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April 12, 2024

VIA ELECTRONIC FILING

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

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

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the Great Redwood Trail Agency ("GRTA") Application for Adverse Abandonment. As noted in GRTA's letter, dated February 28, 2023, the fee for an application for abandonment is waived pursuant to 49 C.F.R. § 1002.2(e)(1), as GRRTA is a public agency created by the State of California as discussed in more detail in the Application. However, GRTA has paid the fee in the interest of having this proceeding move forward as quickly as possible. It does request that the fee be waived and be refunded in accordance with this rule.

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

FILED
April 12, 2024
SURFACE
TRANSPORTATION BOARD

Respectfully submitted,

/s/ Daniel R. Elliott
Daniel R. Elliott

Attorney for Great Redwood Trail Agency

FEE RECEIVED
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Attachment

VERIFCATION ATTESTING TO COMPLIANCE WITH NOTICE REQUIREMENT

I affirm that Great Redwood Trail Agency ("GRTA") has complied with the notice requirement set forth in 49 C.F.R. § 1152.20 as required by 49 C.F.R. § 1152.20.

On March 14, 2024, GRTA filed with the Board and served its Notice of Intent upon all entities as required by 49 C.F.R. § 1152.20(2).

The Board waived the Posting requirement in its August 21, 2023 Waiver Decision. *See Great Redwood Trail Agency -Adverse Abandonment – Mendocino Railway in Mendocino County, CA,* STB Docket No. AB 1305 (Sub-No. 1) at 5 (STB served Aug. 21, 2023).

The Notice of Intent was published in the print and electronic versions of the Ukiah Daily Journal for three consecutive weeks, on March 20, 2024, March 27, 2024, and April 3, 2024. See Exhibit 2.

Verification

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verification.

Daniel Elliott

Dated: April 5, 2024

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

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

APPLICATION FOR ADVERSE ABANDONMENT

Pursuant to 49 U.S.C. § 10903(d) and 49 C.F.R. § 1152.22, as partially waived and exempted in the Surface Transportation Board's ("STB" or "Board") Decision, served August 21, 2023 ("Waiver Decision"), the Great Redwood Trail Agency ("GRTA"), a public agency created by the State of California, hereby respectfully applies for a Board determination that the present and future public convenience and necessity ("PC&N") permit adverse abandonment of the line of the Mendocino Railway ("MR") that extends between Milepost 0 at Fort Bragg and Milepost 40 at Willits, a total distance of approximately 40 miles in Mendocino County, California ("MR Line").[1] GRTA owns track connected to the MR Line over which MR operates to reach its passenger depot for its intrastate tourist excursion rail service.

Several of GRTA's requests for waivers and exemptions were granted in the Board's Waiver Decision. The Notice of Intent was filed and served on March 14, 2024, pursuant to 49 C.F.R. § l152.20(a)(l). It was then published for 3 consecutive weeks in the Ukiah Daily Journal pursuant to 49 C.F.R. § 1152.20(a)(4). *See* Exhibit 2. The Environmental and Historic Report was served on March 14, 2024, pursuant to 49 C.F.R. § 1152.20(c). *See* Exhibit 3. The draft Federal Register Notice, pursuant to the Board's Waiver Decision and 49 C.F.R. § 1152.22(i), is attached hereto as Exhibit 4.

[1] A map of the Line is attached hereto as Exhibit 1.

I. INTRODUCTION

The "primary question" in an adverse abandonment case is whether "removal of [the Board's] jurisdiction as a shield against state law is in the public interest."[2] To decide this question, the Board weighs any need for rail transportation against the cited reasons for abandoning rail service and determines whether the public interest justifies continued Board jurisdiction to "shield" the railroad line from the ordinary operation of state property law.[3]

Rarely has the Board been presented with a case where the balance of interests is more lopsided. On one side of the balance, there is no need for rail transportation on the MR Line. No interstate rail shipments have originated or terminated on the MR Line since it was purchased out of bankruptcy by MR in 2004.[4] (The MR Line thus would qualify for a class exemption under 49 C.F.R. § 1152.50 if MR requested one.) The last business operation on the MR Line, Georgia-Pacific, that once used rail transportation ceased operations in 2002. In fact, MR purchased the former Georgia-Pacific lumber mill site and intends to convert it to a new use which will not

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[2] *CSX Corp. & CSX Transp., Inc. – Adverse Abandonment Application – Canadian Nat'l Ry. Co., & Grand Trunk W. R.R. Inc.,* STB Docket No. AB-31 (Sub-No. 38), at 6 (STB served Feb. 1, 2002) ("Grand Trunk"); *see also Minn. Commercial Ry. Co. Adverse Discontinuance – In Ramsey Cty., MN*, STB Docket No. AB-882, at 3 (STB served Jul. 16, 2008) *(*"*Minn. Commercial*") ("we do not allow our jurisdiction to be used to shield a line from the legitimate processes of state law where no overriding Federal interest exists."); *Modern Handcraft, Inc. – Abandonment in Jackson Cty., MO*, 363 I.C.C. 969, 972 (1981) ("We will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of State law where there is no overriding Federal interest in interstate commerce.").

[3] *Paulsboro Ref. Co. LLC – Adverse Abandonment – in Gloucester Cty., N.J.*, STB Docket No. AB-1095 (Sub-No. 1) (STB served Dec. 2, 2014); *Grand Trunk* at 6 ("Where no overriding federal interest exists, we will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of state law."); *see also City of Chicago, IL – Adverse Abandonment – Chicago Terminal R.R. in Chicago, IL*, STB Docket No. AB-1036, at 3 (STB served Jun. 16, 2010) ("*City of Chicago*").

[4] *See Mendocino Railway–Acquisition Exemption–Assets of The California Western Railroad*, STB Docket No. FD-34465 (STB served Apr. 9, 2004).

produce any new freight service needs. MR has no reasonable prospects for future business along the MR Line as there is no need for rail service in this area and the MR Line is no longer connected to the interstate freight rail system. While MR has made claims to the Board about alleged "full freight service" on the MR Line,[5] it has not identified a single business that has expressed the slightest interest in present or future interstate rail shipments on the MR Line.

On the other side of the balance, the public interest strongly favors abandonment. GRTA initiated this proceeding because it is working to transform a connecting rail line that has not been used since 1998 into a 307-mile, world-class, multi-use rail-to-trail project connecting California's San Francisco and Humboldt Bays, under the mandate of the California state legislature.[6] The legacy trail will travel through some of the wildest and most scenic landscapes in the United States, traversing old growth redwood forests, running alongside oak woodlands and vineyards, and winding through the magnificent Eel River Canyon. This development will benefit residents, local businesses, and visitors.

MR's own recent conduct is further evidence of why it is in the public interest for the Board to remove the shield of its jurisdiction from this unnecessary rail line. As discussed in detail in Section IV, MR has attempted to use its status as a railroad under the jurisdiction of the Board to avoid state and local regulations and to obtain private properties under state eminent domain laws despite having no interstate rail operations on the MR Line. This abuse of the STB's preemption powers has wreaked havoc in the local area as local governments and individuals expend precious

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[5] *See* Reply of Mendocino Railway, *Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino Cty., CA*, STB Docket No. AB-1305 (Sub-No. 1), Doc. No. 306350, at 6-7 (Mar. 20, 2023).

[6] *See About*, Great Redwood Trail Agency, https://thegreatredwoodtrail.org/about/; Cal. Gov. Code §§ 93000 *et seq.*

resources to defend themselves against these nefarious legal machinations. MR's attempt to gain leverage over local residents and businesses as well as the community by misusing its powers as a railroad is exactly the kind of abuse of the Board's jurisdiction that should not be shielded from the legitimate processes of state law.

Section II of this Application sets forth GRTA's interest in this case. Section III of this Application provides the information required under 49 C.F.R. § 1152.22. Section IV of this Application contains the primary substantive elements of GRTA's case in chief explaining that there is no current need for rail service and responds to the claims that MR has made about "significant users" of the MR Line and the supposed potential to use the MR Line for transloading and for freight rail services. Section IV also sets forth the reasons why abandonment is in the public interest.

II. GRTA IDENTITY AND INTEREST

A. GRTA's Role with Respect to Railroad Trail Development in Northern California as an Agency formed by the State

GRTA, formerly named North Coast Railroad Authority ("NCRA"),[7] is a public agency formed by the State of California[8], and requests that the Board exercise its authority under 49 U.S.C. § 10903 to abandon any and all railroad line owned by MR that extends between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California. [9]

[7] The California Legislature through Senate Bill 69 renamed NCRA as GRTA, effective March 1, 2022. Cal. Gov. Code § 93010.

[8] See Verified Statement of Elaine Hogan (attached hereto as Verified Statement 1), at ¶ 2 ("Hogan VS").

[9] The MR Line is shaded in yellow on a map of MR. *See* Exhibit 1.

California Senate Bill 1029, passed in 2018, provided that "the North Coast Rail Authority's (NCRA) railroad tracks, rights-of-way ("ROW"), and other properties provide an opportunity to create a Great Redwood Trail for hiking, biking, and riding, that may *be in the public and economic best interests of the north coast.*" (Emphasis added). The legislation sought to assess the feasibility of turning the 316-mile historic rail line, known as the Northwestern Pacific Railroad ("NWP") corridor ("GRTA Line"), into a long-distance recreational trail to be known as the Great Redwood Trail ("Trail"). Verified Statement of Elaine Hogan, at ¶ 3, attached hereto as Verified Statement 2 ("Hogan VS").

The follow up legislation, known as the Great Redwood Trail Agency Act ("Act"),[10] formalizing the transition from NCRA to GRTA, provided GRTA with various tasks and duties. Under Cal. Gov. Code § 93022, the California Legislature tasked GRTA with the establishment of a world class trail spanning hundreds of miles of the North Coast, including express direction to railbank the GRTA Line in accordance with STB rules and the National Trails System Act ("Trails Act"), 16 U.S.C. § 1247(d), providing an environmental assessment of the GRTA Line, constructing a trail on the GRTA Line, and conducting community engagement regarding the Trail.[11] In addition, under Cal. Gov. Code § 93024, GRTA has the powers, expressed or implied, necessary to carry out the purposes and intent of the Act, including, but not limited to, acquisition of property, management of rail rights-of-way, and adoption and enforcement of rules and regulations for the administration, operation, use, and maintenance of trails, excursion rail service, and other recreational facilities and programs. Specifically, for purposes of this proceeding, GRTA

[10] Cal. Gov. Code § 93000 *et seq*.

[11] *See The Great Redwood Trail*, Great Redwood Trail Agency (map of the proposed Great Redwood Trail with trail highlighted in red), https://thegreatredwoodtrail.org/great-redwood-trail/.

must file for abandonment of the GRTA Line and seek to railbank it as part of GRTA's statutory mandate. The transition from NCRA to GRTA and to the creation of the Trail arose out of the efforts of California lawmakers to protect the environmental and scenic resources along the proposed trail, while invigorating the North Coast economy with additional outdoor recreation opportunities. Outdoor recreation is an over $9 billion dollar a year industry in California, and the Great Redwood Trail has been projected to provide a multi-million-dollar annual augmentation of local revenue from tourism and related economic activity, in a region already heavily shifting toward a tourist economy, of which the MR Line is currently a part.[12] Hogan VS at ¶4.

GRTA, as the reorganized continuation of the same legal entity NCRA, continues to hold the property rights to the GRTA Line under its new name. Those rights include the interests NCRA acquired through a series of transactions authorized by the STB or Interstate Commerce Commission in the 1990s,[13] which extended between milepost 295.5 near Arcata, California, and milepost 63.4 between Schellville and Napa Junction, California, as well as several branch lines. Rail operations on the GRTA Line were ordered shut down by the Federal Railroad Administration ("FRA") via Emergency Order issued on November 25, 1998. *See* FRA Emergency Order No 21, Notice No. 1, 63 Fed. Reg. 67,976 (Dec. 9, 1998).[14] The GRTA Line has not been restored to

[12] *See Great Redwood Trail bill unanimously approved by California Senate*, The Ukiah Daily Journal (Aug. 23, 2018), https://www.ukiahdailyjournal.com/2018/05/31/great-redwood-trail-bill-unanimously-approved-by-california-senate/; *Assessment of the North Coast Railroad Authority and Viability of a Great Redwood Trail* (2020), https://calsta.ca.gov/-/media/calsta-media/documents/sb-1029-assessment-of-ncra-report-to-legislature.pdf.

[13] *N. Coast R.R. Auth.– Acquis. and Operation Exemption – Eureka Southern Railroad*, FD 32052 (ICC served Apr. 23, 1992); *North Coast Railroad Authority – Purchase Exemption – Southern Pacific Transportation Company*, FD 32788 (STB served Mar. 20, 1996); *North Coast Railroad Authority – Lease and Operation Exemption – California Northern Railroad Company*, FD 33115 (STB served Sept. 27, 1996).

[14] The FRA did grant partial relief from this emergency order to allow the California Western Railroad ("CWR"), now MR, to operate over the GRTA Line approximately 1.5 miles between its

serviceable condition since the embargo because of the overwhelming expense to rehabilitate it, the lack of any need for rail service on it, and the instability and flooding of the land in the right-of-way. In the meantime, the FRA's order remains in effect, and no interstate freight or passenger rail operations have been conducted on the GRTA Line in the last 25 years.[15] Hogan VS at ¶5. In order for the MR Line to connect to the interstate rail network, GRTA has determined that it would cost $56,561,000 to rehabilitate the GRTA Line from Willits MP 139.5 to Cloverdale MP 85.6 ("Willits Segment").[16] As a result, MR has no access to the interstate rail network from the MR Line.

B. Condition of the Willits Segment of the GRTA Line

The GRTA Line was embargoed due to washouts and flooding events associated with El Niño storms and crossing signal disrepair rendering the track unsafe. *D&A Report II* at 1. The Willits Segment had minimal maintenance prior to the embargo and has not been maintained since

junction with the GRTA track and the Willits Depot. FRA Emergency Order No. 21, Notice No. 2, 64 Fed. Reg. 30557 (June 8, 1999) ("The purpose of the partial relief was to allow the CWR to renew its operations over NWP tracks to Willits Depot and turn its trains at Willits.") In other words, GRTA is not only an adjacent landowner to the MR, but it is intricately involved in its tourist excursion passenger service on the MR Line as the owner of these tracks.

[15] However, in May 2011, FRA lifted the embargo from Windsor (MP 62.9) south to the interchange at Lombard/Napa Junction. Because the interchange is located on a branch, which has a similar MP number to Windsor (interchange is at MP 63 .4), this can create confusion. This portion of the GRTA system is now owned by the Sonoma-Marin Area Rail Transit District ("SMART"). FRA Emergency Order No. 21, Notice No. 4, 76 Fed. Reg. 27171 (May 11, 2011).

[16] *See Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5 ("D&A Report II")*, D&A Enterprises LLC (Nov. 30, 2023) ("This Assessment was completed to determine an estimated cost necessary to rehabilitate approximately 52.6 miles of GRTA Rail Line from Cloverdale, CA MP 85.6 at the First Street Crossing to Willits, CA MP 139.5 to FRA Class 1 track standards for freight rail service.") The *D&A Report II* is attached hereto as Appendix B to the Verified Statement of David Anderson. Anderson's Verified Statement is attached hereto as Verified Statement 1 ("Anderson VS").

the embargo. *Id.* Generally, this portion of the GRTA Line has washouts from storms since the embargo, and heavy vegetation over much of the right-of-way. *Id.*

This Willits Segment generally parallels Highway 101 from Cloverdale at the First Street crossing MP 85.62 to the Commercial Street crossing, Willits MP 139.5. *Id.* Sonoma-Marin Area Rail Transit ("SMART") is now the owner of the GRTA Line from Cloverdale MP 85.62 to the Sonoma County/Mendocino County border at MP 89.00. *Id.* Within the Willits Segment, certain improvements would be required for freight traffic. *Id.* Presently, this segment suffers from landslides, erosion around culvert outlets, rockslides, and scour at bridge abutments and piers. Landslides that were assessed by a consultant, Shannon & Wilson, in 2005 showed signs of accelerated side movement and erosion at several locations in 2023. *Id.* In general, field observations of slides in 2023 found that the lengths identified in 2005 have deteriorated by an additional 25% to 100%. *Id.* In addition, new washouts since that time were identified. *Id.* Presently, there is over 7,200 feet of hanging track that needs to be rebuilt, including roadbed varying from 4-feet to 15-feet high on the Willits Segment. *Id.*

To re-open the Willits Segment to freight traffic, several improvements would be required to repair or restore track conditions due to geological hazards. *Id.* at 2. These include surface drainage improvements, repairing or replacing culverts, installing culvert extensions, repairing erosion at culvert outlets, excavating rock and sediment slide debris, stabilizing landslide areas, repairing scour at bridges, and restoring track embankment. *Id.*

Costs associated with these repairs and improvements and projected ongoing maintenance related to these items are provided in Section 6 Maintenance and Section 7 Rehabilitation Costs in the *D&A Report II*. *Id.* at 31-33. The cost recognizes that from the 2002 detailed assessment to the 2005 assessment there was a 24% increase in cost, mainly due to increased deterioration of

geotechnical hazards. Since another eighteen years have passed, and the Willits Segment clearly showed continuing degradation, an average deterioration of 62.5% was applied, along with current pricing for the types of improvements required. *Id.*

Five tunnels designated as Tunnels 5 through 9 are located on the Willits Segment. The five tunnels are among the earliest constructed for the railway, in approximately 1889. *Id.* at 8 The tunnels were excavated by drill and blast methods and initially left unsupported. *Id.* Over time, several types of lining were installed in less stable tunnel segments including timber sets and lagging, concrete, and later steel sets and gunite. *Id.* Tunnel 8 and two segments of Tunnel 6 are situated in relatively competent rock and were left unlined. *Id.* However, in June 2011, Tunnel 6 experienced substantial damage as a result of a tunnel fire. Tunnel lengths range from 267 to 1,762 feet. *Id.*

In addition, vegetation needs to be cleared 15 feet to 20 feet horizontally from the centerline of track and 20 feet vertically to provide required site distance, for the safety of train crew, and to minimize fire hazard. *Id.* at 12. The cost to clear vegetation assumes using an on-track mounted brush cutter to clear light vegetation and spreading the chipped debris on the right of way. Medium vegetation will require a combination of felling trees up to 4" in diameter and brush cutting. Heavy vegetation includes trees up to 12" in diameter mixed with low level shrubs, small trees and fallen trees from up slopes. *Id.* For heavy vegetation areas, the removal cost assumes that there would be a combination of brush cutting and manual labor falling trees and a flatbed grapple truck to assist with the clearing. Several areas of heavy vegetation are in a narrow corridor requiring removal of material to a disposal area. *Id.* at 12-13. The larger vegetation that is growing within the track bed will require the removal of stumps and root system. This also assumes manual labor and use of a grapple truck. *Id.* at 13.

