedionda Lagoon, Carlsbad, San Diego County. (ME-SD) Submit Comment

Moved to Consent Calendar, APPROVED WITH CONDITIONS

## 19. Permit Amendments

a. **Permit No. 6-98-127-A3 (Caltrans State Route 56 HOV Operational Improvements, San Diego)**

Report Exhibits

Request by the California Department of Transportation to amend permit to construct middle segment of State Route 56 to construct a 24-Hour High Occupancy Vehicle Lane within the median of State Route 56 between El Camino Real and Carmel Creek Road, North City, San Diego, San Diego County. (ME-SD) Submit Comment

Moved to Consent Calendar, APPROVED WITH CONDITIONS

## Statewide

### Closed Session

At a convenient time during the meeting, the Commission (CCC) will have a closed session to discuss items of pending litigation, including:

Ailanto Properties, Inc. v. CCC, et al., Govt. Code § 11126(e)(2)(A)

AMJT Capital, LLC v. CCC, Govt. Code § 11126(e)(2)(A)

Beach Sandpit v. CCC, et al., Govt. Code § 11126(e)(2)(A)

Cal Coast Companies, LLC, et al. v. CCC, et al., Govt. Code § 11126(e)(2)(A)

California Coastal Commission v. North County Transit District, Govt. Code § 11126(e)(2)(A)

California State Lands Commission, et al. v. Martins Beach I, LLC, et al., Govt. Code § 11126(e)(2)(A)

Casa Mira Homeowners Association, et al. v. CCC, Govt. Code § 11126(e)(2)(A)

City of Ft. Bragg v. Mendocino Railway, Govt. Code § 11126(e)(2)(C)(i)

Friends, Artists, and Neighbors of Elkhorn Slough, et al. v. CCC, Govt. Code § 11126(e)(2)(A)

Friends of Oceano Dunes v. California Department of Parks and Recreation, et al. (21CV-0275), Govt. Code § 11126(e)(2)(A)

Friends of Oceano Dunes v. CCC, et al. (Case 16CV-0160), Govt. Code § 11126(e)(2)(A)

Friends of Oceano Dunes v. CCC, et al. (Case 17 CV-0267), Govt. Code § 11126(e)(2)(A)

Friends of Oceano Dunes v. CCC, et al. (Case 20CV-0100), Govt. Code § 11126(e)(2)(A)

Friends of Oceano Dunes v. CCC, et al. (Case 21CV-0214), Govt. Code § 11126(e)(2)(A)

Friends of Oceano Dunes v. CCC, et al. (Case No. 22CV-0024), Govt. Code § 11126(e)(2)(A)

North Coast Railroad Authority, Surface Transportation Board Docket No. AB 1305X, Govt. Code § 11126(e)(2)(A)

North County Transit District v. CCC, Surface Transportation Board Docket No. 36433, Govt. Code § 11126(e)(2)(A)

Samuel Lawrence Foundation v. CCC, Govt. Code § 11126(e)(2)(A)

Sanson v. CCC, et al., Govt. Code § 11126(e)(2)(A)

Wall, et al. v. Ainsworth, et al., Govt. Code § 11126(e)(2)(A)

The Commission is authorized to discuss these matters in a closed session pursuant to Government Code Sections 11126(e)(2)(A) and (2)(C). In addition, the Commission may consider matters which fall under Government Code Section 11126(e)(2)(B) or (2)(C). The Commission may also consider personnel matters which fall under Government Code Section 11126(a).

## Statewide

**20. Approval of Minutes**

**21. Commissioners' Reports**

**22. Commission Sub-Committee Reports**

**23. Conservancy Report**

**24. Santa Monica Mountains Conservancy Report**

**25. Santa Monica Bay Restoration Report**

**26. Deputy Attorney General's Report**

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## **EXHIBIT C**

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6/27/2022 11:44 PM  
Superior Court of California  
County of Mendocino

By:   
Dorothy Jess  
Deputy Clerk

5 Attorneys for Plaintiff  
6 CITY OF FORT BRAGG

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF MENDOCINO

11 CITY OF FORT BRAGG, a California  
12 municipal corporation,

13 Plaintiff,

14 v.

