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**FILED**

NOV 26 2024

CLERK OF MENDOCINO COUNTY  
SUPERIOR COURT OF CALIFORNIA  
*[Signature]*

**NO FEE REQUIRED PURSUANT  
TO GOVERNMENT CODE  
SECTION 6103**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MENDOCINO

**CITY OF FORT BRAGG,**

Plaintiff,

v.

**MENDOCINO RAILWAY,**

Defendant,

**CALIFORNIA COASTAL COMMISSION,**

Intervenor.

Case No. 21CV00850

**INTERVENOR CALIFORNIA COASTAL  
COMMISSION'S OPPOSITION TO  
JOINT EX PARTE APPLICATION FOR  
STAY AND CONTINUANCE OF TRIAL  
DATE**

Date: November 26, 2024  
Time: 1:15 p.m.  
Dept: TM  
Judge: Honorable Clayton L. Brennan

Trial Date: April 8, 2025  
Action Filed: October 28, 2021



1 preempts state and/or local regulation of the Railway's activities—and thus, the prospect of  
2 settling the entire case in the next 90 days is remote.

3 Therefore, the City's and Defendant's Application for a stay and trial continuance should be  
4 denied, and the April 8, 2025 trial date should be maintained.

### 5 PROCEDURAL BACKGROUND

#### 6 I. INITIATION OF CASE AND REMOVAL – 2021-2022

7 After the City filed its complaint in October 2021, Defendant first sought to dispose of this  
8 case by demurrer in January 2022, which this court denied, and the Court of Appeal subsequently  
9 denied Defendant's writ seeking review of this Court's decision on its demurrer on June 9, 2022.  
10 (Order Denying Petition, filed June 9, 2022.) Not satisfied with that result, Defendant petitioned  
11 for review of the Court of Appeal's decision to the California Supreme Court, which was also  
12 denied, on June 23, 2022. Next, Defendant sought to relate this case to the *Meyer* eminent domain  
13 action, now in the Court of Appeal, which did not involve either the City or the Coastal  
14 Commission. That attempted relation and relocation of this case to Ukiah was summarily denied  
15 by Presiding Judge Nadel on September 30, 2022. (See Coastal Commission's Request for  
16 Judicial Notice in Support of Opposition to Motion for Stay, filed October 6, 2023, Exh. A.)

17 In its Opposition to Defendant's Notice of Related Case, filed June 27, 2022, the City noted  
18 that the Commission was considering seeking to intervene in this action. (Opposition of City of  
19 Fort Bragg to Notice of Related Case, filed June 27, 2022, at pp. 5-6.) The next month, the City  
20 requested that the Commission assume responsibility for enforcement against Defendant. The  
21 Commission agreed to do so and sent a Notice of Violation letter to Defendant on August 10,  
22 2022. (See Motion to Intervene, filed September 8, 2022, at pp. 21-25.) That same week,  
23 Defendant filed a separate lawsuit against the City and the Commission in federal court, which  
24 was ultimately dismissed and unsuccessfully appealed by Defendant in the Ninth Circuit.

25 Then, on September 6, 2022, now more than two years ago, this court set trial in this matter  
26 for June 21, 2023. Two days after the court set that initial trial date, the Commission filed its  
27 motion seeking to intervene. The next week, and more than ten months after the City initiated this  
28 action, Defendant attempted to disqualify Judge Brennan from this case, which caused further

1 delay until such time that an impartial judge from another county could deny that motion to  
2 disqualify at the end of September 2022. (Order on Motion to Disqualify Judge Brennan, filed  
3 September 29, 2022.)

4 On October 20, 2022, this Court granted leave for the Commission to intervene, but before  
5 the Commission even had an opportunity to file its Complaint in Intervention, Defendant  
6 removed this case to federal court. (Notice of Removal, filed October 20, 2022.) Eight days later  
7 marked one full year since the City had filed its complaint alleging a single cause of action for  
8 declaratory relief against Defendant, and with its multiple unsuccessful motions and spurious  
9 appeals, Defendant had essentially prevented any substantive proceedings or discovery from  
10 occurring in this case, then forcing it into federal court.