There are 43 structures within the Willits Segment, however, two have been included in the MR Assessment Report[17] because MR is operating over the bridges (MP 139.29 and MP 139.73) in Willits Yard through a track use agreement. *Id.* at 20. The bridges and walls included in the *D&A Report II* are a combination of timber trestles, concrete boxes, deck plate girders, steel bridges, and pile walls as shown in the Table 5 Structure Inventory and Repair Summary therein. *Id.*

49 CFR Part 237 Bridge Safety Standards requires that any railroad bridge that has been out of service for the previous 540 days must be inspected in accordance with the requirements of Part 237 prior to resumption of rail service.[18] The reinstatement of service would require an update to the existing Bridge Management Program, all bridges to have a detailed inspection including any appropriate underwater and/or scour inspection, and the determination of each bridge's safe load capacity. *Id.*

There are 18 public crossings as shown in Table 6 Public Crossings Assessment of *D&A Report II. Id.* at 25-28. The California Public Utility Commission ("CPUC") has jurisdiction over safety mitigations at all public railroad crossings. *Id.* at 25. The public crossings will require a formal on-site diagnostic to finalize the required railroad crossing warning measures for public safety. *Id.* Implementation of the warning measures will require a formal approval process through the submittal of a GO 88B form to the CPUC. This document is required to be signed by the agency that owns the roadway (i.e., Caltrans, Counties of Mendocino and Sonoma, Cities of Willits,

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[17] *See Railroad Rehabilitation Assessment Mendocino Railway Fort Bragg to Willits ("D&A Report I")*, D&A Enterprises LLC (Nov. 30, 2023). *D&A Report I* is attached hereto as Appendix A to Anderson VS.

[18] Section 237.101(d) states, "Any railroad bridge that has not been in railroad service and has not been inspected in accordance with this section within the previous 540 days shall be inspected and the inspection report reviewed by a railroad bridge engineer prior to the resumption of railroad service."

Ukiah, Hopland, and Cloverdale), agreeing to the safety measures to be implemented. *Id.* The cost associated with these crossings includes the submittal of GO 88B's, reconstructing each of the track roadway crossings, the installation of required signals, approach warning signs, pavement markings, and roadway traffic control. *Id.*

In addition to the deteriorated conditions on the GRTA Line's structure and track, the FRA Embargo of the GRTA Line was driven by the poor condition of signals at public crossings. *Id.* In order to reinitiate usage of the GRTA Line, FRA would require design document review of and will inspect each crossing and test performance before lifting the embargo. Preparation of signal design documents is included in the cost with each crossing. *Id.*

Additionally, to reinstate service of the GRTA Line there would be costs related to preventative measures and routine required safety inspections of track and structures, including chemical spraying for weed control, routine brush cutting, tree trimming, culvert maintenance, bridge repairs based on annual inspections, and track repairs based on required routine track inspections. *Id*. at 31.

As noted, it will cost $56,561,000 in total to rehabilitate the Willits Segment as discussed above pursuant to the *D&A Report II. Id.* at 32-33.

C. GRTA's Interest in the MR Line in This Proceeding

GRTA has begun to implement the changes that the California Legislature envisioned in the Act to the 316-mile GRTA Line, starting its transformation from a long unused rail line to a scenic public trail. First, in accordance with the Act,[19] SMART, a Class III rail carrier, filed a verified notice of exemption, which became effective shortly thereafter, under 49 C.F.R. § 1150.41 to acquire from NCRA, now GRTA, and operate approximately 87.65 miles of the southern portion

[19] *See* Cal. Gov. Code § 93030.

of the GRTA Line (the part of rail corridor in Sonoma and Marin Counties), consisting of: (1) the line of railroad and right-of-way in fee between the Sonoma/Mendocino County, California, border at NWP milepost 89 and Healdsburg, California, at NWP milepost 68.2; and (2) the freight rail operating easement between Healdsburg, at NWP milepost 68.2 and Lombard, California, at SP milepost 63.4.[20] SMART will be responsible for rail-with-trail development for the southern segment of the Trail. Hogan VS at ¶6.

GRTA also filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F — Exempt Abandonments to abandon 175.84 miles of the GRTA Line from milepost 139.5 at Commercial Street in Willits to milepost 284.1 near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, milepost 300.5 near Samoa, and milepost 301.8 near Korbel, in Mendocino, Trinity and Humboldt Counties, California. Concurrently with the filing of its verified notice, GRTA filed a request for issuance of a notice of interim trail use or abandonment ("NITU") to establish interim trail use/rail banking on this rail line under the Trails Act and 49 C.F.R § 1152.29. In this proceeding, MR filed an offer of financial assistance to purchase a 13-mile portion of the line extending from milepost 139.5 in Willits to milepost 152.5, which *was denied by the Board for failure to demonstrate financial responsibility.*[21] Concurrently with its rejection of the offer of financial assistance by MR, on October 24, 2022, the Board authorized GRTA to proceed with railbanking, and on October 26,

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

[21] *Great Redwood Trail Agency – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, Cal.*, STB Docket No. AB-1305X (STB served Oct. 21, 2022) (emphasis added). Tellingly, MR provided no evidence of any need for rail service on its connected MR Line in relation to this request.

2022, GRTA gave notice that GRTA consummated the interim trail/use railbanking authority as authorized by the Board.[22] Hogan VS at ¶7.

Consequently, GRTA now owns and has residual common carrier responsibility for this approximately 175.84 miles of the GRTA Line north of Willits railbanked in STB Docket No. AB-1305X, and SMART now owns the portion of the GRTA Line in Sonoma and Marin Counties on the southern end. *Id.* at ¶8. The remainder of the GRTA Line from Willits to NWP milepost 89 is still owned by GRTA and is subject to the jurisdiction of the STB. *Id.* This is the portion of the GRTA Line where MR can connect to the interstate rail network by running south, via segments owned and operated by other carriers, eventually connecting to an interchange point with the Union Pacific Railroad in Fairfield, California. *Id.* However, as noted, this part of the GRTA Line remains subject to the 1998 FRA embargo; consequently, it has not had any freight traffic on it in 25 years, and there is no realistic prospect for such use in the foreseeable future as shown in AB-1305X and herein. *Id.*

Therefore, it is not disputed that the only location where the MR Line at issue connects to the interstate rail network is in Willits, California on the GRTA Line. *Id.* at ¶9. The GRTA Line, MR's only possible access to the interstate rail network, has been embargoed by the FRA for public safety reasons since 1998. *Id.* As a result of this embargo, MR has absolutely no physical access to the interstate rail network. *Id.* No freight traffic of any kind has passed along the relevant section of the GRTA Line in 25 years, and the State of California, after a thorough analysis by California's transportation agency, has directed the transition away from rail to trail uses. *Id.*

[22] *Great Redwood Trail Agency – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, Cal.*, AB-1305X, Filing ID 305567 (Oct. 26, 2022) (GRTA Consummation Notice).

However, GRTA cannot seek abandonment of this remaining portion of the GRTA Line and railbank it in accordance with the Act based on STB precedent if it is attached to the MR Line in Willits; otherwise, it would leave the MR Line stranded from the interstate network.[23] *Id.* at ¶10. Therefore, GRTA cannot satisfy its statutory mandate to railbank the GRTA Line and continue with its plans to develop the Great Redwood Trail in the most efficient and effective manner until this matter is resolved. *Id.* As a practical matter, the freight traffic along both the MR Line and the GRTA Line have long been relegated to history. *Id.* However, the continued status of the MR Line as under the jurisdiction of the STB prevents GRTA from effectuating its statutory mandate under the Act, consistent with the current and future needs of the State of California. *Id.*

As a result, GRTA seeks a determination by the Board that, under these facts and circumstances, the PC&N require and permit abandonment of the MR Line, thereby extinguishing the federal interest in the MR Line. *Id.* at ¶11.

III. INFORMATION REQUIRED BY 49 C.F.R. § 1152.22

A. General (49 C.F.R. § 1152.22(a))

(1) Exact name of applicant.

The applicant is Great Redwood Trail Agency.

(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

GRTA is a common carrier by railroad. *See N. Coast R.R. Authority – Acquis. and Operation Exemption – Eureka Southern Railroad*, STB Docket No. FD 32052 (ICC served Apr.

[23] Board precedent does not allow a segment of common carrier track to be "stranded" due to abandonment of an adjacent section of track: "It is well settled that so long as there is a common carrier obligation attached to a particular segment of track, the Board will not allow that segment to become isolated from the rail system as a result of the abandonment of the adjoining segment." *R.J. Corman R.R. Property, LLL – Aban. Exemption – in Scott, Campbell, and Anderson Counties, Tenn.*, STB Docket No. AB-1296X, slip op. at 3 (STB served Nov. 17, 2022) (citation omitted).

23, 1992); *North Coast Railroad Authority – Purchase Exemption – Southern Pacific Transportation Company,* FD 32788 (STB served Mar. 20, 1996); *North Coast Railroad Authority – Lease and Operation Exemption – California Northern Railroad Company,* FD 33115 (STB served Sept. 27, 1996); *but see Great Redwood Trail Agency – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, Cal.*, AB-1305X (STB served Oct. 21, 2022) (On October 26, 2022, GRTA gave notice that GRTA consummated the interim trail/use railbanking authority as authorized by the Board of a 175.84-mile portion of GRTA Line); *Sonoma-Marin Area Rail Transit District—Acquisition and Operation Exemption— North Coast Railroad Authority*, FD 36481 (STB served Feb. 18, 2021)(GRTA sold 87.65 mile portion of GRTA Line).

(3) Relief sought (Abandonment of line or discontinuance of service).

GRTA is seeking the adverse abandonment of the authority of MR to operate over a rail line that extends (1) between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California.

(4) Detailed map of the subject line on a sheet not larger than 8 X 10 ½ inches, drawn to scale, and with the scale shown thereon. The Map must show, in clear relief, the exact location of the rail line to be abandoned or over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers.

Map showing the location of the railroad is attached as Exhibit 1.

(5) Reference to inclusion of the rail line to be abandoned or over which service is to be discontinued on the carrier's system diagram map or narrative, in compliance with §§ 1152.10 through 1152.13, and the date upon which such line was first listed on the system diagram map or included in the narrative in category 1 in accordance with § 1152.10(b)(1). A copy of the line description which accompanies the system diagram map shall also be submitted.

The Board granted waiver of all requirements in 49 C.F.R. § 1152.22(a)(5) in its Waiver Decision.

(6) Detailed statement of reasons for filing application.

The detailed reasons for seeking adverse abandonment have been set forth in Section IV below. In short, there is no present or future need for rail service on the MR Line, and abandonment of the MR Line is in the public interest. The MR Line has not been used for freight transportation for more than twenty years. MR's actions demonstrate that there are no current or future prospects for restoring consistent and ongoing freight service over the MR Line. Also, as noted herein, GRTA, pursuant to California law, must seek abandonment of the GRTA Line and seek railbanking approval thereon. Cal. Gov. Code § 93022. Without the abandonment of the MR Line, GRTA would be prohibited from seeking abandonment of the remaining portion of the GRTA Line that has not been abandoned to date because such action would leave the MR Line stranded from the interstate rail network. Moreover, as noted herein, MR, as a rail carrier subject to the Board's jurisdiction, is improperly interfering with local and state land use and safety policies, as well as creating environmental concerns on the MR Line. In sum, abandonment of the MR Line is in the public interest and will contribute to the economic policy of the California legislature as adopted by the Act to attract more ecotourism to this economically struggling area.

(7) Name, title, and address of representative of applicant to whom correspondence should be sent.

Any correspondence, comments or protests relating to this Application should be sent to the following representative of the Applicant:

Daniel Elliott
GKG Law, PC
1055 Thomas Jefferson Street, NW
Suite 620
Washington DC 20008
(703) 863-9670
delliott@gkglaw.com

(8) List of all United States Postal Service ZIP Codes that the line proposed for abandonment traverses.

The affected railroad MR Line is situated in U.S. Postal Zip Codes 95437 and 95490.

B. Condition of Properties (49 C.F.R. § 1152.22(b))

The Board denied GRTA's request for a waiver of this section but provided that "GRTA may exclude information that is solely in the control of MR or is not necessary to support GRTA's claims regarding the condition of the MR Line" with respect to the § 1152.22(b) requirement to describe "[t]he present physical condition of the line including any operating restrictions and estimate of deferred maintenance and rehabilitation costs (e.g., number of ties that need replacing, miles of rail that need replacing and/or new ballast, bridge repairs or replacement needed, and estimated labor expenses necessary to upgrade the line to minimum Federal Railroad Administration class 1 safety standards)." *See* Waiver Decision at 6. As a result, GRTA is providing the Board with the *D&A Report I,* attached to Verified Statement 1 at Appendix A, that describes the physical condition of the MR Line including deferred maintenance and rehabilitation costs.

That being said, with respect to the "present physical condition of the line," it is public knowledge that Tunnel No. 1 on the MR Line has collapsed and there is no through route from Fort Bragg to Willits at this time. The MR Line passes along the Pudding Creek estuary and through two tunnels: Tunnel No. 1 and Tunnel No. 2. As background, beginning April 11, 2013, the MR, which owns the intrastate tourist excursion operation called "Skunk Train" on the MR Line, was essentially disabled following the partial collapse of Tunnel No. 1 located at approximately Milepost 3.5, near Fort Bragg, which buried nearly 50 feet of its 1,200 feet of track

under rocks and soil, the third major collapse at the time in the over 100-year-old tunnel's history.[24] Without sufficient cash reserves to finance the excavation, MR announced a fundraising campaign on June 7, 2013, selling lifetime passes and seeking private donations to meet a goal set at $300,000, the estimated cost to remove the blockage and repair the tunnel walls.[25] The announcement explicitly stated that if some manner of external funding was not secured, MR would have no option but to cease the Skunk Train intrastate operations permanently. On June 19, 2013, Save the Redwoods League[26] announced an offer to pay the amount required to meet the fundraising goal in exchange for a conservation easement along the track's 40-mile right-of-way. The acceptance of the offer allowed MR/Skunk Train to resume full intrastate tourist excursion service in August 2013.[27]

Tunnel No. 1 was once again closed in 2015 and remains so after sustaining damage from the 2015–16 El Nino, but the Skunk Train had equipment at the Willits Depot to allow the running of half-routes to the Northspur Junction and back; trains from Fort Bragg are limited to running only 3.5 miles to the Glen Blair Junction (75 minute round trip) before returning to the depot,

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[24] Guido, Francis A. (1965) "California Western's 'Super Skunk' Steam Train", The Western Railroader, Vol. 28, No. 8, at p. 4.

[25] Fimrite, Peter, "Skunk Train stranded by tunnel collapse", SF Gate (June 7, 2013) https://www.sfgate.com/news/article/skunk-train-stranded-by-tunnel-collapse-4588329.php.

[26] Since 1918, Save the Redwoods League has protected and restored California redwood forests and connected people with their peace and beauty so these wonders of the natural world flourish. It purchases redwood forests and the surrounding lands needed to nurture them; regenerate logged forests so they become spectacular havens for future generations; study how to best protect and restore these global treasures; and introduce people to these magical places. https://www.savetheredwoods.org/what-we-do/our-work/.

[27] *See Save the Redwoods League and the Skunk Train Work Together to Reopen the Historic 'Redwood Route' and Preserve Old-Growth Forest*, Save the Redwoods League (June 18, 2013), https://www.savetheredwoods.org/restore/save-the-redwoods-league-and-the-skunk-train-work-together-to-reopen-the-historic-redwood-route-and-preserve-old-growth-forest/.

officially called the "Pudding Creek Express."[28] It also provides a train route called the "Wolf Tree Turn" from Willits for about 16 miles and back that takes about two hours to complete.[29] In other words, MR cannot operate a through route from Fort Bragg to Willits on the MR Line.

MR estimates that it will cost $8,000,000 to repair the tunnel. MR Reply to Petition for Partial Waiver, *Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railwya in Mendocino Cty., CA*, AB-1305 (Sub. No. 1), Doc. No. 306350, at 5 (March 20, 2023); *see also* California Coastal Commission and Friends of the Eel River's Joint Motion to Dismiss Mendocino Railway's Offer of Financial Assistance (Doc. No. 305500), Exh. C, Verified Answer, 3:9-10, *North Coast Railroad Authority – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, CA*, AB 1305X (Oct. 19, 2022). Shortly after this collapse, MR attempted to repair Tunnel No. 1 but ceased repair work due to a lack of funds. California Coastal Commission and Friends of the Eel River's Joint Motion to Dismiss Mendocino Railway's Offer of Financial Assistance (Doc. No. 305500), at Exh. D (California Regional Water Quality Control Board, North Coast Region, *Cleanup and Abatement Order No. R1-2016-0036 for Mendocino Railway Skunk Train*, at 2 (Aug. 3, 2016)). However, before ceasing its repair activities, MR failed to stabilize the steep hillslopes above and adjacent to the western portal of Tunnel No. 1. MR similarly failed to install erosion and sediment controls to prevent any discharge of sediment or other construction-related pollutants into Pudding Creek, a tributary to the Pacific Ocean. *Id*. at 2, 7. Consequently, several sediment discharges into Pudding Creek occurred throughout 2016. *Id*. at 6, 7. On August

[28] *See Pudding Creek Express*, The World-Famous Skunk Train, https://www.skunktrain.com/pudding-creek-express/.

[29] *See Wolf Tree Turn*, The World-Famous Skunk Train, https://www.skunktrain.com/wolf-tree-turn/.

3, 2016, the North Coast Regional Water Quality Control Board issued a Cleanup and Abatement Order to MR to stabilize the site and prevent further discharges. *See generally id.*

To date, Tunnel No. 1 remains unrepaired and closed. Since the tunnel collapsed seven years ago, MR has made several unsuccessful attempts to secure federal funding to repair the tunnel. MR submitted applications to the United States Department of Transportation ("DOT") for Better Utilizing Infrastructure to Leverage Development ("BUILD") grants in 2018, 2019, and 2020. Mendocino Railway's Verified Reply in Opposition to North Coast Railroad Authority's Petition for Exemption from 49 U.S.C. § 1094 (Doc. No. 302860), at 13 n.21, *North Coast R.R. Authority – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, CA*, AB-1305X, (Aug. 16, 2021). DOT did not approve any of MR's BUILD grant applications. *Id.* Then, MR applied to the DOT's Build America Bureau for a Railroad Rehabilitation & Improvement Financing Express ("RRIF Express") loan seeking a loan to, among other things, repair Tunnel No. 1. Recently, the DOT appeared to approve MR's RRIF Express loan application. *See* https://www.transportation.gov/buildamerica/financing/rrif (showing approved $31.4 million loan application for MR or its parent company, Sierra Railroad) (accessed February 6, 2024). However, now, the approval by DOT does not appear on its website at the same URL. *See* https://www.transportation.gov/buildamerica/financing/rrif (last accessed March 14, 2024). In any event, at this time, MR cannot operate the full length of the MR Line or properly rehabilitate it due to the Tunnel No. 1 collapse.