15 MENDOCINO RAILWAY AND  
DOES 1–10, inclusive

16 Defendants.

Case No. 21CV00850

**OPPOSITION OF CITY OF FORT BRAGG  
TO NOTICE OF RELATED CASE**

**JUDGE:** Hon. Clayton Brennan  
**DEPT.:** Ten Mile

EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT CODE SECTION 6103

19 Plaintiff City of Fort Bragg (“City”) hereby opposes the Notice of Related Case filed by  
20 Mendocino Railway (“MR”) in the above-captioned matter (the “City Action”) and in *Mendocino*  
21 *Railway v. John Meyer, et al.*, Mendocino County Superior Court Case No. SCUK-CVED-2020-  
22 74939 (the “Meyer Action”), and submits the following opposition thereto:

**MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I. INTRODUCTION.**

25 MR has belatedly filed a Notice of Related case in the *Meyer* and *City* Actions. The cases  
26 are not related *at all*, even if there could potentially be one similar issue that might be decided in  
27 each. Indeed, the parties are not the same, and nearly all the facts, the underlying subject matter,  
28 and the overall legal claims are all completely unrelated. Even as to the one issue that *may* be

1 similarly presented, there would be no substantial conservation of judicial or other resources, and  
 2 there are other significant reasons why the cases are not sufficiently related and/or there would be  
 3 severe detriment to the parties from the transfer of the *City* Action. This includes the fact that the  
 4 *Meyer* Action is currently set for trial and the City could not timely or adequately participate in  
 5 that trial. Further, the Notice appears to be merely an exercise in forum shopping by MR.

6 Thus, the Notice of Related Case should be denied. In the alternative, assuming *arguendo*  
 7 that the Court were to find that any issues would overlap in the Actions – although that is highly  
 8 speculative, the Court can, at the most under the circumstances presented, informally coordinate  
 9 some aspects of the Actions, without transfer of the *City* Action and/or disruption of the set trial  
 10 in the *Meyer* Action.

## 11 **II. STATEMENT OF FACTS.**

12 The *Meyer* action is an eminent domain action filed by MR against John Meyer and  
 13 others, relating to specific property *not* within the City of Fort Bragg, but within the City of  
 14 Willits (APN 038-180-53).<sup>1</sup> MR's Complaint in the *Meyer* Action was filed on December 22,  
 15 2020, and has been pending a year and a half.

16 In fact, it is currently scheduled for a bifurcated trial on July 11, 2022. The issues in the  
 17 first part of the bifurcated trial relate to the authority of MR to exercise eminent domain, and  
 18 whether there is sufficient justification for public use and necessity of the particular proposed  
 19 uses MR's intends or proposes for the specific property in Willits, and alternative properties, at  
 20 issue in the *Meyer* Action. (See *Meyer* Action Complaint, at ¶¶ 6-8; Motion to Bifurcate and  
 21 Specially Set Bench Trial, filed on or about April 14, 2022.) In the second portion of the  
 22 bifurcated trial, the just compensation would need to be determined, if any. Notably, this is a jury  
 23 question, whereas all issues in the *City* Action are issues to be determined by the Court, not a  
 24 jury.

25 MR filed the Notice of Related Case in both Action on or about June 22, 2022.

26 ///

27 \_\_\_\_\_  
 28 <sup>1</sup> The Court is requested to take judicial notice of its own records in both the *Meyer* and the *City*  
 Actions. Cal. Evid. Code § 452 (d)(1). - 2 -

1           The *City* Action against MR was filed on October 28, 2021, nearly a year after the *Meyer*  
2 Action commenced. The only parties to the *City* Action are the City of Fort Bragg and MR.  
3 However, the City is informed by counsel for the California Coastal Commission that the  
4 Commission intends to consider whether to seek to intervene in the *City* Action at its next  
5 upcoming regular monthly meetings on July 13-15. Therefore, additional potential parties could  
6 be impacted, and would be even more remotely related to the primary issues in the *Meyer* Action.

7           The City's Action generally seeks a declaration of the rights and duties as between the  
8 City and MR, relating to property owned and/or operated by MR and located in the *City of Fort*  
9 *Bragg*. Specifically, the *City* Action relates to the City's authority as to applicable regulations to  
10 MR's property/ies, potential nuisance activities, uses, and/or buildings and other activities of MR  
11 within the City. While this includes a general legal issue of the public entity status of MR (not its  
12 eminent domain powers, however), there are many other factually and legally distinct issues in  
13 the *City* Action, including the following: a dilapidated building needing repair/demolition;  
14 unpermitted/uninspected and/or non-compliant work; failure to obtain permits; conditions of real  
15 property, including environmental or other health and safety hazards, or other hazardous or  
16 noxious conditions, substances, or activities; activities and/or uses in violation of applicable laws  
17 or regulations; etc. The City seeks declaratory and injunctive relief in order to compel MR to  
18 bring its property/ies *within the City of Fort Bragg* into compliance with the law as may be  
19 applicable to MR.

20           MR initially filed a demurrer in the *City* Action on January 14, 2022. That demurrer was  
21 denied by the Court's written order on April 28, 2022. Unhappy with the result, MR filed a  
22 petition for writ of mandate with the Court of Appeal on May 3, 2022. The Court of Appeal  
23 denied the petition by written order on June 9, 2022. MR then filed a Petition for Review with  
24 the California Supreme Court on June 20, 2022, which was summarily denied on June 23, 2022.