11 On October 27, 2022, now more than two years ago, the Commission filed and served its  
12 Complaint in Intervention in both state and federal court, as the case was, at that time, still  
13 removed to federal court.

## 14 **II. REMAND TO STATE COURT - 2023**

15 In April 2023, while the case languished in federal court, this court was forced to vacate its  
16 initial June 2023 trial date. More than six months after Defendant removed the case, in May 2023,  
17 district court Judge Tigar confirmed that Defendant had improperly removed this matter to federal  
18 court and granted the City's and the Commission's motions to remand. On July 25, 2023,  
19 Defendant finally filed an answer to the Commission's Complaint in Intervention. Now that the  
20 instant case was back in this Court, however, and facing the prospect of this action moving  
21 forward and discovery finally starting in earnest (more than 21 months after the filing of the  
22 City's complaint), on September 5, 2023, Defendant filed a motion seeking to stay this case (and  
23 all discovery) for an indeterminate amount of time to allow Defendant to pursue appeals of its  
24 dismissed federal complaint and failed eminent domain action. This Court denied that motion for  
25 stay on November 2, 2023, more than two years after the City had filed its initial complaint,  
26 during which time no discovery had commenced. On December 21, 2023, this Court set the  
27 matter for trial on October 23, 2024.

28 //

1 **III. DISCOVERY AND TRIAL CONTINUANCES - 2024**

2 Subsequently, on June 13, 2024, the parties submitted a joint stipulation requesting that the  
3 October trial date be continued for approximately four months, "to allow the Parties to complete  
4 discovery and likely prepare and file dispositive motions," which the court granted, thus moving  
5 the trial date to February 26, 2025. (Stipulation and Order to Continue Trial, filed June 13, 2024.)  
6 On August 27, 2024, this Court then continued the trial again to its current date of April 8, 2025.  
7 In total, the trial date has been vacated and continued four times, for a total of nearly 22 months,  
8 and Defendant and the City now seek to push it out at least three more months.

9 Out of options for further delay, Defendant finally had to concede and allow discovery to  
10 proceed, with multiple exchanges of written discovery between the Commission, City, and  
11 Defendant, as well as production of documents, between January and October 2024. In May  
12 2024, Defendant indicated that it would only produce some documents responsive to the  
13 Commission's document requests under a protective order, but it did not provide a draft of such a  
14 protective order until July 11, 2024. After nearly two months of review and suggested revisions  
15 by the City, the Commission was able to send the draft protective order, with proposed revisions,  
16 back to Defendant on September 9, 2024. Despite the Commission's multiple requests for a  
17 response regarding the protective order over the past two months, as of the date of this filing,  
18 Defendant has not provided a substantive response to those proposed revisions. The Commission  
19 was waiting on finalizing that protective order and receiving the allegedly confidential documents  
20 from Defendant before scheduling depositions of Defendant's employees, but it appears that  
21 protective order demand was likely another delay tactic by Defendant, dragging the review  
22 process out for more than six months. In an effort to keep discovery moving, with the trial date  
23 five months away, on November 18, 2024, the Commission asked to finalize the protective order  
24 so that Defendant might finally produce its documents and could schedule the relevant  
25 depositions. (See Declaration of Patrick Tuck, attached hereto, at ¶ 3.) Just over a week later,  
26 apparently realizing that its multiple delays in this case had greatly shortened its window for  
27 completing discovery and preparing a dispositive motion before the April trial date, Defendant  
28 convinced the City to join in this unnecessary ex parte application for a stay and trial continuance.



## ARGUMENT

The Commission agrees that this court has an inherent power and discretion “to stay proceedings when such a stay will accommodate the ends of justice.” (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141, quoting *People v. Bell* (1984) 159 Cal.App.3d 323, 329.)