The MR Line beginning at Fort Bragg has several street crossings prior to following the alignment of Pudding Creek to the collapsed Tunnel No. 1 located at MP 3.52. *D&A Report I*, at 1. On the east side of Tunnel No. 1, it winds along the Noyo Creek toward Willits, with several creek crossings and hairpin switchbacks to Tunnel No. 2 at MP 35.4 (the summit). *Id.* From Tunnel

No. 2, the MR Line winds to Willits. After crossing the Baechtel Creek bridge (MR MP 39.49), it switches to the GRTA mainline. *Id.* MR uses GRTA property through existing trackage right agreements to turn the locomotive. *Id.* The track crosses E. San Francisco Ave, E. Valley Road, a GRTA bridge over Broaddus Creek (GRTA MP 139.29), then comes to the Skunk Train Depot in Willits. *Id.* at 1-2. To turn locomotives, MR crosses Commercial St. to use the wye in the Willits Yard which includes the GRTA bridge (MP 139.73). *Id.* at 2. The 40 miles of line has many curves, including five hairpin turns with a maximum degree of curvature 24 degrees., areas of steep hillsides and valleys, and for the most part is remotely accessed. *Id.*

Tunnel No. 1 was constructed in 1893. As noted, in 2013, the tunnel experienced a partial collapse. *Id.* Though some repairs were made, in 2015, the 1,000-foot-long tunnel experienced another collapse. *Id.* MR hired AECOM to perform a field investigation, geologic site reconnaissance, and repair designs. *Id.* Due to funding limitations, MR reconstructed the hillside above the tunnel with the intention of reconstructing the tunnel at a future date as funds become available. *Id.* The work performed included removing a portion of landslide debris and installing drainage at the south portal, welding a ¾-inch steel plate to the south side of the steel portal frame to close the portal opening, backfill, ditching, edge drains along the reinstated hillsides, and a tension basin at the base of the hillside to retain surface water runoff and prevent sediment entering Pudding Creek. *Id*.

Tunnel No. 2 was constructed with timber sets and timber lagging in the early 1900's and has had some timber sets filled with concrete at both ends of the tunnel. *Id.* at 3. In 2017, a walk through was performed and documented the following conditions:

- Timber lined section in poor condition
- Several rotted timbers
- Hanging timbers throughout

- A section on East Wall of the tunnel has bulged out 4” to 6", cap and timber is crushed
- Ballast is fouled throughout

Id.

The walk-through report included a Priority 2 to perform a detailed inspection. The walk through also indicated that the tunnel has experienced a fire that left fire char on several timber sets and timber lagging. *Id.* Tunnel #2 is structurally-sound and MR is budgeting for and reserving funds for ongoing maintenance to ensure that inspections and maintenance continue at regular intervals. *Id.* at 3-4.

Steep slope slides: Several MR track segments are adjacent to steep embankment slopes. In these areas, the track experiences several types of slides that require routine maintenance. *Id.* at 4. Slide types include:

- Rockslides
- General debris slides
- Tree falls

Id. Past NWP train crews, which ran trains 40 plus years ago from Willits to Fort Bragg, reported frequent need to stop trains to clear track resulting from slides and tree falls. *Id.*

MR’s objective is to use BUILD in connection with RRIF to completely revitalize the Line by replacing 59,499 ties, 4,107 sticks of rail. *Id.* The 4,107 sticks of rail at 39’ per stick is about 15 miles of built track or about 38% of the MR Line. *Id.* It is assumed that 115 lb. rail will be used to replace any remaining 90 lb, rail, especially in curves. *Id.*

The timing of the track improvements will influence the safe operation of any hypothetical freight train traffic on the MR Line. *Id.* Increasing train consists can lead to derailments on rail in poor condition. *Id.* Sharp curves limit the number of cars in a consist due to the large side loading

from the resultant pulling force on the rail. *Id.* This larger side loading also accelerates the wear and maintenance of the track. *Id.* All the above is exacerbated on steep grades due to the larger pulling force required of the locomotive. *Id.*

Also, it is assumed that the MR Line would need to be regulated and surfaced with a minimum of 2" of added ballast. *Id.*

For MR to be part of a general railroad system of transportation, it would need to comply with Title 49 Bridge Safety Standards Part 237. *Id*. at 5. This would require the adoption of a Bridge Management Program, performance of annual bridge inspections by a qualified inspector, and having a qualified "Railroad Bridge Engineer" review the reports and determine the safe load capacity of the bridges based on condition. *Id.* The safe loading would then govern the safe loading of locomotives and railcar consists. *Id*.

In 2017, MR hired Koppers Railroad Structures Inc. ("Koppers") to inspect their 30 bridges. *Id.* These bridges include a combination of timber trestles, deck plate girders, beam spans, and a through-plate girder. In total, there are 185 bridge spans for a total of 4,191 linear feet on the MR Line. *Id.*

The Koppers detailed inspection report identified 50 Priority 2 repair recommendations for these bridges. *Id.* at 6. Koppers defines Priority 2 ratings as: *"Condition is structurally unsound and could cause failure any time. Repair as soon as possible. Condition must be monitored by Railroad personnel at a frequency determined by the Railroad Bridge Engineer until repairs have been completed." Id.*

In addition, Koppers's inspection identified 103 Priority 3 ratings. *Id.* Koppers defines Priority 3 ratings as: "*Condition could become structurally unsound should be monitored by Railroad personnel at a frequency determined by the Railroad Bridge Engineer. Condition may*

need repair in the near future." Because 5 years have passed since this Koppers bridge inspection, it is highly likely that these conditions, if they were not addressed, have now progressed to Priority 2 ratings. *Id.*

Of the 30 bridges, 28 have a Priority 2 or 3 rating with a total of 190 conditions to monitor. *Id.* The last detailed inspections on the GRTA bridges were in 2005. *Id.* Since then, a cursory field inspection has been performed. The following conditions and repairs have been identified:

- Bridge 139.29: Add walkway railing on the right side and repair north end wingwall and right-side decayed cap, repair ballast leaks
- Bridge 139.73: Post pile 1 of bent 1 and replace 5 deteriorated bridge ties and clear drift.

Id.

Moreover, there are five public crossings in Fort Bragg and six public crossings in Willits, including the three GRTA crossings at E. San Franciso Lane, E. Valley Road, and Commercial Street in Willits. *Id.* at 8. There are at least two private crossings in Willits. *Id*.

The California Public Utility Commission ("CPUC") has jurisdiction over safety mitigations at all public railroad crossings. *Id.* A formal on-site diagnostic to finalize the required railroad crossing warning measures for public safety may be required and would be an additional cost. *Id.*

With complete revitalization of the MR Line and access to the national rail network, MR would become subject to all FRA regulations regarding track and bridge inspections and maintenance. *Id.* This includes annual bridge inspections, daily track inspection (depending on traffic), timetables, and operating plans. They will be subject to regular FRA inspections and access to records. *Id.* at 9.

In sum, it would cost about $31,598,000 to rehabilitate the MR Line to FRA Class 1 track standard based on GRTA's inspection and analysis. *Id.* at 11 (Rehabilitation costs set forth in Table 7 for MR Line).

C. Service Provided (49 C.F.R. § 1152.22(c))

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

D. Revenue and Cost Data (49 C.F.R § 1152.22(d))

The Board did not grant waiver of the Section 1152.22(d) revenue and cost data reporting requirements. *See* Waiver Decision at 6. Instead, as noted in Section C above, the Board required MR to provide GRTA with service data, revenue and cost data, and shipper and traffic data in its possession that will aid GRTA in satisfying the requirements of 49 C.F.R. § 1152.22(c), (d), and (e)(2) by October 5, 2023." *Id.* at 7. MR provided said data to GRTA in a timely manner. That information is marked highly confidential and is attached hereto as Exhibit 5. GRTA also provides its own cost report. *See Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale* ("*D&A Report III*"), attached as Appendix C to Anderson VS.

GRTA discussed the relevance of this revenue data in Section III.C above (Section 1152.22(c)), demonstrating that none of the data provided by MR is actually freight or passenger traffic moving in interstate commerce subject to the jurisdiction of the STB.

E. Rural and Community Impact (46 C.F.R. § 1152.22(e))

(1) The name and population (identify source and date of figures) of each community in which a station on the line is located.

The MR Line is located in Mendocino County, California, which had a population of 91,601 from the April 1, 2020 Census. The Census population estimate on July 1, 2023 was 89,108 or a decrease of 2.7%. *See Quick Facts: Mendocino County, California*, United States Census Bureau,

https://www.census.gov/quickfacts/fact/table/mendocinocountycalifornia/PST045223

(2) Identification of significant users, as defined in § 1152.2(1), by name, address, principal commodity, and by tonnage and carloads for each of the 2 calendar years immediately preceding the filing of the abandonment or discontinuance application, for that part of the current year for which information is available, and for the Base Year. In addition, the total tonnage and carloads for each commodity group originating and/or terminating on the line segment shall also be shown for the same time periods as those of the significant users.

There are no significant users or any users of the MR Line. In the Waiver Decision, as noted above in Section III.C (Section 1152.22(c)), the Board ordered MR to provide "the identity of current users of the MR Line to GRTA by October 5, 2023" and "with service data, revenue and cost data, and shipper and traffic data in its possession that will aid GRTA in satisfying the requirements of 49 C.F.R. § 1152.22(c), (d)." Waiver Decision at 5, 7. MR provided this information to GRTA; however, as discussed in detail in Section III.C, none of this data or the supposed "significant users" demonstrated the use of the MR Line for STB-regulated freight or passenger traffic. Therefore, there are no relevant "significant users" to be provided here.

However, the list of "past and current users" marked confidential and supplied by MR in accordance with the Waiver Decision is attached hereto as Exhibit 8.

(3) General description of the alternate sources of transportation service (rail, motor, water, air) available, and the highway network in the proximate area.

Truck service is readily available in the area. *See Feasibility & Market Analysis of Rail Freight Service in the Fort Bragg, Willits & Cloverdale Corridor ("Feasibility & Market Analysis"),* at 11-12, Marie Jones Consulting (March 6, 2024)).[34] The MR Line is in close proximity to State Route 20 (SR 20), which is a state highway in the northern-central region of the State of California, running east–west north of Sacramento from the North Coast to the Sierra Nevada. *Id.* at 15. Its west end is at SR 1 in Fort Bragg, from where it heads east directly into Willits. Figure 4 in the *Feasibility & Market Analysis* illustrates "the state highway system that is currently available for use by freight trucks, along with a myriad number of secondary roads (not shown) which connect the entire Mendocino County for point-to-point freight delivery by truck. This allows for easy and fast service without transfers and associated wait time and logistics." *Id.*

(4) Statement of whether the properties proposed to be abandoned are appropriate for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the applicant is aware of any restriction on the title of the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

The right of way currently used by MR potentially could be appropriate for other public purposes. First, it is presently used for intrastate tourist excursion rail services called the Skunk Train.[35] These intrastate operations could continue upon abandonment. Second, it could also be

[34] *Feasibility & Market Analysis* is attached to the attached Verified Statement of Marie Jones ("Jones VS") as Appendix A. This Verified Statement is attached hereto as Verified Statement 3.

[35] *See* The World-Famous Skunk Train, https://www.skunktrain.com/.

converted into a pedestrian and bike trail that could connect to the GRTA Trail in Willits which would be in line with the State of California's present plans for this area as demonstrated by the Great Redwood Trail Agency Act. Finally, the Save the Redwood League now has a conservation easement on the right-of-way, thereby allowing this land to revert to its natural state as private parkland in this environmentally sensitive area.

F. Environmental Impact (1152.22(f))

The applicant shall submit information regarding the environmental impact of the proposed abandonment or discontinuance in compliance with §§1105.7 and 1105.8. If certain information required by the environmental regulations duplicates information required elsewhere in the application, the environmental information requirements may be met by a specific reference to the location of the information elsewhere in the application.

An Environmental and Historic Report was submitted to the Board on March 14, 2024 and is attached hereto as Exhibit 3.

G. Passenger Service (1152.22(g))

If passenger service is provided on the line, the applicant shall state whether appropriate steps have been taken for discontinuance pursuant to the Rail Passenger Service Act. (45 U.S.C. 501 et seq.)

Interstate passenger service is not provided over the MR Line. *See* Waiver Decision at 5.

H. Additional Information (1152.22(h))

The applicant shall submit additional information to support its application as the Board may require.

None at this time.

I Draft Federal Register Notice (1152.22(i))

The applicant shall submit a draft notice of its application to be published by the Board. The Board will publish the notice in the Federal Register within 20 days of the application's filing with the Board.

A draft Federal Register notice modified pursuant to GRTA's waiver request and the Board's Waiver Decision is attached hereto as Exhibit 4.

H. Verification (1152.22(j))

The original application shall be executed and verified in the form set forth below by an officer of the carrier having knowledge of the facts and matters relied upon.

The required Verification is attached as Exhibit 9.

IV. ABANDONMENT IS PERMITTED BY THE PRESENT AND FUTURE PUBLIC CONVENIENCE AND NECESSITY.

A. The Applicable Standard

The standard governing abandonment, including adverse abandonment, "is whether the present or future [public convenience and necessity] require or permit the proposed abandonment." *See, e.g.*, *The Western Stock Show Ass'n—Abandonment Exemption—In Denver. CO,* AB-452 (Sub-No. IX) 1 S T B. 113 (served July 3. 1996). It is well settled that an interested third party can file a petition for abandonment, in which case, the petition is considered "adverse," because the carrier usually opposes the abandonment. *See, e.g., Chelsea Property Owners-Abandonment-Portion of the Consolidated Rail Corp's West 30th St. Secondary Track in New York, NY*, AB-167 (Sub-No. 1094), 8 I.C.C.2d 773 (1992) ("*Chelsea*"), *aff'd sub nom*. *Consolidated Rail Corp. v. ICC*, 29 F.3d 706 (D.C. Cir. 1994); *Modern Handcraft Inc.— Abandonment in Jackson County, MO*, FD 29330, 363 I.C.C 969 (1981) ("*Modern Handcraft*"). The Board has explained in its decisions that, in applying this standard, it balances the interests of the carrier, the owner and/or public, shippers, and interstate commerce and the interstate rail system *See, e.g.*, *Western Stock Show*, 1 STB at 131. The burden is on the non-carrier petitioner when the carrier opposes the abandonment. *Salt Lake City Corp.—Adverse Abandonment in Salt Lake City. UT,* AB-33 (Sub-No. 183), slip op. at 5 (STB served Mar. 8, 2002). However, the Board "*will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of state law where no overriding federal interest exists*." *Id.* at 6 (emphasis supplied).

The circumstances described in this Application are like those in numerous prior decisions granting adverse abandonments where, as here, the line had been out of interstate service for a lengthy time and there essentially has been a "de facto abandonment*." See, e.g.*, *Chelsea*, *supra* (out of service 7 years); *Modern Handcraft*, *supra* (10 years); *The City of Chicago, Ill. – Adverse Abandonment – Chicago Term. R.R. in Chicago, Ill.* AB-1036 (STB served June 16, 2010) (out of service 3 and 10 years on 2 railroad lines); *Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, Ind.,* AB-290 (Sub-No. 286) (STB served Apr. 17, 2012) (out of service approximately 17 years); *Alloy Property Company, LLC – Adverse Abandonment – Chicago Terminal R.R. in Chicago, Ill.,* AB-1258 (STB served Apr. 30 2018) (out of service 3 years). Indeed, this Application is even more compelling, because the MR Line has been out of service for over 20 years and is physically and legally cut off from the interstate rail network.

B. The Present and Future Public Convenience and Necessity Permit Adverse Abandonment of the Line.

A balancing of the various interests shows that abandonment of the MR Line is permitted by the PC&N.

1. There is no need for rail transportation service on the MR Line.

There is absolutely no longer any need for rail transportation service along the MR Line. No freight movements have originated on, terminated on, or otherwise traversed the MR Line since MR purchased it out of bankruptcy in 2004, and no shippers that have been served in the past on the MR Line have a current need for rail service. *See Meyer Decision, supra.* In fact, the only shipper on the MR Line in the 21st century, Georgia-Pacific, permanently closed its facility in Fort Bragg in 2002.

[redacted]

[redacted]

Moreover, there are no reasonable prospects of future rail service needs along the MR Line. The MR Line has only been operated for intrastate tourist excursion rail service, called the "Skunk Train," since its acquisition by MR in 2004. In fact, as noted, MR only connects to the interstate rail network in Willits with the GRTA Line. As described above, the GRTA Line between milepost 295.5 near Arcata, California, and milepost 63.4 between Schellville, California and Napa Junction, California has been embargoed by the FRA for public safety reasons since 1998. Operations on the GRTA Line were ordered shut down by the FRA, by its Emergency Order No 21. Notice No. 1, issued November 25, 1998. The GRTA Line has not been restored to serviceable condition since the embargo because of the expense of over $56,561,000 to rehabilitate it, the lack of any need for rail service on it, the instability of the land in the right-of-way, and various tunnel collapses. *See D&A Report II* at 32-33 (providing rehabilitation costs for Willits Segment to Class 1 level). In the meantime, the FRA's order remains in effect, and no operations have been conducted on the GRTA Line in the last 24 years. As a result of this embargo, MR has no true access to the interstate rail network which can only occur over this track.

Moreover, not only does MR have no access to the interstate rail network, but the MR Line itself is impassable outside of Fort Bragg, meaning there is no through route between the end points on the MR Line. Tunnel No. 1 was closed in 2015 after sustaining damage from the 2015–16 El Nino. MR estimates that it will cost $8,000,000 to repair the tunnel. *North Coast Railroad*

Authority – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, CA, AB 1305X, California Coastal Commission and Friends of the Eel River's Joint Motion to Dismiss Mendocino Railway's Offer of Financial Assistance (STB Filing 305500), Exh. C, Verified Answer, 3:9-10. To date, Tunnel No. 1 remains collapsed, unrepaired, and closed.

In sum, the MR Line has no shippers. It has not moved any freight in over twenty years. *See Meyer Decision*, *supra.* It is not connected and probably will never be connected in the future to the interstate rail network unless various extremely unlikely events occur. And the MR Line itself is not even fully traversable from beginning to end due to a tunnel collapse. Moreover, the MR Line will require significant rehabilitation to bring it in line with FRA Class 1 track standards. *D&A Report I* at 11 (rehabilitation cost estimate is $31,598.000 for MR Line). In other words, there is absolutely no need or possibility for freight rail service on this MR Line based on these numerous and insurmountable roadblocks to any freight operations.

2. MR has no reasonable prospects of developing additional business on the Line.[36]

Overall, there is little market demand for rail freight between Cloverdale, Willits, and Fort Bragg. Rail freight is not an economically viable business on the MR Line as transportation costs would be prohibitively high given the required rail rehabilitation. *Feasibility & Market Analysis* at 17-25.

The present economic state of Mendocino County and its dormant freight railroad infrastructure clearly demonstrate that MR has no reasonable prospects of developing additional business on the MR Line. Mendocino County is a very sparsely populated area with no need for any rail freight service in or out of the region. The railroad infrastructure, as discussed, in Mendocino County only has two rail lines (the MR Line and the GRTA Line) that have had no

[36] The economic analysis in this section is based on *Feasibility and Market Analysis*, *supra.*

freight traffic on them for over twenty years and would require extensive and costly rehabilitation to make them usable for freight service in the future. *Id*. at 3-4.

The Mendocino County economy portends no future economic or population growth to support the re-establishment of rail freight service along the MR Line. First, Mendocino's population growth is constrained by its remote location, low housing production numbers, and very slow job growth. In 2021, Mendocino's population was 91,305, which is just 0.2% of the State population.[37] Mendocino County's population has remained relatively flat for the past 70 years and recently has shrunk.[38] The Mendocino Coast is relatively isolated from inland Mendocino due to the Coast Mountain Range. The Mendocino Coast has a population of around 18,000 residents. *Id*. at 9.