25 ///

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27 ///

28

1 **III. THE TWO ACTIONS ARE NOT SUFFICIENTLY RELATED AND/OR THERE**  
 2 **IS OTHERWISE NO VALID BASIS FOR FINDING THE ACTIONS RELATED**  
 3 **AND/OR TO TRANSFER THE CITY'S ACTION.**

4 All parties have a duty to provide notice of “related cases” “no later than 15 days after the  
 5 facts concerning the existence of related cases become known.” Cal. Rules Ct., Rule 3.300 (b)-  
 6 (e). “Related cases” are those which:

- 7 (1) Involve the same parties and are based on the same or similar claims;  
 8 (2) Arise from the same or substantially identical transactions, incidents, or events  
 9 requiring the determination of the same or substantially identical questions of law or  
 10 fact;  
 11 (3) Involve claims against, title to, possession of, or damages to the same property; or  
 12 (4) Are likely for other reasons to require substantial duplication of judicial resources if  
 13 heard by different judges.

14 As noted above, the cases do *not* involve the same parties, the same claims or the same  
 15 property. Further, the overall claims in the Actions are not similar at all, and do not arise from  
 16 the same or substantially identical transactions, incidents, or events, or involve the same or  
 17 substantially identical questions of law or fact. Indeed, the Actions involve completely unrelated  
 18 facts, in that the *Meyer* Action pertains to a single property in the City of Willits, and MR’s  
 19 purported need for that specific property as justification for eminent domain, whereas the *City*  
 20 Action involves MR’s activities within the City of Fort Bragg, and the condition of MR’s  
 21 property/ies within the City and/or MR’s activities and the applicability of certain local regulatory  
 22 authority over the same. The fact that one legal issue *may* be decided in each case is an  
 23 inadequate basis to delay and disrupt the *Meyer* Action and/or to truncate the City’s ability to  
 24 adequately and timely participate in the trial already set in that action for July 11<sup>th</sup>.

25 In fact, as noted in MR’s Motion to Bifurcate, MR asserted that the eminent domain action  
 26 is entitled to priority; thus, it seems proper that the trial already set should proceed as scheduled,  
 27 without delay. If, however, the *City* Action were to be transferred, such action would seem to  
 28 require that either the City be required to participate in a trial already set, or the *Meyer* Action  
 would be required to be delayed, for an indefinite time period, since the *City* Action has been  
 entirely consumed, since its commencement, solely with MR’s demurrer. MR acknowledged in

1 its Motion to Bifurcate that it would, in fact, be prejudiced, if the right-to-take objections were not  
2 expeditiously determined as to that specific property as part of the *Meyer* Action.

3 Furthermore, it is not clear that either of the Actions will *necessarily* involve the legal  
4 issue of whether MR is a public utility, in that that is only one issue in the *City* Action, and MR's  
5 eminent domain power as to the property in the *Meyer* Action may not even touch on the issue of  
6 MR's status.

7 Thus, even though Defendant Meyer does raise the issue of whether MR is a common  
8 carrier railroad entitled to exercise eminent domain in his Amended Answer, Defendant Meyer  
9 also raises the following issues: whether the complaint sufficiently describes MR's necessity for  
10 the property, the nature of the rail projects for which condemnation is being sought, the specific  
11 nature of the public use proposed by condemnation of the property, whether the proposed use is  
12 most compatible with the greatest public good, etc.; as well as asserting other unrelated  
13 affirmative defenses such as: failure to state a claim, lack of power of eminent domain  
14 specifically "for the purposes stated in the complaint," that "[t]he state purpose is not for public  
15 use," that MR "does not intend to devote the Property to the stated purpose," that "[t]here is no  
16 reasonable probability that Plaintiff will devote the Property to the stated purposes within seven  
17 (7) years, or such other longer period as is reasonable," that "[p]ublic interest and necessity do not  
18 require the proposed Project," that "[t]he proposed Project is not planned or located in the manner  
19 that will be most compatible with the greatest public good and least private injury," and that  
20 "[t]he Property [or all of the Property] is not necessary for the proposed Project." (*See* Defendant  
21 John Meyer's First Amended Answer to Complaint for Eminent Domain, filed on or about May  
22 27, 2022 in the *Meyer* Action, at ¶¶ 4-10; pp. 4-5.) There are a whole host of legal issues that  
23 could well obviate any need for the overall public entity status of MR to ever be decided in the  
24 *Meyer* Action.