Here, however, after three years of unsuccessful attempts by Defendant to prevent this court from hearing this case and both Defendant’s and the City’s unnecessary delays in the discovery process, justice would not be accommodated by further delaying the matter and continuing the trial to a date that would be more than two years after the initial date set for trial, and three and half years after this case was initiated.

Additionally, because Defendant and the City have not involved the Commission in any of their “numerous” settlement discussions to date, and those discussions allegedly have been going on for at least five months since the last trial continuance, including “a full-day formal mediation” between just Defendant and the City, it would not be in the interests of justice to grant this requested stay and trial continuance without a noticed motion simply because the requesting parties suddenly realized the trial date and dispositive motion deadlines were coming up, without further justification for the delay in submitting this request. (Application, at p. 7.)

In their Application, Defendant and the City claim that the requested stay and continuance would not be prejudicial to the Commission because the Commission has indicated that it is willing to participate in settlement negotiations. (Application, at pp. 6, 8, 10, 11.) However, such nebulous attestations, without any actual informal or formal discussions involving the Commission having taken place or even being scheduled to take place in the future, do not demonstrate that the stay and continuance would not be prejudicial to the Commission. If this 90-day stay and three-month trial continuance is granted, on the sole basis that Defendant and the City have engaged in some settlement discussions, without the Commission and without any clear progress towards settlement, it is hard to believe that the “significant time and resources” that the City and Defendant admit it will take to resolve this matter will come to fruition in the next 90 days, and those parties will be right back here seeking another stay and likely another continuance of trial. (Application, at p. 9.)

1 As discussed above, it has been more than three years since the City first filed its complaint  
2 in this matter, and more than two years since the Commission intervened, and Defendant and the  
3 City now seek a July 2025 or later trial date, more than two years after the initial June 2023 trial  
4 date set by this Court in September 2022. This case has been delayed long enough, and resolution  
5 of the preemption questions likely will not be addressed by settlement, but will require a trial,  
6 which can be completed in April, as currently set.

7 If Defendant and the City committed to timely responding to discovery requests, such as  
8 completing the protective order and producing the purported confidential documents, the  
9 Commission believes the parties can finish all discovery in the coming months, and well in  
10 advance of trial. At no time before the filing of this Application has Defendant or the City  
11 indicated that it had not completed sufficient discovery to date to prepare a dispositive motion or  
12 to prepare for trial, or have requested any specific additional discovery to that end.

13 Defendant and the City dismissively state in their Application that the Commission will not  
14 suffer any prejudice from this stay and trial continuance. (Application, at pp. 6, 8, 10, 11.) Not so.  
15 In its complaint in intervention, the Commission alleged that Defendant has undertaken  
16 development activities in the coastal zone, and likely will undertake more unpermitted  
17 development activities in the near future, which may harm the coastal zone environment and its  
18 natural and artificial resources. (Complaint in Intervention, ¶¶ 4-6, 12, 17.) In both of their  
19 complaints, the City and the Commission seek to enjoin Defendant from continuing with these  
20 ongoing development actions, which violate state and local law. (Complaint in Intervention,  
21 Prayer, ¶ 4; City's Complaint, ¶¶ 15-21.) The actions by Defendant constitute ongoing harms, and  
22 yet the Commission has been stifled in its attempt to complete discovery and obtain documents  
23 pursuant to Defendant's protective order that may shed light on the scope and damage done by  
24 Defendant's development activities, and so that the Commission might prepare for trial.

25 It is unknown what evidence of Coastal Act violations may have been destroyed or is being  
26 destroyed by Defendant as we speak, or what detrimental activities Defendant may undertake in  
27 the coastal zone while this case is stayed and trial continues to be pushed back. Only with timely  
28 and complete discovery in this case will the parties be able to understand the extent of