Mendocino's economy is very small and stagnant. Overall, the Mendocino County Gross Domestic Product ranks 38th from the top of California's 58 counties. Since 2010, its Gross Domestic Product has grown only 0.78% per year (ranked 38th out of 58 counties). Ranked 46th out of 57 counties, Mendocino County's total employment shrank by -0.35% from 2010 to 2020. Of the 45,293 jobs in Mendocino County, only a very small portion result in freight trips as follows:

- Mining is a very small component of the economy at 0.3% and experienced a significant job contraction from 121 jobs in 2010 to 71 jobs in 2020, a decline of

[37] *Quick Facts: Mendocino County, California*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/mendocinocountycalifornia/PST045221.

[38] The Census population estimate on July 1, 2023 was 89,108 or a decrease of 2.7% from the 2020 census population. *Quick Facts: Mendocino County, California*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/mendocinocountycalifornia/PST045223.

41.32%. Mining in Mendocino County is almost exclusively related to aggregate extraction.

- Forestry and Fishing experienced a slight increase of 170 jobs (+12.36%) in this same ten-year timeframe. Fishing products are not a suitable product for rail transport due to perishability. Forestry is a difficult item to transport via rail because timber harvests are geographically dispersed and transport by rail in Mendocino County would require a truck, rail, and truck transfer scenario with very large logs for an average 40-mile transport distance which is uneconomical. Forestry has suffered a general decline in Mendocino County, which decline has played a major role in the overall reduced use of rail transportation across coastal Northern California.
- Manufacturing is a relatively small sector of the Mendocino County economy. It represents just 6% of all jobs and experienced nominal growth of 1.86% during this timeframe, most of the manufacturing jobs are located along the Highway 101 corridor in and around Ukiah.

Id. at 9-10.

Mendocino County per capita income has ranged between 85% and 100% of the US average per capita income from 1970-2020, notwithstanding California's overall robust economic contribution to the Gross National Product of nearly 13% and high cost of living, illustrating that the area has struggled economically for decades. Mendocino County housing production averages 148 units/year or a 0.36% annual growth rate, which represents a very slow increase in housing units. *Id.* at 42.

Due to the short haul distances and competition from trucks in Mendocino County, there is insufficient actual demand for rail freight transport from Willits to Fort Bragg to justify the

significant capital investment required to improve the MR Line necessary for the rail freight, let alone maintain and operate them. The MR Line, if rehabilitated for freight, would not be able to recover its capitalization costs with earned income. MR would presumably go bankrupt, as CWR was before its assets were acquired in bankruptcy in 2004. *Id.* at 24.

In other words, Mendocino County does not have the economic conditions to develop a need for freight rail service in the future. Its natural resources and manufacturing businesses are extremely limited and do not warrant new freight rail service. The small size and lack of growth of the local economy does not warrant use of rail service to transport goods into this community by rail. Moreover, the rail infrastructure in Mendocino County has been decimated by a lack of revenue and unstable building conditions, resulting in the inability to use or rehabilitate the MR Line and the GRTA Line, which would cost approximately $30,000.000 and over $50,000,000 to rehabilitate, respectively. *See id.* This situation has effectively cut Mendocino County off from the interstate rail network, thereby making the possibility of developing future rail service nil.

C. Abandonment Is in the Public Interest.

The public interest strongly supports removal of the unused MR Line from the federal interest. First, abandonment will support the area's transition to ecotourism from a timber-based economy. Second, removal of the MR Line from the shield of federal rail protection will put an end to ongoing tactics by MR of improperly using its status as a common carrier to avoid state and local regulation and to acquire land improperly through eminent domain. Overall, abandonment will put to rest ongoing confusion about the MR Line's status and help the economy blossom as a tourist destination.

1. Abandonment is more fitting with California's plans to transform essentially unused freight rail lines in Mendocino County into rail trails to increase ecotourism in this scenic area as the best way to improve economic conditions in this struggling region.

In the 1990s, the State of California attempted, through the creation of the NCRA, to revitalize freight railroad capability in rural northern California under public control, after the commercial rail operations with roots in California's bygone era of commercial logging had fallen into financial ruin. The transformation of the economy of northern California away from the logging industry concurrent with the transformation of freight hauling away from rail to truck traffic in the remote regions of California that were home to the GRTA Line, proved insurmountable to the state's attempt to revitalize freight rail service along the GRTA Line, even with control of the entire segment consolidated in a single public entity. From its first major acquisition in 1992 through 2018, California's NCRA was unable to resurrect a functioning freight system where the economics and logistics of the region could simply no longer support freight rail economically. California realized after its failed experiment trying to support rail service in this area through the NCRA because of the lack of demand for freight rail service in the area that a new approach was needed. In 2018, legislation (Senate Bill [SB] 1029) provided that "the North Coast Rail Authority's (NCRA) railroad tracks, rights-of-way (ROW), and other properties provide an opportunity to create a Great Redwood Trail for hiking, biking, and riding, that may be in the *public and economic best interests of the north coast*." (Emphasis supplied).

Section 2 of SB 1029 directed the California State Transportation Agency, in consultation with the California Natural Resources Agency, to "conduct an assessment of the North Coast Railroad Authority to provide information necessary to determine the most appropriate way to dissolve the North Coast Railroad Authority and dispense with its assets and liabilities." The legislation called for the preparation of a report that includes "a preliminary assessment of which

portions of the terrain along the rail corridor may be suitable for a trail." A 252-mile portion of this rail corridor was evaluated in this feasibility assessment, pursuant to SB 1029 Section 2(a)(4)(b). The feasibility assessment found while there are several complexities and challenges associated with the corridor, it recommended development of the Great Redwood Trail on the GRTA Line.[39]

As discussed herein, MR bought the MR Line in 2004 and clearly has been unable to bring back freight service for similar reasons to those experienced by NCRA as it struggled with tunnel collapses and the prior closing of the G-P facility in Fort Bragg. As a result, MR moved towards tourist excursion passenger service to survive as an entity. This use of the MR Line as a tourist excursion rail operation by MR fits with California's plans to focus more attention in this area on ecotourism in this environmentally beautiful but economically struggling area. Abandonment of the MR Line could further this state policy by turning the right-of-way into a trail that could easily be a branch of the Great Redwood Trail. Obviously, an abandonment of the MR Line would fit the public interest to develop this region into an ecotourism area as the days of the timber industry supporting this region fade into history.

2. Abandonment of the MR Line will put an end to ongoing tactics by MR of using its status as a common carrier to avoid state and local regulation.

In June 2017, the City of Fort Bragg deemed the MR roundhouse as so dilapidated that it may be necessary to demolish the building and rebuild instead of repairing it. Fort Bragg even offered to assist with funding to defray those costs. However, attempts to inspect the roundhouse by the Mendocino County Building Inspector were refused and rebutted with a message from MR

[39] See Great Redwood Trail | Feasibility, Governance, and Railbanking Report (July 2020), https://calsta.ca.gov/-/media/calsta-media/documents/appendix-d--cdpr-great-redwood-trail-feasibility-report508remediateda11y.pdf.

that Fort Bragg has no authority over a railroad. In 2019, when Fort Bragg red tagged MR's work on a storage shed on MR's property for failure to obtain a Fort Bragg building permit, MR removed the tag and proceeded with the work. More recently, in August 2021, Fort Bragg sent an email to MR to inform them that it needed a Limited Term Permit for a special event after 10pm that would create additional noise in the neighborhood surrounding the MR's property. MR's response was that they are "outside the City's jurisdictional boundaries and thus not subject to a permit."[40]

GRTA in no way disputes that the STB's exclusive sphere of influence reaches all state and local attempts to affect "transportation by rail carriers." It does not, however, reach every regulation that impacts a carrier in any way. "State and local regulation is appropriate where it does not interfere with rail operations. Courts have consistently held that localities retain their reserved police powers to protect the public health and safety so long as their actions do not unreasonably burden interstate commerce." *Grafton & Upton R.R. Co.,* FD 35779, 2014 WL 292443, at *5 (STB Jan. 22, 2014) (citing *Green Mountain R.R. v. Vt.*, 404 F.3d 638, 643 (2d Cir. 2005)). *See New England Cent. R.R., Inc. v. Springfield Terminal Ry. Co.,* 415 F.Supp.2d 20*,* 27 (D. Mass. 2006) ("Courts have consistently found that state law that directly or indirectly regulates railroads is preempted by § 10501(b). In other words, preemption clearly applies where a claim will directly affect railroad transportation. On the other hand, where adjudication of a claim will address garden variety issues of negligence, without significant 'regulation' of the railroad, then preemption generally will not be appropriate.").

Here, there are no discernable interstate rail operations with which Fort Bragg can interfere, as MR conducts no such activities on the MR Line considering its collapsed tunnel and disconnect

[40] *See* Complaint, *City of Fort Bragg v. Mendocino Railway*, Case No. 21CV00850, (filed in Superior Court of California, County of Mendocino, Oct. 28, 2021) (attached hereto as Exhibit 10).

from the interstate rail network. Also, these laws that Fort Bragg has sought to enforce, the building safety code and an event permit, are exactly these types of reserved police powers courts have left to local governments to protect public health and safety. However, MR has decided to use the power of preemption under 49 U.S.C. § 10501(b) improperly as a shield against this justifiable local regulation.

In fact, MR filed a demurrer to Fort Bragg's complaint in state court about these very issues arguing for dismissal on two grounds. First, it argued that as a railroad, it is a public utility subject to the jurisdiction of a state agency and not the court. It also argued that as a railroad subject to the jurisdiction of the Surface Transportation Board, Fort Bragg's attempts to regulate it were preempted by federal law. The court rejected the first argument and found the second argument created a "fact bound" question inappropriate for demurrer.[41] Therefore, MR continues to ignore local building, event, and safety laws placing this community at risk for absolutely no reason based on MR's contrived premise that this regulation would interfere with its interstate rail operations.

Moreover, in an attempt to keep its intrastate railroad operations alive, MR has attempted to maintain the MR Line by taking shortcuts. Due to its lack of concern regarding the possible impacts these activities could have on the sensitive local environment in this pristine and scenic area, MR has caused serious environmental damage along the MR Line as discussed above in Section III.B - Condition of Properties (Section 1152.22(b)). *See* California Coastal Commission and Friends of the Eel River's Joint Motion to Dismiss Mendocino Railway's Offer of Financial Assistance (Doc. No. 305500), Exh. D, Cleanup and Abatement Order, at 2, *North Coast Railroad Authority – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, CA*, AB

[41] *City of Fort Bragg v. Mendocino Railway*, Case No. 21CV00850, Ruling on Demurrer (Superior Court of California, County of Mendocino, Apr. 28, 2022) (attached hereto as Exhibit 11).

1305X (Oct. 19, 2022). Moreover, as discussed herein, MR's unmaintained culverts have restricted breeding grounds for endangered fish species near the MR Line. Abandonment will diminish the risk of further environmental harm on the MR Line by allowing the state and local authorities to monitor the activities of MR more effectively when it engages in rehabilitation work in the pristine, scenic areas in and around the right-of-way.

In addition, and most astonishingly, MR has used its eminent domain powers as a rail carrier to obtain the former G-P mill site on the Pacific coast in 2019, claiming that the property was being used for the "construction and maintenance of rail facilities related to [Mendocino Railway's] ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto . . ." Exh. A, Order of Condemnation, ¶ 2 attached hereto as Exhibit 12. However, the overwhelming majority of MR's plans for the former G-P mill site appear to have nothing to do with constructing rail facilities. MR describes its "vision" for the mill site as follows: "[MR] envisions new residential properties at all levels of density, a restoration of part of the coastal spur of the rail line expanded public parking, a hostel, live/work units, storefront commercial space, a massive open space preservation, a restoration of our dry shed, an oceanfront hotel and condos, a Pomo education center, and more." Exh B, The Little Stinker, 2. The restoration of rail facilities only encompasses further excursion services described as "restoring rail service to Glass Beach for passengers" and the addition of "an iconic train station there with a view of the ocean" and a dry shed. *Id*. at 3. Based on its own publications, it is clear that MR has no plans to develop any infrastructure that would facilitate freight operations at the former G-P mill site. Instead, it has used its status as a railroad to obtain the site at an incredibly low price and to avoid any and all local and state regulations, especially those relating to this environmentally sensitive coastal zone of the Pacific Ocean where this land lies.

Moreover, as discussed herein, MR attempted to acquire land in Willits through eminent domain again under the guise that it is a rail carrier that needed this land for rail operations. MR was unsuccessful in this unjustified attempt to take this individual's land based on MR's failure to demonstrate any interstate freight rail business. *Meyer Decision,* SCUK-CVED-2020-74939, at 4-5, attached hereto as Exhibit 6.

This scheme by MR to acquire and develop this land under the guise of being a rail carrier is completely against the public interest as MR has absolutely no chance of operating prohibitively expensive, wholly economically unnecessary freight service on the MR Line as the discussion herein demonstrates. Moreover, MR is using its status as a rail carrier to avoid state and local regulation in the sensitive coastal zone where this land rests. In other words, MR is seeking to construct housing, retail, and some minor intrastate rail upgrades smack dab in the middle of this environmentally sensitive coastal zone and to avoid all state and local environmental regulation in the process as a rail carrier. This attempt to build willy-nilly in this area without any supervision is clearly against the public interest.

3. The STB has granted numerous adverse abandonments under similar circumstances in favor of the public interest.

In *Modern Handcraft*, *supra*, the Board ruled that "[t]he function of our exclusive and plenary jurisdiction over abandonments is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. **We will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of State law where there is no overriding Federal interest in interstate commerce**. Where, as here, there have been no rail operations for over 12 years and no attempt to provide rail service, we can find no public benefit in preventing a state condemnation proceeding." *Id.* at 972. Similarly, because MR has not moved any freight in interstate commerce in over 20 years and has no

economically feasible prospects of doing so in the future, there is a clear public benefit in preventing MR from using STB jurisdiction as a shield against the police powers and crucial environmental regulation under State law.

Moreover, in *Stewartstown R.R. Company – Adverse Abandonment – in York County, Pa.,* AB-1071 (STB served Nov. 16, 2012), the Board granted an adverse abandonment application for a 7.4-mile line that had not been used for freight in 20 years. In addressing the public interest, the Board stated as follows:

> We agree with the Estate that, under the circumstances presented in this case, it is in the public interest to terminate Board jurisdiction to allow the Estate to pursue all available legal remedies to obtain the money that it is owed. As previously noted, the Estate has explained that under its mortgage it is entitled to immediate full payment and that remaining a creditor of SRC for five years, as SRC suggests, would be contrary to the Estate's fiduciary obligations. Where, as here, the record shows no overriding Federal interest in keeping the property within the national rail system, there is a legitimate public interest in ensuring railroad creditworthiness and freeing the Estate to use all legal remedies available to it to hold the railroad accountable for its financial obligations. Removing our jurisdiction over the Line also is consistent with the Rail Transportation Policy (RTP) at 49 U.S.C. § 10101, which promotes sound economic conditions in transportation (§ 10101(5)) and efficient management of railroads (§ 10101 (9)) and makes clear that, where warranted, the Board should minimize the need for federal regulatory control over the rail transportation system (§ 10101(2)).

Id. at 12. Identical reasoning applies in this situation as there is no Federal interest in keeping the MR Line in the national rail system, but there is an extremely strong public interest in protecting the environment and public safety under State law and freeing California to fully abandon the GRTA Line.

In *Alloy Property Company, LLC – Adverse Abandonment – Chicago Terminal R.R. in Chicago, Ill.,* AB-1258 (STB served Apr. 30, 2018), the Board granted an adverse abandonment application for a line that had not been used for freight for three years. The Board found it to be in the public interest to support a land use policy, which "embraces changes to land use policy within

the Corridor to attract innovation and technology-oriented businesses (as opposed to new heavy industrial ones) with the goals of fostering new mixed-use neighborhoods and publicly accessible open space." Likewise, an adverse abandonment would be in the public interest here because it would be supportive of the efforts by the State of California to change this deteriorated rail infrastructure in the area to its highest and best use as pedestrian and biking trails in favor of transforming this region into an ecotourism economy as it attempts to transition away from the timber industry. *See also Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, Ind.,* AB-290 (Sub-No. 286), slip op. at 5 (STB served Apr. 17, 2012) (Board granted the application for adverse abandonment on rail lines that had not been used in 17 years, ruling "the City states that it plans to acquire the right-of-way for public use, specifically for a bicycle and pedestrian trail. Acquisition of the Lines would also allow the City to improve safety…The benefits that these public projects would bring weigh in favor of granting the proposed abandonment under the circumstances presented here." (citations omitted)); *Denver & Rio Grande Railway Historical Foundation – Adverse Abandonment – in Mineral County, CO,* AB-1404, slip op. at 17 (STB served May 23, 2008) ("the City's plans are somewhat less developed than those we have seen in some other cases where adverse abandonments have been granted. But given the essentially nonexistent need to preserve this 1-mile segment as part of the national rail system, we find that adverse abandonment would serve the public interest by allowing possible development of public projects.")

In sum, an adverse abandonment will support the public interest by promoting California's policy in this region to transition this economy towards ecotourism. Moreover, given the absence of any current or future need for rail transportation on the MR Line, the Board should "not allow [its] jurisdiction to be used to shield a carrier from the legitimate processes of state law." *Modern*

Handcraft, Inc., 363 I.C.C. at 972. In a situation like MR's, the Board's "removal of [its] jurisdiction as a shield against state law is in the public interest." *Id.* Otherwise, the short line rail industry would be overrun by scofflaws and ne'er-do-wells seeking to take advantage of their federal preemption powers at every turn.

V. CONCLUSION

Based on the foregoing discussion, GRTA respectfully asks the Board to grant this Application for Adverse Abandonment permitted by the present or future public convenience and necessity.