25 Moreover, the City has information from legal counsel for the California Coastal  
26 Commission that -- now that the demurrer issue in the *City* Action has been conclusively  
27 determined, the Commission intends to consider intervening in the *City* Action at its upcoming  
28 July meeting. This intended consideration is not anticipated to occur until *after* the set trial in the

1 *Meyer* Action, which again would either impair the normal progression of the *City* Action, or  
2 would require delay in the *Meyer* Action.

3 In addition, MR has significantly delayed in filing its Notice of Related Case. Despite the  
4 fact that MR itself is a party to *both* actions, MR notably did not file the Notice of Related Case,  
5 despite having notice of the contents of the *City* Action in or about November 2021 when it was  
6 served. As noted above, MR was required to file its Notice of Related Case within *15 days* of its  
7 knowledge of the two purportedly related cases, or in or about *December 2021*. Interestingly,  
8 MR did not immediately file the Notice of Related Case. Indeed, it did not even just belatedly  
9 file the Notice of Related Case at some reasonable time thereafter.

10 Instead, it waited until its demurrer was heard in the Ten Mile Branch by the Honorable  
11 Clayton L. Brennan, after His Honor had already expended judicial resources carefully  
12 considering one of the same legal issues that MR now claims that Court should be saved from  
13 utilizing further judicial resources to potentially decide further. And, MR *still* did not file its  
14 Notice even after that ruling issued by the Superior Court. MR also did not file the Notice after  
15 the denial by the Court of Appeal of MR's Petition for Writ of Mandate.

16 In fact, MR waited until just after filing its Petition for Review with the Supreme Court --  
17 apparently as an insurance policy so that MR could try to obtain a different ruling than the one  
18 already issued *against* it by the Court in the *City* Action. It waited until just prior to all of its  
19 appeal options had expired before filing the Notice. One of the very purposes of the Notice of  
20 Related Case process is to avoid just such forum shopping.

21 In the alternative, assuming *arguendo* that the Court were to find that any issues may  
22 potentially overlap in the Actions, it can, at most, informally coordinate some aspects of the  
23 Actions, without transfer of the *City* Action and/or disruption of the set trial in the *Meyer* Action.

#### 24 **IV. CONCLUSION.**

25 For all of the foregoing reasons, in response to the Notice of Related Case, the Court  
26 should find that the cases are not related, since the Actions only *potentially* involve one  
27 underlying issue identified by MR, whereas the two Actions otherwise are dissimilar in all other  
28 respects. There would be no real conservation of judicial resources, and there would only be the

1 “avoid[ance] [of] *potentially* conflicting rulings” – which may never actually materialize. There  
2 would also seem to be significant disruption of the *Meyer* Action, which is already set for an  
3 upcoming trial date, and which would have to, either be delayed, as to an action entitled to  
4 priority, or the City would have inadequate time to fully prepare and participate in that trial.  
5 Further, the *City* Action may involve other parties unrelated to the *Meyer* Action. Taken together,  
6 all of these circumstances require that the cases be found not related, and/or that the *City* Action  
7 not be transferred because the Actions are not properly joined together in the same court. In the  
8 alternative, the Court should, at most, informally coordinate some limited aspects of the Actions,  
9 without transfer.

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Dated: June 27, 2022

JONES MAYER

By:   
\_\_\_\_\_  
Krista MacNevin Jee,  
Attorneys for Plaintiff,  
CITY OF FORT BRAGG

1 *Fort Bragg v. Mendocino Railway*  
2 *Case No. 21CV00850*

3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA** )  
5 **COUNTY OF ORANGE** ) **ss.**

6 I am employed in the County of Orange, State of California. I am over the age of 18 and  
7 not a party to the within action. My business address is 3777 North Harbor Blvd. Fullerton, Ca  
8 92835. On June 27, 2022, I served the foregoing document(s) described as **OPPOSITION OF  
9 CITY OF FORT BRAGG TO NOTICE OF RELATED CASE**, on each interested party **listed  
10 below/on** the attached service list.

11 Paul J. Beard, II  
12 Fisherbroyles LLP  
13 4470 W. Sunset Blvd., Suite 93165  
14 Los Angeles, CA 90027  
15 T: (818) 216-3988  
16 F: (213) 402-5034  
17 Email: [paul.beard@fisherbroyles.com](mailto:paul.beard@fisherbroyles.com)

18 — (VIA MAIL) I placed the envelope for collection and mailing, following the ordinary  
19 business practices.

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25 or postage meter date is more than one day after date of deposit for mailing affidavit.

26 XX (VIA ELECTRONIC SERVICE) By electronically transmitting the document(s) listed  
27 above to the e-mail address(es) of the person(s) set forth above. The transmission was  
28 reported as complete and without error. See Rules of Court, Rule 2.251.

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct. Executed on June 27, 2022 at Fullerton, California.

21   
22 \_\_\_\_\_  
23 WENDY A. GARDEA  
24 wag@jones-mayer.com