Respectfully submitted,

/s/ Daniel R. Elliott

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Attorney for Great Redwood Trail Agency

Dated: April 12, 2024

Certificate of Service

I hereby certify that on this 12th day of April 2024, I caused the foregoing Application to be served by First Class Mail or more expedient method on the following:

Governor Gavin Newsom
State of California
1021 O Street, Suite 9000
Sacramento, CA 95814
(By certified mail)

California Public Utilities Commission
300 Capitol Mall, Suite 500
Sacramento, CA 95814

California Department of Transportation
P.O Box 942873
Sacramento, CA 94273-0001
maya.wallace@dot.ca.gov

UCCE-Mendocino County
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cemendocino@ucanr.edu

U.S. Department of Transportation - Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

US Dept. of Defense (SDDCTEA)
Attn: Railroads for National Defense
1 Soldier Way, Bldg. 1900W
Scott AFB, IL 62225

U.S. Department of Agriculture
Chief of the Forest Service
1400 Independence Ave., SW
Washington, DC 20250

U.S. Railroad Retirement Board
844 North Rush Street
Chicago, IL 60611

U.S. Department of Interior
Recreation Resources Assistance Division
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Significant Users of MR Line
(Names not revealed in accordance with protective order)

_/s/ Daniel R Elliott___
Daniel R. Elliott

EXHIBIT 1

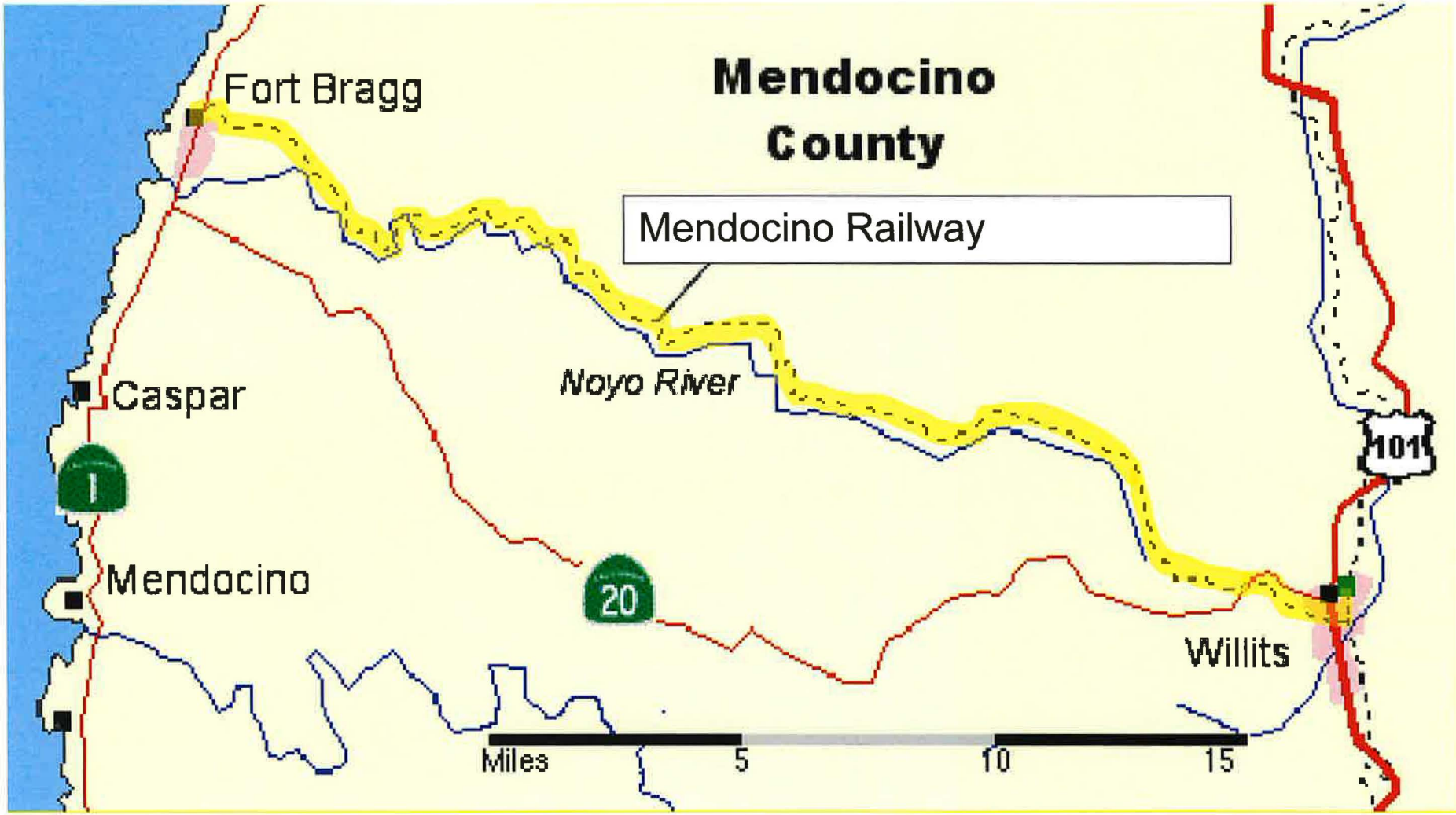
Mendocino
County
Fort Bragg
Mendocino Railway
Noyo River
Caspar
1
101
20
Mendocino
Willits
Miles
5
10
15

EXHIBIT 2

The Ukiah Daily Journal classifieds

(707) 468-3500 ext. 2

Copy Acceptance
The Daily Journal reserves the right to withhold publication and may examine its discretion in acceptance or classification of any and all advertising.
Deadlines
New classified ads, corrections and cancellations is 11 a.m. the day before publication.
Sunday edition deadline is Friday at 11:30 a.m.
Payment
All advertising must be paid in advance unless credit account has been established.
Master Card and Visa are accepted.
Errors
When placing your ad, always ask for the ad to be repeated back to you. Check your ad for any errors the FIRST DAY. The Ukiah Daily Journal will be responsible for only one incorrect insertion and no greater extent than the cost of the space occupied.

Local • Statewide • Countywide • One Call – One Bill – *We make it EASY for you!*

Legal Notices

NOTICE OF INTENT TO FILE ADVERSE ABANDONMENT BEFORE THE SURFACE TRANSPORTATION BOARD AB-1305 (Sub-No. 1) GREAT REDWOOD TRAIL AGENCY - ADVERSE ABANDONMENT - MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

The Great Redwood Trail Agency ("The Applicant") gives notice that on or about April 5, 2024, it intends to file with the Surface Transportation Board ("STB" or "Board"), Washington, D.C. 20423, an Application for Adverse Abandonment of a line of railroad that extends between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California ("MR Line"), which traverses through United States Postal Service ZIP Codes 95437 and 95490. There are no stations on the MR Line.

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

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

The application will include the Applicant's entire case for abandonment. The application, when filed, can be viewed on the Board's webpage, www.stb.gov, or a copy can be secured from Applicant's counsel, whose name and address appear below. Any interested person, after the application is filed on April 5, 2024, may file with the STB written comments concerning the proposed abandonment or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the MR Line, the MR Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. § 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. § 1247(d) (§1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application.

Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition (case in chief) including the following: (1) Protestant's name, address, and business; (2) a statement describing protestant's interest in the proceeding including: (i) A description of protestant's use of the MR Line; (ii) if protestant does not use the MR Line, information concerning the group or public interest it represents; and (iii) if protestant's interest is limited to the retention of service over a portion of the MR Line, a description of the portion of the MR Line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the MR Line profitably, including an appropriate return on its investment for those operations. (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service (this information must be supported by affidavits of persons with personal knowledge of the fact(s)). (4) Any rebuttal of material submitted by applicant.

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

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

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

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, should indicate the proceeding designation STB No. AB-1305 (Sub-No. 1). Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the Applicant, Daniel Elliott, GKG Law, 1055 Thomas Jefferson Street, NW, Suite 620, Washington, DC 20007, delliott@gkglaw.com. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Comments or protests need to be notarized or verified, and are required to be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, at 395 E Street, S.W., Washington, DC 20423, together with a certificate of service attesting that copies of the comments or protests have been served on Applicants' counsel in this matter, no later than May 20, 2024.

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

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Comments and protests will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

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

3/20,3/27,4/3/2024

ANDERSON VALLEY JR./SR. HIGH SCHOOL
2024 TEMPORARY CLASSROOMS PROJECT
NOTICE TO BIDDERS

Notice is hereby given that the Anderson Valley Unified School District (hereinafter referred to as "Owner") will receive sealed bids prior to the date and time stated for the bid opening for the award of a contract to construct the

ANDERSON VALLEY JR./SR. HIGH SCHOOL
2024 TEMPORARY CLASSROOMS PROJECT
(the "Contract"),

as per the Contract Documents, including the drawings and specifications, which may now be obtained electronically from the Architect, who is

Alameida Architecture
555 S. Main Street, Suite 2
Sebastopol, CA 95472

The lowest bid shall be determined on the total of the bid prices on the Base Bid and the following additive and deductive items: Alternate 1 and 2.

This Contract isnot subject to prequalification pursuant to Public Contract Code section 20111.6.

Public works projects shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations. For all projects over Twenty-Five Thousand Dollars ($25,000), a contractor or subcontractor shall not be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104 unless currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code. For all projects over Twenty-Five Thousand Dollars ($25,000), a contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work and proof of registration is provided.

The Contract Time shall be Three hundred (300) calendar days with the following limitations: 150 days for early procurement and off site fabrication followed by 150 days on site access and construction, and liquidated damages for delay shall accrue.

Bids must be sealed and filed at The District Office located adjacent to the High School, in the following building:

Anderson Valley Unified School District Office 18200 Mountain View Road, Boonville California.

on **April 4, 2024, before 3:00 p.m.** on the clock designated by the Owner or its representative as the bid clock. No bid will be accepted by the Owner after this time. Facsimile (FAX) copies of the bid will not be accepted. Bids may be opened immediately after the above deadline for submittal, or at a later time, within the Owner's discretion.

Non-Mandatory pre-bid conference will be held on **March 26, 2023 at 3:00 p.m.** at 18200 Mountain View Road, Boonville California. Bidders not attending one of the prebid conference will be disqualified.

Bids must be accompanied by a bidder's bond, cashier's check, or certified check for at least ten percent (10%) of the amount of the base bid and made payable to the Owner, as detailed in the Contract Documents.

Pursuant to the Contract Documents, the successful bidder will be required to furnish a Payment (Labor and Material) Bond in the amount of one hundred percent (100%) of the Contract Sum, and a Faithful Performance Bond in the amount of one hundred percent (100%) of the Contract Sum.

The successful bidder will be allowed to substitute securities or establish an escrow in lieu of retainage, pursuant to Public Contract Code Section 22300, and as described in the Agreement Between Owner and Contractor and General Conditions.

The Owner will not consider or accept any bids from contractors who are not licensed to do business in the State of California, in accordance with the California Public Contract Code, providing for the licensing of contractors. In accordance with Section 3300 of said Code, the bidder shall have a Class "B" license at the time of award and shall maintain that license in good standing through Completion of the Contract and all applicable warranty periods. For all projects over Twenty-Five Thousand Dollars ($25,000), the bidder shall state the public works contractor registration number on the Designation of Subcontractors form for each subcontractor performing more than one-half of one percent (0.5%) of the bidder's total bid.

The Director of Industrial Relations of the State of California, in the manner provided by law, has ascertained the general prevailing rate of per diem wages and rate for legal holidays and overtime work. The Contractor must pay for any labor therein described or classified in an amount not less than the rates specified. Copies of the required rates are on file at the Owner's business office and are available on request.

Advertisement (Public Contract Code §20112).
1st Publication Date:
2nd Publication Date:

FICTITIOUS BUSINESS NAME STATEMENT File No: 2024-F0163

THE FOLLOWING PERSON(S) IS (ARE) DOING BUSINESS AS: **PETE'S POWER WASH AND MINI STORAGE**, 1401 South State Street Ukiah, CA 95482. **Gloria Maria Carter** 1751 Daniel Way, Redwood Valley CA 95470 This business is conducted by an **individual**. The registrants commenced to transact business under the fictitious business name or names listed above on **03/04/2024.** Endorsed-Filed on **3/14/2024** at the Mendocino County Clerks Office /s/Gloria Maria Carter

3-20,27 & 4-3,10/24

Fictitious Business Name Statement 2024-F70135

The following person(s)is/are doing business as: **Tribal Connect**, 151 San Hedrin Cir Suite B Willits, CA. 95490, PO Box 512, 95490 (707) 496-7918. This business is conducted by a **Corporation Kosher Sun Distribution Inc** 151 San Hedrin Suite B Willits, CA. 95490. The registrant will commence

Legal Notices

to transact business under the fictitious business name above on [date]. Endorsement filed with the Mendocino County Clerk **N/A.**
s/ Marisa McConnell, C.E.O
2/13,2/20,2/27; 3/1/2024

Miscellaneous Merchandise

A POWER WHEELCHAIR NEW* at NO COST! $0 Call to qualify 831-244-6300

Mobile Home Space Rentals

Clark RV & TP Free Wat&Garb, From $425/mo internet (707)462-7383 (707) 972-4696

When You **GOTTA FIND IT NOW!** Check The **CLASSIFIEDS!**

JUMBLE

Unscramble these Jumbles, one letter to each square, to form four ordinary words.

WCAHK

DBYUD

LFAMEE

SUWINE

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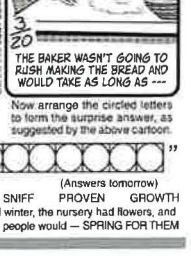
Ans. here: ( ) ( ) ( ) ( ) ( ) ( )

(Answers tomorrow)

Yesterday's Jumbles: IMPEL SNIFF PROVEN GROWTH
Answer: After a cold winter, the nursery had flowers, and they hoped people would — SPRING FOR THEM

THAT SCRAMBLED WORD GAME

By David L. Hoyt and Jeff Knurek



Now arrange the circled letters to form the surprise answer, as suggested by the above cartoon.

Legal Notices

Request for Qualifications

March 15, 2024

Request for Qualifications: Pinoleville Pomo Nation (PPN) is requesting qualifications to construct a Multi-Family Housing Project in Ukiah, California.

Native American firms will receive preference. Small-minority-owned, women's business enterprises and local firms are encouraged to bid. The owner reserves the right to select the most qualified and responsible bidder.

RFQ packages for the "Multi-Family Housing Project" may be obtained by visiting our website at https://pinoleville-nsn.gov/departments/housing/ starting March 15, 2024.

All questions regarding this RFQ must be submitted in writing in email format directed to Alicia Tielo at alicia@pinoleville-nsn.gov.

INDIAN PREFERENCE & SECTION 3
Bid I subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C) and section 3 requirement under Housing and Urban Development Act of 1968 (12 U.S.C. 1704u) and HUD's impiementing regulation in 24 CFR part 135.

See The Ukiah Daily Journal Classifieds Online At www.ukiahdailyjournal.com

Financial Notices

Wanted! Attorney to sue RCHDC. 707-472-0823

General Employment

Mendocino County invites applications for:

Corrections Deputy
$55,369 - $67,308
Deputy County Counsel II/III/IV
$97,260 - $162,718
Deputy Probation Officer I/II
$51,937 - $69,617
Deputy Sheriff-Coroner
$75,578 - $93,142
Legal Secretary I/II
$38,563 - $54,792
Library Assistant - Fort Bragg
$37,398 - $39,270
Mental Health Rehabilitation Specialist
$57,387 - $69,763
Screener
$40,144 - $48,796

For a complete list of current openings and to apply: www.mendocinocounty.gov/jobs
EOE

Legal Notices

NOTICE OF TRUSTEE'S SALE Trustee Sale No. 170269 Title No. 230511331 YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 11/20/2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER. On 04/09/2024 at 10:00 AM, Prime Recon LLC, as duly appointed Trustee under and pursuant to Deed of Trust recorded 11/27/2006, as Instrument No. 2006-23353, in book xx, page xx, of Official Records in the office of the County Recorder of Mendocino County, State of California, executed by Rodney Defazio, a single man, WILL SELL AT PUBLIC AUCTION TO HIGHEST BIDDER FOR CASH, CASHIER'S CHECK/CASH EQUIVALENT or other form of payment authorized by 2924h(b), (payable at time of sale in lawful money of the United States). At the main entrance to the Mendocino County Courthouse, 100 North State Street, Ukiah, CA 95482 All right, title and interest conveyed to and now held by it under said Deed of Trust in the property situated in said County and State, described as: FULLY DESCRIBED IN THE ABOVE DEED OF TRUST.APN 108-191-26-00 The street address and other common designation, if any, of the real property described above is purported to be:10825 Hearst Willits Road, Willits, CA 95490 The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by said Deed of Trust, with interest thereon, as provided in said note(s), advances, if any, under the terms of said Deed of Trust, fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is:$363,999.81 If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee, and the successful bidder shall have no further recourse. The beneficiary under said Deed of Trust heretofore executed and delivered to the undersigned a written Declaration of Default and Demand for Sale, and a written Notice of Default and Election to Sell. The undersigned caused a Notice of Default and Election to Sell to be recorded in the county where the real property is located. Dated:03/1/2024 PRIME RECON LLC Prime Recon LLC may be attempting to collect a debt. Any information may be used for that purpose. Ryan Remington/Authorized Signature 27368 VIA INDUSTRIA STE 201 TEMECULA CA 92590 (866) 725-4142 FOR TRUSTEE'S SALE INFORMATION PLEASE CALL (714) 730-2727 NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property. NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call (714) 730-2727 for information regarding the trustee's sale or visit this Internet Web site - www.servicelinkASAP.com - for information regarding the sale of this property, using the file number assigned to this case: 170269. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale. NOTICE TO TENANT: You may have a right to purchase this property after the trustee auction pursuant to Section 2924m of the California Civil Code. If you are an "eligible tenant buyer," you can purchase the property if you match the last and highest bid placed at the trustee auction. If you are an "eligible bidder," you may be able to purchase the property if you exceed the last and highest bid placed at the trustee auction. There are three steps to exercising this right of purchase. First, 48 hours after the date of the trustee sale, you can call (714) 730-2727 for information regarding the trustee's sale, or visit this internet website www.servicelinkASAP.com for information regarding the sale of this property, using the file number assigned to this case 170269 to find the date on which the trustee's sale was held, the amount of the last and highest bid, and the address of the trustee. Second, you must send a written notice of intent to place a bid so that the trustee receives it no more than 15 days after the trustee's sale. Third, you must submit a bid so that the trustee receives it no more than 45 days after the trustee's sale. If you think you may qualify as an "eligible tenant buyer" or "eligible bidder," you should consider contacting an attorney or appropriate real estate professional immediately for advice regarding this potential right to purchase. A-4812084 03/20/2024, 03/27/2024, 04/03/2024

UDJ#6815772

3/20/24, 3/27/24, 4/3/24

Legal Notices

NOTICE OF INTENT TO FILE ADVERSE ABANDONMENT BEFORE THE SURFACE TRANSPORTATION BOARD AB-1305 (Sub-No. 1) GREAT REDWOOD TRAIL AGENCY – ADVERSE ABANDONMENT – MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

The Great Redwood Trail Agency ("the Applicant") gives notice that on or about April 5, 2024, it intends to file with the Surface Transportation Board ("STB" or "Board"), Washington, D.C., 20423, an Application for Adverse Abandonment of a line of railroad that extends between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California ("MR Line"), which traverses through United States Postal Service ZIP Codes 95437 and 95490. There are no stations on the MR Line.

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

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

The application will include the Applicant's entire case for abandonment. The application, when filed, can be viewed on the Board's website, www.stb.gov, or a copy can be secured from Applicant's counsel, whose name and address appear below. Any interested person, after the application is filed on April 5, 2024, may file with the STB written comments concerning the proposed abandonment or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the MR Line, the MR Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. § 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. § 1247(d) (§1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application.

Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition (case in chief) including the following: (1) Protestant's name, address, and business. (2) A statement describing protestant's interest in the proceeding including: (i) A description of protestant's use of the MR Line; (ii) If protestant does not use the MR Line, information concerning the group or public interest it represents; and (iii) If protestant's interest is limited to the retention of service over a portion of the MR Line, a description of the portion of the MR Line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the MR Line profitably, including an appropriate return on its investment for those operations. (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service (this information must be supported by affidavits of persons with personal knowledge of the fact(s)). (4) Any rebuttal of material submitted by applicant.

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

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

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

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, should indicate the proceeding designation STB No. AB-1305 (Sub-No. 1). Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each comment or protest shall be served upon the representative of the Applicant, Daniel Elliott, GKG Law, 1055 Thomas Jefferson Street, NW, Suite 620, Washington, DC 20007, delliott@gkglaw.com. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Comments or protests need to be notarized or verified, and are required to be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, at 395 E Street, S.W., Washington, DC 20423, together with a certificate of service attesting that copies of the comments or protests have been served on Applicants' counsel in this matter, no later than May 20, 2024.

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

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Comments and protests will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

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

3/20,3/27,4/3/2024

Request for Qualifications

March 15, 2024

Request for Qualifications: Pinoleville Pomo Nation (PPN) is requesting qualifications to construct a Multi-Family Housing Project in Ukiah, California.

Native American firms will receive preference. Small-minority-owned, women's business enterprises and local firms are encouraged to bid. The owner reserves the right to select the most qualified and responsible bidder.

RFQ packages for the "Multi-Family Housing Project" may be obtained by visiting our website at https://pinoleville-nsn.gov/departments/housing/ starting March 15, 2024.

All questions regarding this RFQ must be submitted in writing in email format directed to Alicia Tielo at alicia@pinoleville-nsn.gov.

INDIAN PREFERENCE & SECTION 3

Bid I subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C) and Section 3 requirement under Housing and Urban Development Act of 1968 (12 U.S.C. 1734u) and HUD's implementing regulation in 24 CFR part 135.

APN: 181-141-10-00 TS No.: 23-06987CA TSG Order No.: 150-2386705 NOTICE OF TRUSTEE SALE UNDER DEED OF TRUST YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED JANUARY 9, 2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER. Affinia Default Services, LLC, the duly appointed Trustee, under and pursuant to the power of sale contained in that certain Deed of Trust Recorded January 15, 2008 as Document No.: 2008-00592 of Official Records in the office of the Recorder of Mendocino County, California, executed by: Jamie Arias, an unmarried man and Ramon A Rios, an unmarried man, as Trustor, will be sold AT PUBLIC AUCTION TO THE HIGHEST BIDDER for cash (payable in full at time of sale by cash, a cashier's check drawn by a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state). All right, title and interest conveyed to and now held by it under said deed of trust in the property situated in said county and state, and as more fully described in the above referenced deed of trust. Sale Date: April 23, 2024 Sale Time: 10:00 AM Sale Location: At the main entrance to the Mendocino County Courthouse at 100 North State Street, Ukiah, CA 95482 File No.:23-06987CA The street address and other common designation, if any, of the real property described above is purported to be: 1851 Talmage Rd, Ukiah, CA 95482. The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made in an "AS IS" condition, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by said Deed of Trust, with interest thereon, as provided in said note(s), advances, if any, under the terms of the Deed of Trust, estimated fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust, to-wit: $330,858.87 (Estimated) as of . Accrued interest and additional advances, if any, will increase this figure prior to sale. It is possible that at the time of sale the opening bid may be less than the total indebtedness due. NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property. NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call, (916) 939-0772 for information regarding the trustee's sale or visit this internet website, www.nationwideposting.com, for information regarding the sale of this property, using the file number assigned to this case, T.S.# 23-06987CA. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the internet website. The best way to verify postponement information is to attend the scheduled sale. NOTICE TO TENANT: You may have a right to purchase this property after the trustee auction pursuant to Section 2924m of the California Civil Code. If you are an "eligible tenant buyer," you can purchase the property if you match the last and highest bid placed at the trustee auction. If you are an "eligible bidder," you may be able to purchase the property if you exceed the last and highest bid placed at the trustee auction. There are three steps to exercising this right of purchase. First, 48 hours after the date of the trustee sale, you can call (916) 939-0772, or visit this internet website www.nationwideposting.com, using the file number assigned to this case 23-06987CA to find the date on which the trustee's sale was held, the amount of the last and highest bid, and the address of the trustee. Second, you must send a written notice of intent to place a bid so that the trustee receives it no more than 15 days after the trustee's sale. Third, you must submit a bid so that the trustee receives it no more than 45 days after the trustee's sale. If you think you may qualify as an "eligible tenant buyer" or "eligible bidder," you should consider contacting an attorney or appropriate real estate professional immediately for advice regarding this potential right to purchase. File No.:23-06987CA If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee and the successful bidder shall have no further recourse. For Trustee Sale Information Log On To: www.nationwideposting.com or Call: (916) 939-0772. Dated: March 11, 2024 By: Omar Solorzano Foreclosure Associate Affinia Default Services, LLC 301 E. Ocean Blvd., Suite 1720 Long Beach, CA 90802 (833) 290-7452 NPP0457972 To: UKIAH DAILY JOURNAL 03/27/2024, 04/03/2024, 04/10/2024

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Legal Notices

NOTICE OF INTENT TO FILE ADVERSE ABANDONMENT
BEFORE THE
SURFACE TRANSPORTATION BOARD AB-1305 (Sub-No. 1)
GREAT REDWOOD TRAIL AGENCY - ADVERSE ABANDONMENT - MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

The Great Redwood Trail Agency ("the Applicant") gives notice that on or about April 5, 2024, it intends to file with the Surface Transportation Board ("STB" or "Board"), Washington, D.C. 20423, an Application for Adverse Abandonment of a line of railroad that extends between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California ("MR Line"), which traverses through United States Postal Service ZIP Codes 95437 and 95490. There are no stations on the MR Line.

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

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

The application will include the Applicant's entire case for abandonment. The application, when filed, can be viewed on the Board's webpage, www.stb.gov, or a copy can be secured from Applicant's counsel, whose name and address appear below. Any interested person, after the application is filed on April 5, 2024, may file with the STB written comments concerning the proposed abandonment or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the MR Line, the MR Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. § 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. § 1247(d) (§1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application.

Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments.

Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition (case in chief) including the following: (1) Protestant's name, address, and business. (2) A statement describing protestant's interest in the proceeding including: (i) A description of protestant's use of the MR Line; (ii) if protestant does not use the MR Line, information concerning the group or public interest it represents; and (iii) if protestant's interest is limited to the retention of service over a portion of the MR Line, a description of the portion of the MR Line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the MR Line profitably, including an appropriate return on its investment for those operations. (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)]. (4) Any rebuttal of material submitted by applicant.

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

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

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

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission at their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use conditions, will be filed and should indicate the proceeding designation STB No. AB-1305 (Sub-No. 1). Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each comment or protest shall be served upon the representative of the Applicant, Daniel Elliott, GKG Law, 1055 Thomas Jefferson Street, NW, Suite 620, Washington, DC 20007, delliott@gkglaw.com. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Comments or protests need to be notarized or verified, and are required to be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, at 395 E Street, S.W., Washington, DC 20423, together with a certificate of service attesting that copies of the comments or protests have been served on Applicants' counsel in this matter, no later than May 20, 2024.

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

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Comments and protests will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

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

3/20,3/27,4/3/2024

ATTORNEY OR PARTY WITHOUT ATTORNEY:
Mendocino County Department of Social Services/Family & Children's Services Division.
P. O. Box 839, Ukiah, CA 95482
TELEPHONE NO.: (707) 463-7990
Fax No. (707) 463-7960
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO
100 North State Street, Ukiah, CA 95482.
CASE NAME: Seranay Reza
CITATION FOR PUBLICATION UNDER WELFARE AND INSTITUTIONS CODE SECTION 294(f)(7)(A)
CASE NUMBER: **23JV00224-01**

To: Amanda Reza, and anyone claiming to be a parent of Seranay Reza, born on December 20, 2023, at UCSF Benioff Children's Hospital in San Francisco, California.

1. A hearing will be held on May 14, 2024, at 9:00 a.m. in Dept. G, located at court address above.

2. At the hearing the court will consider the recommendations of the social worker or probation officer.

3. The social worker or probation officer will recommend that your child be freed from your legal custody so that the child may be adopted. If the court follows the recommendation, all your parental rights to the child will be terminated.

4. You have the right to be present at the hearing, to present evidence, and you have the right to be represented by an attorney. If you do not have any attorney and cannot afford to hire one, the court will appoint an attorney for you.

5. If the court terminates your parental rights, the order may be final.

6. The court will proceed with the hearing whether or not you are present.

Date: February 26, 2024
Kim Turner, Clerk of Superior Court, by
Tracy Johnson, Assistant Operations Manager, Superior Court

The publication of the Citation for Publication under Welfare and Institutions Code Section 366.26 will run on the following dates: March 20, 2024, March 27, 2024, April 3, 2024, April 10, 2024.

CITY OF UKIAH, MENDOCINO COUNTY, CALIFORNIA

NOTICE TO BIDDERS FOR GREAT REDWOOD TRAIL PHASE 4

SPECIFICATION NO. 21-02

NOTICE IS HEREBY GIVEN that sealed standard proposals for GREAT REDWOOD TRAIL PHASE 4 will be received at the Office of the City Clerk, Ukiah Civic Center, 300 Seminary Avenue, Ukiah California until 2:00 p.m. on Tuesday, April 23, 2024. Bids shall be addressed to the City Clerk and shall be endorsed "GREAT REDWOOD TRAIL PHASE 4." Bids are required for the entire work described herein. No fax bids will be accepted. As soon thereafter as possible, the bids will be publicly opened and read in the Council Chambers at 300 Seminary Avenue, Ukiah. The bid opening will also be visible via live streaming at http://www.cityofukiah.com/meetings/.

Project Scope: The work includes the design and construction of a Class I trail along the Great Redwood Trail Agency (GRTA) corridor between Commerce Drive and Plant Road in Ukiah, CA. Where the trail intersects road crossings, at Airport Road, Norgard Lane and Plant Road, there will be intersection improvements that include striping, signage, crosswalks, ramps, sidewalks, lighting, signing and striping. The work includes clearing and grubbing, demolition, SWPPP implementation, erosion controls and BMPs, drainage, excavation, fill, grading, compaction, retaining wall, pedestrian ramps, asphalt paving, striping, signing, lighting, flashing beacons and related improvements. The work is within the State Right-of-Way and City Right-of-Way.

Plans and Special Provisions may be inspected and/or copies obtained from the City's website at www.cityofukiah.com/purchasing. No bid will be considered unless it is made on the forms furnished by the City and is made in accordance with the details of the Special Provisions. Each bidder must be licensed as required by law. Further information regarding the work or these specifications can be obtained by calling Myles Fisette, Purchasing Manager at (707) 463-6225 or by email at mfisette@cityofukiah.com

The City Council reserves the right to reject any or all bids and to determine which proposal is, in its opinion, the lowest responsive bid by a responsible bidder and which it deems in the best interest of the City to accept. The City Council also reserves the right, but not the obligation, to waive any irregularity or failure to strictly comply with the bidding requirements, that the City determines in the reasonable exercise of its discretion does not provide the bidder with a competitive advantage over other bidders.

No contractor or subcontractor may be listed on a bid proposal for a public works unless registered with the Department of Industrial Relations ("DIR") pursuant to Labor Code section 1725.5 except as allowed under Labor Code section 1771.1(a). The prime contractor shall be responsible for posting job site notices as prescribed by regulation. This project is subject to compliance monitoring and enforcement by the DIR.

Pursuant to provisions of Section 1770, including amendments thereto, of the Labor Code of the State of California, the Director of the Department of Industrial Relations, State of California, has ascertained the general prevailing rate of wages for straight time, overtime, Saturdays, Sundays and Holidays including employer payment for health and welfare, vacation, pension and similar purposes. Copies of the General Prevailing Wage Determination (applicable to the work), for the locality in which the work is to be done are available on the Internet at web address: http://www.dir.ca.gov/DLSR/PWD/

The prime contractor for the work herein shall possess a current, valid State of California, Class A (General Engineering) Contractor's License. Pursuant to California Public Contract Code §22300, this contract includes provisions that allow substitutions of certain types of securities in lieu of the City withholding a portion of the partial payments due the Contractor to insure performance under this contract.

By order of the City Council, City of Ukiah, County of Mendocino, State of California
/s/ Kristine Lawler, City Clerk, City of Ukiah, California, March 27, 2024

SUMMONS
(CITACION JUDICIAL)
Case Number:
(Numero del Caso):
23CV00783

NOTICE TO DEFENDANT (AVISO AL DEMANDADO): Alveen Chand, James Thomas, Pablo Garza Cortina and Does 1-20 Incl.

YOU ARE BEING SUED BY PLAINTIFF (LO ESTA DEMANDANDO EL DEMANDANTE): County of Sonoma

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Court Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 dias, la corte puede decidir en su contra sin escuchar su version. Lea la information a continuacion.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante.

Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y mas información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/ espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene Que pager el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is (El nombre y dirección de la corte es):
Sonoma County Superior Court
600 Administration Drive
Santa Rosa, CA 95403
The name, address and telephone number of plaintiff's attorney, or plaintiff without an attorney, is (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Diana E. Gomez, SBN 127417
Sonoma County Counsel
575 Administration Drive,
Room 105-A
Santa Rosa, CA 95403
707-565-2421
NOTICE to Defendant PABLO GARZA CORTINA, of the Case Management Conference set for August, at 3:00PM, in Courtroom 17 of the Sonoma County Superior Court, located at 3035 Cleveland Ave., Ste. 200, Santa Rosa, CA 95403.
DATE (Fecha): 09/28/2023
Robert Oliver,
Clerk
By Taylor Curtis,
Deputy

APN: 181-141-10-00 TS No.: 23-06987CA TSG Order No.: 150-2386710-05 NOTICE OF TRUSTEE SALE UNDER DEED OF TRUST YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED JANUARY 9, 2008. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER. Affinia Default Services, LLC, as the duly appointed Trustee, under and pursuant to the power of sale contained in that certain Deed of Trust Recorded on January 15, 2008 as Document No.: 2008-00592 of Official Records in the office of the Recorder of Mendocino County, California, executed by: Jamie Arias, an unmarried man and Ramon A Rios, an unmarried man, as Trustor, will be sold AT PUBLIC AUCTION TO THE HIGHEST BIDDER for cash (payable in full at time of sale by cash, a cashier's check drawn by a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state). All right, title and interest conveyed to and now held by it under said deed of trust in the property situated in said county and state. and as more fully described in the above referenced deed of trust. Sale Date: April 23, 2024 Sale Time: 10:00 AM Sale Location: At the main entrance to the Mendocino County Courthouse at 100 North State Street, Ukiah, CA 95482 File No.:23-06987CA The street address and other common designation, if any, of the real property described above is purported to be: 1851 Talmage Rd, Ukiah, CA 95482. The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made in an "AS IS" condition, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by said Deed of Trust, with interest thereon, as provided in said note(s), advances, if any, under the terms of the Deed of Trust, estimated fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust, to-wit: $330,858.87 (Estimated) as of . Accrued interest and additional advances, if any, will increase this figure prior to sale. It is possible that at the time of sale the opening bid may be less than the total indebtedness due. NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property. NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call (916) 939-0772 for information regarding the trustee's sale or visit this Internet website, www.nationwideposting.com, for information regarding the sale of this property, using the file number assigned to this case, T.S.# 23-06987CA. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet website. The best way to verify postponement information is to attend the scheduled sale. NOTICE TO TENANT: You may have a right to purchase this property after the trustee auction pursuant to Section 2924m of the California Civil Code. If you are an "eligible tenant buyer," you can purchase the property if you match the last and highest bid placed at the trustee auction. If you are an "eligible bidder," you may be able to purchase the property if you exceed the last and highest bid placed at the trustee auction. There are three steps to exercising this right of purchase. First, 48 hours after the date of the trustee sale, you can call (916) 939-0772, or visit this internet website www.nationwideposting.com, using the file number assigned to this case 23-06987CA to find the date on which the trustee's sale was held, the amount of the last and highest bid, and the address of the trustee. Second, you must send a written notice of intent to place a bid so that the trustee receives it no more than 15 days after the trustee's sale. Third, you must submit a bid so that the trustee receives it no more than 45 days after the trustee's sale. If you think you may qualify as an "eligible tenant buyer" or "eligible bidder," you should consider contacting an attorney or approprioate real estate professional immediately for advice regarding this potential right to purchase. File No.:23-06987CA If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee and the successful bidder shall have no further recourse. For Trustee Sale Information Log On To: www.nationwideposting.com or Call: (916) 939-0772. Dated: March 11, 2024 By: Omar Solorzano Foreclosure Associate Affinia Default Services, LLC 301 E. Ocean Blvd., Suite 1720 Long Beach, CA 90802 (833) 290-7452 NPP0457971 To: UKIAH DAILY JOURNAL 03/27/2024, 04/03/2024, 04/10/2024

Invoice Text: **NOTICE OF INTENT TO FILE**
ADVERSE ABANDONMENT
BEFORE THE
SURFACE TRANSPORTATION BOARD AB-1305 (Sub-No. 1)
GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

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3/20,3/27,4/3/2024

The Willits News
77 W Commercial Street
PO Box 628
Willits, CA 95490
707-459-4643

3864646

GKG LAW
1055 THOMAS JEFFERSON STREET NW SUITE #620
WASHINGTON, DC 20007

Legal No. **0006816665**

PROOF OF PUBLICATION

STATE OF CALIFORNIA
COUNTY OF MENDOCINO

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of The Willits News, a newspaper of general circulation, printed and published Every Wednesday and Friday in the City of Willits, California, County of Mendocino, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Mendocino, State of California, in the year 1903, Case Number 9150; that the notice of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

03/20/2024, 03/27/2024, 04/03/2024

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated at Willits, California this 9th day of April, 2024.

Signature

NOTICE OF INTENT TO FILE ADVERSE ABANDONMENT BEFORE THE SURFACE TRANSPORTATION BOARD AB-1305 (Sub-No. 1) GREAT REDWOOD TRAIL AGENCY - ADVERSE ABANDONMENT – MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

The Great Redwood Trail Agency ("the Applicant") gives notice that on or about April 5, 2024, it intends to file with the Surface Transportation Board ("STB" or "Board"), Washington, D.C. 20423, an Application for Adverse Abandonment of a line of railroad that extends between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California ("MR Line"), which traverses through United States Postal Service ZIP Codes 95437 and 95490. There are no stations on the MR Line.

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

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

The application will include the Applicant's entire case for abandonment. The application, when filed, can be viewed on the Board's webpage, www.stb.gov, or a copy can be secured from Applicant's counsel, whose name and address appear below. Any interested person, after the application is filed on April

the application is filed on April 5, 2024, may file with the STB written comments concerning the proposed abandonment or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the MR Line, the MR Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. § 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. § 1247(d) (§1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application.

Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition (case in chief) including the following: (1) Protestant's name, address, and business. (2) A statement describing protestant's interest in the proceeding including: (i) A description of protestant's use of the MR Line; (ii) If protestant does not use the MR Line, information concerning the group or public interest it represents; and (iii) If protestant's interest is limited to the retention of service over a portion of the MR Line, a description of the portion of the MR Line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the MR Line profitably, including an appropriate return on its investment for those operations. (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)]. (4) Any rebuttal of material submitted by applicant.

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

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant

may participate in the proceeding as its interests may appear.

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

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, should indicate the proceeding designation STB No. AB-1305 (Sub-No. 1). Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the Applicant, Daniel Elliott, GKG Law, 1055 Thomas Jefferson Street, NW, Suite 620, Washington, DC 20007, delliott@gkglaw.com. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Comments or protests need to be notarized or verified, and are required to be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, at 395 E Street, S.W., Washington, DC 20423, together with a certificate of service attesting that copies of the comments or protests have been served on Applicants' counsel in this matter, no later than May 20, 2024.

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

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Comments and protests will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

Persons seeking further information concerning abandonment procedures may contact the Board's Rail Customer and Public Assistance program at

(202) 245-0238 or refer to the text of the abandonment regulations at 49 C.F.R. part 1152.

3/20,3/27,4/3/2024

EXHIBIT 3

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

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

ENVIRONMENTAL AND HISTORIC REPORT

Pursuant to 49 C.F.R. § 1105.7(e) and 49 C.F.R. § 1105.8(d), the Great Redwood Trail Agency ("GRTA") hereby submits this Environmental and Historic Report ("Report") for circulation to interested agencies and opportunity for comment. GRTA plans to seek Surface Transportation Board ("STB" or "Board") authorization for the proposed abandonment and discontinuance by filing an application for adverse abandonment pursuant to the provisions of 49 CFR 1152 Subpart C. This Report is being filed in connection therewith in accordance with the requirements of 49 CFR § 1152.20(c), and 49 CFR § 1105.7 and § 1105.8. To prepare this Report, GRTA consulted with various state and federal agencies. See the letters attached as Exhibit A. Based on the written responses received by GRTA attached as Exhibit B, among other sources, GRTA states as follows:

I. Environmental Report

GRTA hereby submits the following information required by 49 C.F.R. § 1105.7(e):

(1) ***Proposed action and alternatives.*** *Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.*

The action is an Application for Adverse Abandonment in which GRTA seeks a finding that the present or future public convenience and necessity require or permit abandonment of a rail line owned by Mendocino Railway ("MR") that extends (1) between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California ("MR Line"). Maps of the Line, including U.S.G.S. maps, are attached hereto as Exhibit C.

No commodities have been transported over the MR Line in interstate commerce for more than 20 years.[1] The MR Line has only been operated for intrastate rail service, mainly involving the tourist excursion operation, "Skunk Train," since its acquisition by MR in 2004.[2]

The MR Line only connects to the interstate rail network in Willits, California, with the rail line now owned by the Sonoma Marin Area Rail Transit District ("SMART") and GRTA, referred to herein as the "GRTA Line." The Northwestern Pacific Railway Co., LLC ("NWP") once operated on this 286-mile GRTA Line between mile post 295.5 near Arcata, California and mile post 63.4 between Schellville, California and Napa Junction, California. GRTA, a California public agency formed pursuant to California Government Code Section 93000 et seq., owns a portion of the GRTA Line between mile post 87 and Arcata, while SMART owns the balance of the GRTA Line. No current freight or passenger activity is occurring on the GRTA Line north of Windsor, California (mile post 62.9), and no activity has occurred north of mile post 87 since at least 1998.

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[1] *See Mendocino Ry. v. John Meyer et al,* Case No. SCUK-CVED-2020-74939, at 3-5 (Ca. Superior Court Apr. 19, 2023) (attached hereto as Exhibit D). MR claims it has conducted regulated transportation during these 20 years. In the Board's August 18, 2023 order in this proceeding, it ordered MR to provide the identity of current users of the MR Line to GRTA by October 5, 2023, so that GRTA may serve notice on them. While GRTA strongly disputes whether these current users identified by MR are engaged in regulated transportation of freight or passengers on the MR Line, it has served notice on them and will address this disputed issue in more detail in its application.

[2] See https://www.skunktrain.com/

Most of NWP's historical operations involved the transportation of freight; however, in the past, this railroad also conducted passenger operations between Willits and Healdsburg. The NWP connected to the California Northern Railroad, another freight railroad, at Schellville. It also connected to the California Western Railroad ("CWR") (now MR), which historically operated both freight and passenger trains, but which has provided for the most part only passenger tourist excursion service since at least 2002, at Willits. Before being purchased by MR, the CWR operated over about one mile of NWP trackage in order to perform interchange at Willits.

The NWP traditionally hauled mostly timber and wood products, but it also hauled some hazardous materials, especially over the portion of the line south of Willits.

The entire GRTA Line north of Windsor has been embargoed by the Federal Railroad Administration ("FRA") since 1998. Operations on the GRTA Line were ordered shut down by the FRA, by its Emergency Order No 21. Notice No. 1, issued November 25, 1998. 63 Fed. Reg. 67976 (Dec. 9, 1998). These rail lines have not been restored to serviceable condition since the embargo was issued because of the expense, lack of funding, and lack of sufficient freight demand to make the outlay of such significant funds economically feasible. In the meantime, the FRA's order remains in effect, and no operations have been conducted on the GRTA Line north of Windsor, CA in the last 24 years. In order for the MR Line to connect to the interstate rail network, GRTA has determined that it would cost $56,561,000 to rehabilitate the GRTA Line from Willits MP 139.5) to Cloverdale (MP 85.6).[3] As a result, MR has no access to the interstate rail network from the MR Line.

[3] *See* *Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5*, D&A Enterprises LLC (Nov. 30, 2023) ("This Assessment was completed to determine an estimated cost necessary to rehabilitate approximately 52.6 miles of GRTA Rail Line from Cloverdale, CA MP 85.6 at the First Street Crossing to Willits, CA MP 139.5 to FRA Class 1 track standards for freight rail service.") (attached hereto as Exhibit E).

The MR Line passes along the Pudding Creek estuary and through two tunnels: Tunnel No. 1 and Tunnel No. 2. Beginning April 11, 2013, MR was essentially disabled following the partial collapse of Tunnel No. 1 located at approximately Milepost 3.5, near Fort Bragg, which buried nearly 50 feet of its 1,200 feet of track under rocks and soil, the third major collapse in the over 100-year-old tunnel's history.[4] Without sufficient cash reserves to finance the excavation, MR announced a fundraising campaign on June 7, selling lifetime passes and seeking private donations to meet a goal set at $300,000, the estimated cost to remove the blockage and repair the tunnel walls.[5] The announcement explicitly stated that if some manner of external funding was not secured it would have no option but to cease operations permanently. On June 19, Save the Redwoods League announced an offer to pay the amount required to meet the fundraising goal in exchange for a conservation easement along the track's 40-mile right-of-way. The acceptance of this offer allowed MR to resume its tourist excursion service in August 2013.

Tunnel No. 1 was once again closed in 2015 after sustaining damage from the 2015–16 El Nino, but MR had equipment at the Willits depot to allow the running of half-routes to the Northspur Junction and back; trains from Fort Bragg are limited to running only 3.5 miles to the Glen Blair Junction (one-hour round trip) before returning to the depot, officially called the "Pudding Creek Express."

MR estimates that it will cost over $8,000,000 to repair the tunnel. MR Reply to GRTA's Petition for Partial Waiver, at 5. Shortly after the latest collapse, MR attempted to repair Tunnel No. 1 but ceased repair work due to a lack of funds. California Regional Water Quality Control

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[4] Guido, Francis A. (1965) *"California Western's "Super Skunk" Steam Train". The Western Railroader,* p. 4.

[5] Fimrite, Peter (June 8, 2013). *"Skunk Train stranded by tunnel collapse",* SF Gate.

Board Cleanup and Abatement and 13267 Order No. R1-2016-0036, 2 (attached hereto as Exhibit F). However, before ceasing its repair activities, MR failed to stabilize the steep hillslopes above and adjacent to the western portal of Tunnel No. 1. MR similarly failed to install erosion and sediment controls to prevent any discharge of sediment or other construction-related pollutants into Pudding Creek, a tributary to the Pacific Ocean. *Id.* at 2, 7. Consequently, several sediment discharges into Pudding Creek occurred throughout 2016. *Id.* at 6, 7. On August 3, 2016, the North Coast Regional Water Quality Control Board issued a Cleanup and Abatement Order to MR to stabilize the site and prevent further discharges. *See generally id.*

To date, Tunnel No. 1 remains unrepaired and closed. Since the tunnel collapsed seven years ago, MR has made several unsuccessful attempts to secure federal funding to repair the tunnel. MR submitted applications to the United States Department of Transportation ("DOT") for Better Utilizing Infrastructure to Leverage Development ("BUILD") grants in 2018, 2019, and 2020. Mendocino Railway, Verified Reply in Opposition to North Coast Railroad Authority's Petition for Exemption from 49 U.S.C. § 1094, AB-1305X, Filing No. 302860 (Aug. 16, 2021), 13, no. 21. DOT did not approve any of MR's BUILD grant applications. *Id.* Then, MR applied to the DOT's Build America Bureau for a Railroad Rehabilitation & Improvement Financing Express ("RRIF Express") loan seeking a loan to, among other things, repair Tunnel No. 1. Recently, the DOT appeared to approve MR's RRIF Express loan application. *See* https://www.transportation.gov/buildamerica/financing/rrif PUBLIC VERSION 6 (showing approved $31.4 million loan application for MR or its parent company, Sierra Railroad) (accessed February 6, 2024). However, now, the approval by DOT does not appear on its website at the same URL. *See* https://www.transportation.gov/buildamerica/financing/rrif (last accessed March 14, 2024).

Including the estimated cost to repair the collapsed tunnel, the estimated cost necessary to rehabilitate the MR Line from Fort Bragg to Willits, as well as GRTA-owned track, bridges, and signals that MR currently is using to FRA Class 1 track standards for freight rail service is approximately $31 million.[6]

There is clearly no reasonable alternative to abandonment of the MR Line because MR has no access to the interstate rail network because the only interchange point connects to the GRTA Line which has been subject to an FRA safety embargo since 1998. In addition, even if MR had access to the interstate rail network, there is no need for interstate freight service on the MR Line.[7]

(2) ***Transportation system.*** *Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.*

The MR Line has been inactive for more than 20 years with respect to interstate freight and interstate passenger service. For that reason, the proposed abandonment will have no impact on regional or local transportation systems or patterns. For that reason, too, no passenger or freight rail traffic would be diverted to other transportation systems or modes as a result of the proposed abandonment. It is expected that the tourist excursion service on the MR Line will continue.

GRTA served notice of the proposed abandonment upon agencies that would be concerned with the transportation system including the California Department of Transportation and

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[6] *See Railroad Rehabilitation Assessment Mendocino Railway Fort Bragg to Willits,* D&A Enterprises LLC, 11 (Nov. 30, 2023) (attached hereto as Exhibit G).

[7] *See Feasibility & Market Analysis for Rail Freight Service -Fort Bragg, Willits & Cloverdale*, Marie Jones Consulting, 24 (January 5, 2023) ("Due to the short haul distances and competition from trucks, there is insufficient actual demand for rail freight transport to fund the significant capital investment required to improve that rail line segments necessary for the rail freight, let alone maintain and operate them. The rail lines, if rehabilitated for freight, would not be able to recover their capitalization costs with earned income. They would presumably go bankrupt, as California Western did before its assets were acquired by Mendocino Railroad in bankruptcy, and as Eureka Southern did before its assets were acquired by NCRA in bankruptcy.") (attached hereto as Exhibit H).

Mendocino County. See letters attached as part of Exhibit A. No response has been received. Any responses will be sent promptly to the Board.

(3) Land use. (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

Inasmuch as no freight rail shipments have moved over the MR Line for more than 20 years and GRTA expects the existing tourist excursion service to continue without change, the proposed abandonment would be consistent with existing land use regulations in the affected territory. Regarding land use, letters were sent to representatives of Mendocino County, the City of Fort Bragg, and the City of Willits. See letters attached as part of Exhibit A. No response has been received. Any responses will be sent promptly to the Board.

(3)(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

Inasmuch as no freight rail shipments have moved over the MR Line for more than 20 years and GRTA expects the existing tourist excursion service to continue without change, abandonment of the MR Line would not have an adverse effect on prime agricultural land. GRTA served notice of the proposed abandonment upon agencies that would be concerned with prime agricultural land including the United States Department of Agriculture - Natural Resources Conservation Service. See letter attached as part of Exhibit A. No response has been received. Any responses will be sent promptly to the Board.

(3)(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by Sec. 1105.9.

The proposed abandonment would not affect a designated coastal zone. A letter was sent seeking the views of the California Coastal Commission which is attached as part of Exhibit A. Its

response, attached hereto as part of Exhibit B, stated the proposed abandonment would not affect a designated coastal zone.

(3)(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10905 and explain why.

The MR Line is suitable for alternative public use. GRTA expects the existing tourist excursion service on the MR Line to continue.

In addition, the MR Line is suitable for alternative public use under 49 U.S.C. § 10905. The right-of-way runs through areas of great natural beauty and if converted to interim trail use would provide excellent hiking and back country experiences which would stimulate Northern California's tourist industry. A trail would provide a tourist attraction and an active non-motorized transportation commuter route.

There is no need for the land on the MR Line for additional highway or utility use, which is adequate in the involved territory.

(4) Energy. (i) Describe the effect of the proposed action on transportation of energy resources.

There having been no freight rail traffic over the MR Line in more than 20 years, abandonment of the MR Line would not have an adverse effect on energy resources.

(4)(ii) Describe the effect of the proposed action on recyclable commodities.

For the reasons stated above, abandonment would not have an adverse effect on transportation of recyclable commodities.

(4)(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

For the reasons stated above, abandonment would not have an effect on energy efficiency.

(4)(iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show data and methodology used to arrive at the figure given. To minimize the production of repetitive data, the information on overall energy efficiency in Sec. 1105.7(e)(4)(iii) need not be supplied if the more detailed information in Sec. 1105.7(e)(4)(iv) is required.

For the reasons stated above, abandonment would not result in any diversion of rail traffic to motor carriage.

(5) Air. (i) If the proposed action will result in either: (A) An increase in rail traffic of at least 100 percent (measured in gross tons miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) An increase in rail yard activity of at least 100 percent (measured by car load activity), or (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.

The above thresholds will not be exceeded.

(5)(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either: (A) An increase in rail traffic of at least 50 percent (measured in gross tons miles annually) or an increase of at least three trains a day on any segment of the rail line, (B) An increase in rail yard activity of at least 20 percent (measured by carload activity). or (C) An average increase in truck traffic of more than 10 per cent of the average daily traffic of 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. 10901 (or 49 U.S.C. 10505), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The above thresholds will not be exceeded.

(5)(iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

Not applicable.

(6) Noise. If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause: (i) An incremental increase in noise levels of three decibels Ldn or more.

None of the above thresholds will be exceeded.

(6)(ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g. schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

None of the above thresholds will be exceeded.

(7) Safety. (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

Abandonment would not result in an increase in delays at public crossings, nor any other effect on public health or safety as the only present rail operations, the tourist excursion service, on the MR Line will continue without change.

(7)(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accident release of hazardous materials.

Not applicable.

(7)(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and types of hazardous materials involved.

There are no such known sites.

(8) Biological resources. (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

A letter was sent to the U.S. Fish and Wildlife Service for its views which is included in Exhibit A attached hereto. No response has been received. Any response will be sent promptly to the Board. Inasmuch as the track will likely not be removed as the existing excursion train service

should continue to operate upon abandonment, abandonment should have no adverse effect on endangered or threatened species or their habitat.

(8)(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

The proposed abandonment will have no effect on National or State Parks as there is none on or about the MR Line. Letters were sent to the US Department of Agriculture – Forest Service, National Park Service, and the California Department of Parks and Recreation for their views, which are attached hereto in Exhibit A. A response, attached as part of Exhibit B, has been received from the Forest Service which stated no National or State Parks are on the MR Line.

(9) Water. (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

GRTA does not expect MR to remove or to alter the roadbed underlying the MR Line to be abandoned by way of excavation or other ground disturbing activity. GRTA therefore expects no soil to be disturbed as a result of the proposed abandonment, and it follows that no storm water mitigation measures, including but not limited to a National Pollutant Discharge Elimination System permit, will be required. GRTA also does not expect there to be any in-stream work or dredge and/or use of fill materials in connection with the proposed abandonment. The abandonment therefore will not result in water quality impacts and will be consistent with applicable water quality standards. Moreover, soil disturbances that previously caused in-stream effects identified by the North Coast Regional Water Quality Control Board during prior attempts by MR to rehabilitate the MR Line may be prevented by the proposed abandonment. In addition, letters were sent to the California Environmental Protection Agency, the North Coast Regional

Water Quality Control Board, and the U.S. Environmental Protection Agency. No responses have been received. Any response will promptly be sent to the Board.

(9)(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether designated wetlands or 100-year flood plains will be affected. Describe the effects.

GRTA does not expect MR to remove or alter the roadbed underlying the MR Line or to undertake in-stream work or dredge or use fill materials. GRTA does not expect the geometry of the roadbed to be altered. No discernible effects on either 100-year flood plains or adjacent wetlands are expected in connection with the proposed abandonment. GRTA therefore does not believe a Section 404 permit will be required in connection with the proposed abandonment. A letter, which is in Exhibit A attached hereto, was sent to the U.S. Army Corps of Engineers. No response has been received. Any response will be promptly sent to the Board.

(9)(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

GRTA does not expect any salvage of the MR Line at this time. GRTA anticipates that the bridges, tunnels, and roadbed will remain intact. GRTA does not anticipate excavation or other ground-disturbing activity. Therefore, no storm water permitting, including a National Pollutant Discharge Elimination System permit, is expected to be required. GRTA expects the proposed abandonment to have no impact on water quality and that additional permitting under section 402 will not be required. Letters were sent to the U.S. Environmental Protection Agency, the California Environmental Protection Agency, and the North Coast Regional Water Quality Control Board for their views on whether permits under section 402 of the Clean Water Act are required for the

proposed abandonment. No responses have been received. Any response will promptly be sent to the Board.

(10) Proposed Mitigation. Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

The proposed abandonment is not expected to produce adverse environmental impacts for the reasons set forth above. Therefore, proposed mitigation should not be applicable.

(11) Consultation

As shown by the copies of the letters attached as Exhibit A, Applicant has consulted with the following agencies: (1) The California State Clearinghouse; (2) The California Environmental Protection Agency; (3) The California Coastal Commission; (4) The head of Mendocino County; (5) The appropriate regional office of the U.S. Environmental Protection Agency; (6) The U.S. Fish and Wildlife Service; (7) The U.S. Army Corps of Engineers; (8) The National Park Service; (9) The USDA Natural Resources Conservation Service; (10) The National Geodetic Survey (formerly known as the Coast and Geodetic Survey) as designated agent for the National Geodetic Survey and the U.S. Geological Survey; (11) The California State Parks; (12) The North Coast Regional Water Quality Control Board; (13) the Mendocino County Planning Commission; (14) Fort Bragg City Manager; (15) City of Willits; (16) U.S. Bureau of Land Management; (17) The U.S. Forest Service; (18) The California Department of Transportation; and (19) The California Natural Resources Agency. GRTA received certain additional information in response to those consultation efforts. The National Oceanic & Atmospheric Administration ("NOAA") informed GRTA that according to the National Geodetic Survey ("NGS"), there are no geodetic survey marks on the Line. This written response as well as the other written responses referenced herein are attached as Exhibit B.

(12) Certifications

Applicant certifies that: (i) It consulted with the agencies listed in 49 CFR 1105.7, as described in paragraph No. 11 above. (ii) On this date, it sent copies of this Report to each of the agencies consulted, and to other parties to the proceeding, as shown on the certificate of service attached hereto. (iii) Notice of the Applicant's intent to file an application for adverse abandonment is being published in the Ukiah Daily Journal on March 20 and 27, and April 3, 2024. A copy of the notice of intent is attached as Exhibit I. Proofs of publication from the Ukiah Daily Journal will be submitted upon receipt after the final publication. (iv) Applicant will not file its application for adverse abandonment authority until at least twenty (20) days after this Environmental/Historic Report has been filed with the Board.

II. Historic Report

GRTA hereby submits the following information required by 49 C.F.R. § 1105.8(d):

(1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older are part of the proposed action;

The required topographic maps are attached as part of Exhibit C. The maps are being sent to Julianne Polanco, State Historic Preservation Officer, California State Parks, Office of Historic Preservation, 1725 23rd Street, Suite 100, Sacramento, CA 95816 ("SHPO"), as part of a complete copy of this Historic Report. It is believed that there are 32 bridges and 2 tunnels on the MR Line that are at least 50 years old.

There is a railroad depot in Willits that is over 50 years old. The depot was added to the National Register of Historic Places on October 20, 1999, as Willits Depot. The MR operates over about one mile of GRTA trackage to reach this depot in Willits. See Fed. Reg. 67976 (Dec. 9,

1998) (emergency order no. 21; notice no. 1).[8] The FRA granted partial relief from the emergency order to allow CWR to operate approximately 1.5 miles between its junction with the GRTA track and the Willits Depot. 64 Fed. Reg. 30557 (June 8, 1999) (emergency order no. 21, notice no. 2) (this modification permitted CWR, now MR, to operate its passenger excursion trains into the Willits Depot provided certain conditions were met.) However, the Willits Depot is not on the MR Line, so it should not be impacted by this abandonment or relevant to this historic report.

There is a railroad depot and a roundhouse in Fort Bragg that might be over 50 years old. These buildings should not be impacted by this abandonment because MR is expected to continue its tourist excursion rail service on the MR Line.

(2) A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;

The MR Line is approximately 40 miles long and runs between Fort Bragg and Willits. The MR Line right-of-way is generally 50 feet wide but does vary at points. The MR Line runs adjacent to lands of varying uses, ranging from forested open land and rural farmland to developed residential and urban areas mainly near Fort Bragg and Willits. As noted, there are 32 bridges and two tunnels on the MR Line.

The MR Line beginning at Fort Bragg has several street crossings prior to following the alignment of Pudding Creek to the collapsed Tunnel No. 1 located at MP 3.52. On the east side of Tunnel No. 1, it winds along the Noyo Creek toward Willits, with several creek crossings and hairpin switchbacks to Tunnel No. 2 at MP 35.4 (the summit). From Tunnel No. 2, the MR Line winds to Willits. After crossing the Baechtel Creek bridge (MR MP 39.49), it switches to the

[8] In approximately, March 1999, CWR acquired the Willits Depot from North Coast Rail Authority, now GRTA, and acquired some trackage rights "to operate over switching, yard, and other track that is excepted from this Board's licensing regulation within the meaning of 49 U.S.C. 10906." *Northwestern Pacific R.R. Co. – Change in Operators Exemption – North Coast R.R. Auth., et al.*, FD 35073, slip op. at 3 (STB served Sept. 2, 2007).

GRTA Line. MR uses GRTA property through existing trackage right agreements to turn its locomotive. The track crosses E. San Francisco Ave, E. Valley Road, a GRTA bridge over Broaddus Creek (GRTA MP 139.29), then comes to the Skunk Train Depot. To turn locomotives, it crosses Commercial St. to use the wye in the Willits Yard which includes a GRTA bridge (MP 139.73).

The 40 miles of the MR Line has many curves, including five hairpin turns with a maximum degree of curvature 24 degrees, areas of steep hillsides and valleys, and for the most part is remotely accessed.

(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;

As this is an adverse abandonment proceeding, GRTA had significant limitations on its ability to take these photographs. Attached as Exhibit J are photographs of various bridges and other structures on the MR Line moving from west to east. GRTA used Bing Maps to take these photographs which provide the geographic coordinates. Those photographs are being sent to SHPO for review and evaluation. GRTA does not have any additional information in its possession, such as engineering drawings or the like, that might be of benefit in an analysis of historical structures along the MR Line.

(4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;

GRTA believes that the rail line was originally constructed in the 1880's in part (see the discussion in Section 5 below); however, GRTA does not have information with respect to any replacements or rehabilitation projects that may have occurred on the MR Line, particularly within the past 50 years, except as discussed regarding Tunnel No. 1 in Section 1 of the Environmental Report. Certain bridges and tunnels on the MR Line are believed to be more than 50 years old.

GRTA does not have documents in its possession that show the exact date of construction or any major alteration of the bridges or tunnels.

(5) A brief narrative story of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;

GRTA believes that the MR Line was constructed by the Fort Bragg Redwood Company as the Fort Bragg Railroad in 1885 to carry coast redwood logs from the forests at Glenela (Glen Blair) to a newly built lumber mill located 6.6 miles to the west at coastal Fort Bragg. Fort Bragg Redwood Company was incorporated into the new Union Lumber Company in 1891; railroad ownership remained with the parent lumber company until 1969. An 1,184-foot Tunnel No. 1 from Pudding Creek to the Noyo River was completed on the MR Line in 1893. The MR Line was extended up the Noyo River to Alpine by 1904 when passenger service began with a stagecoach connection to the inland town of Willits. On July 1, 1905, the railroad was renamed the California Western Railroad & Navigation Company.[9]

Rails were gradually extended up the Noyo River headwall with a 3.3 percent grade and five 33 degree horseshoe curves with a railway distance of 6.5 miles to climb 932 feet over the straight-line distance of 1.5 miles from Soda Springs to the summit. Completion of the 795-foot Tunnel No. 2 on December 11, 1911[10] allowed interchange connection with the NWP at Willits, 40 rail miles from Fort Bragg.[11]

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[9] Tahja, Katy M. (2008) *Rails Across the Noyo.* Comptche, California: Tahjanjoki Press. ISBN 978-0-933391-28-4, pp. 3-8, 40.

[10] *Id.* at 3-8.

[11] LeBaron, Gaye (April 20, 2003), *"Skunk Train's colorful history makes it well worth saving". The Press Democrat.*

The rail connection to Fort Bragg was used by passengers traveling to and from San Francisco. Union Lumber Company selected premium grade clear redwood lumber (without knots) to build a Tyrolean Alps-style depot in 1916 where passengers changed trains at Willits. A Pullman car began operating between Fort Bragg and San Francisco in May 1921; and this steam passenger train continued operating in addition to the Skunk railbus schedule until November, 1929.[12]

On December 19, 1947, the railroad name was shortened to the California Western Railroad. Union Lumber and its CWR came under the ownership of the various lumber producers, including Boise Cascade (1969), and later Georgia-Pacific Corporation ("G-P"). G-P initially leased the CWR's operations to Kyle Railways, but in June 1987, the CWR was sold to the Kyle Railways subsidiary Mendocino Coast Railway. Mendocino Coast Railway continued to operate the CWR under the California Western name.

In the late 1980s, the MR Line's freight redwood lumber traffic rapidly declined. G-P gradually shifted lumber shipments to more flexible highway trucks until the NWP, now partly owned by GRTA, was embargoed by the FRA in 1998 and shut down from Willits to the California Northern Railroad and Union Pacific mainline connection near the San Francisco Bay Area. By 1996, before the NWP FRA embargo, CWR lumber shipments were less than 500 cars per year and passenger service became the MR Line's main source of revenue. The G-P shut down its

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[12] Crump, Spencer (1998), *Redwoods, Iron Horses, and the Pacific (Fifth ed.)*. Fort Bragg, California: California Western Railroad, *Crump, Spencer (1998). Redwoods, Iron Horses, and the Pacific (Fifth ed.). Fort Bragg, California: California Western Railroad.* pp. 64, 65, 74-75. ISBN 0-918376-12-2.

facility in Fort Bragg in 2002. All freight service on the MR Line was discontinued in 2001, and the 1998 FRA's emergency order effectively cut the CWR off from the national rail network.[13]

In 2004, MR purchased the assets of CWR through a trustee in bankruptcy and with the approval of the Bankruptcy Court for the Northern District of California. MR obtained authority to purchase the railroad by filing notice pursuant to 49 C.F.R. § 1150.31 at the STB to exempt from regulation under 49 U.S.C. § 10901 its acquisition of the assets of CWR. *Mendocino Railway–Acquisition Exemption–Assets of The California Western Railroad,* FD 34465 (STB served Apr. 9, 2004).

Although MR has not provided freight transportation over the MR Line in more than 20 years, MR has used its common carrier status to engage in multiple eminent domain actions seeking to take private property for its purported freight purposes, and to avoid applicable state and local land use control, building standards, and environmental regulations.[14]

GRTA's adverse abandonment application seeks elimination of MR's federal interest in the MR Line so that it can proceed to railbank the remainder of its own GRTA Line from mile post 139.5 in Willits to the terminus of its control near Cloverdale, California, to comply with its

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[13] Burns, Ryan (June 10, 2022). *"Surface Transportation Board Rejects Shady Company's Bid to Take Over NCRA Rail Line for Coal Exports". Lost Coast Outpost.*

[14] *See, e.g., Mendocino Ry v. Georgia Pacific LLC et al,* Case No. 21-CV-00595 Ca.Superior Court Nov. 17, 2021) (Order of Condemnation) (attached hereto as Exhibit K); *Mendocino Railway v John Meyer, et al,* Case No SCUK-CVED-2020-74939 (Exhibit D); *City of Fort Bragg v. Mendocino Railway*, Case No. 21CV00850, Ruling on Demurrer (Ca. Superior Court, Apr. 28, 2022) (attached hereto as Exhibit L) *app. den.* Case No. A 165104 (Ca. App. June 9, 2022) (attached hereto as Exhibit M); *City of Fort Bragg v. Mendocino Railway* Case No. 21CV00850, Minute Order (Ca. Superior Court, Oct. 20, 2022) (attached hereto as Exhibit N); *Mendocino Railway v. Jack Ainsworth, et al,* Case No. 22-CV-04597-JST (ND Ca. May 12, 2023) (attached hereto as Exhibit O). See also https://savenoyoheadlands.org/

legislative mandate. It also seeks to stop MR from using its common carrier status as a tool to take land through eminent domain and to avoid state and local regulation under the guise of seeking to operate interstate freight rail service on a line that has not connected to the interstate rail network since 1998.

> *(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic.*

There are no such documents in the GRTA's possession.

> *(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic preservation Office, local historical societies or universities);*

In the opinion of GRTA, the 32 bridges or 2 tunnels on the MR Line do not appear to meet the criteria for listing in the National Register of Historic Places. Those bridges and tunnels do not appear to have unique or otherwise significant design characteristics. None of those bridges or tunnels is linked to events of historic significance. Moreover, any other structures on the MR Line, like the depots and roundhouse, will not be affected by this abandonment because MR in all likelihood will continue to operate its tourist excursion service. In GRTA's view, there is no likelihood of archaeological resources or previously unknown properties in the right-of-way of the MR Line.

> *(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.*

GRTA has no records to indicate that there could have been subsurface ground disturbances or fill or environmental conditions that might affect the archaeological recovery of resources and the surrounding terrain.

Respectfully submitted,

/s/ Daniel R. Elliott

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Attorney for Great Redwood Trail Agency

Dated: March 14, 2024

Certificate of Service

I certify that I have, on this 14th day of March 2024, served by the method indicated copies of the foregoing Environmental/Historic Report on the parties listed below.

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Significant Users of MR Line
(Names not revealed in accordance with protective order)

/s/ Daniel R Elliott
Daniel R. Elliott

EXHIBIT A

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Re: Proposed Adverse Abandonment of Mendocino Railway in Mendocino County, CA, STB Docket No. AB-1305 (Sub-No. 1)

To Whom It May Concern:

The Great Redwood Trail Agency, formerly named North Coast Railroad Authority, a public agency formed by the California Legislature, Cal. Gov. Code § 93000 et seq., plans to request authority from the U.S. Surface Transportation Board (STB} to abandon a rail line that extends (1) between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California (Line), owned by the Mendocino Railway. A map of the Line is attached.

Pursuant to the STB's regulations at 49 C.F.R. Part 1152, and the environmental regulations at 49 C.F.R. § 1105.7 and historic regulations at 49 C.F.R. § 1105.8, this is to request your assistance in identifying any potential effects of this action as indicated in the paragraphs below. We do not anticipate any adverse environmental or historic impacts as we do not believe the proposed abandonment would affect the existing operations on the Line or result in any track removal. However, if you identify any adverse environmental or historic impacts, describe any actions that are proposed in order to mitigate the environmental or historic impacts. Please provide us with a written response that can be included in an Environmental and Historic Report, which will be sent to the STB.

LOCAL AND/OR REGIONAL PLANNING AGENCIES. State whether the proposed action is consistent with existing land use plans. Please describe any inconsistencies.

U. S. SOIL CONSERVATION SERVICE. State the effect of the proposed action on any prime agricultural land.

U.S. FISH AND WILDLIFE SERVICE AND CALIFORNIA STATE PARKS. State (1) whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects, and (2) whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

STATE WATER QUALITY OFFICIALS. State whether the proposed action is consistent with applicable Federal, State or local water quality standards. Please describe any inconsistencies.

U.S. ARMY CORPS OF ENGINEERS. State (1) whether permits under Section 404 of the Clean Water Act (33 U.S. C. § 1344) are required for the proposed action and (2) whether any designated wetlands or 100-year flood plains will be affected. Please describe the effects.

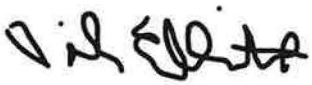
U.S. ENVIRONMENTAL PROTECTION AGENCY AND STATE ENVIRONMENTAL PROTECTION (OR EQUIVALENT AGENCY}. (1) Identify any potential effects on the surrounding area, (2) identify the location of hazardous waste sites and known hazardous material spills on the right-of-way and list the types of hazardous materials involved, and (3) state whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action.

CALIFORNIA COASTAL COMMISSION. State whether the proposed action would have any effect on a designated coastal zone.

CALIFORNIA STATE PARKS, OFFICE OF HISTORIC PRESERVATION. State whether the site and/or structures on this rail line meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions.

Thank you for your assistance. Please send your reply to the undersigned. You can reach me at delliott@gkglaw.com or the above-listed address. My direct number is (703) 863-9670 if you have any questions.

Sincerely,



Daniel R. Elliott
Attorney for Great Redwood Trail Agency

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May 15, 2023

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U. S. SOIL CONSERVATION SERVICE. State the effect of the proposed action on any prime agricultural land.

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CALIFORNIA COASTAL COMMISSION. State whether the proposed action would have any effect on a designated coastal zone.

CALIFORNIA STATE PARKS, OFFICE OF HISTORIC PRESERVATION. State whether the site and/or structures on this rail line meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions.

NOAA NATIONAL GEODETIC SURVEY. Any geodetic markers that could be affected by the action.

Thank you for your assistance. Please send your reply to the undersigned. You can reach me at delliott@gkglaw.com or the above-listed address. My direct number is (703) 863-9670 if you have any questions.

Sincerely,

Daniel R. Elliott
Attorney for Great Redwood Trail Agency

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May 16, 2023

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state.clearinghouse@opr.ca.gov

Re: Proposed Adverse Abandonment of Mendocino Railway in Mendocino County, CA, STB Docket No. AB-1305 (Sub-No. 1)

To Whom It May Concern:

The Great Redwood Trail Agency, formerly named North Coast Railroad Authority, a public agency formed by the California Legislature, Cal. Gov. Code § 93000 et seq., plans to request authority from the U.S. Surface Transportation Board (STB) to abandon a rail line that extends (1) between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California (Line), owned by the Mendocino Railway. A map of the Line is attached.

Pursuant to the STB's regulations at 49 C.F.R. Part 1152, and the environmental regulations at 49 C.F.R. § 1105.7 and historic regulations at 49 C.F.R. § 1105.8, this is to request your assistance in identifying any potential effects of this action as indicated in the paragraphs below. We do not anticipate any adverse environmental or historic impacts as we do not believe the proposed abandonment would affect the existing operations on the Line or result in any track removal. However, if you identify any adverse environmental or historic impacts, describe any actions that are proposed in order to mitigate the environmental or historic impacts. Please provide

us with a written response that can be included in an Environmental and Historic Report, which will be sent to the STB.

LOCAL AND/OR REGIONAL PLANNING AGENCIES. State whether the proposed action is consistent with existing land use plans. Please describe any inconsistencies.

U. S. SOIL CONSERVATION SERVICE. State the effect of the proposed action on any prime agricultural land.

U.S. FISH AND WILDLIFE SERVICE AND CALIFORNIA STATE PARKS. State (1) whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects, and (2) whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

STATE WATER QUALITY OFFICIALS. State whether the proposed action is consistent with applicable Federal, State or local water quality standards. Please describe any inconsistencies.

U.S. ARMY CORPS OF ENGINEERS. State (1) whether permits under Section 404 of the Clean Water Act (33 U.S. C. § 1344) are required for the proposed action and (2) whether any designated wetlands or 100-year flood plains will be affected. Please describe the effects.

U.S. ENVIRONMENTAL PROTECTION AGENCY AND STATE ENVIRONMENTAL PROTECTION (OR EQUIVALENT AGENCY}. (1) Identify any potential effects on the surrounding area, (2) identify the location of hazardous waste sites and known hazardous material spills on the right-of-way and list the types of hazardous materials involved, and (3) state whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action.

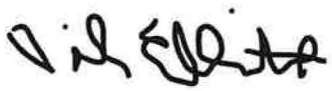
CALIFORNIA COASTAL COMMISSION. State whether the proposed action would have any effect on a designated coastal zone.

CALIFORNIA STATE PARKS, OFFICE OF HISTORIC PRESERVATION. State whether the site and/or structures on this rail line meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions.

NOAA NATIONAL GEODETIC SURVEY. Any geodetic markers that could be affected by the action.

Thank you for your assistance. Please send your reply to the undersigned. You can reach me at delliott@gkglaw.com or the above-listed address. My direct number is (703) 863-9670 if you have any questions.

Sincerely,



Daniel R. Elliott
Attorney for Great Redwood Trail Agency

Attachment

EXHIBIT B

Daniel Elliott

From: Daniel Elliott
Sent: Tuesday, February 7, 2023 2:22 PM
To: Heather L. Holland; Rachel Amster
Subject: Re: [External Email]Adverse abandonment application for a railroad filing

Yes please but keep the email. We can use as part of the filing. Thanks!

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From: Heather L. Holland <hholland@gkglaw.com>
Sent: Tuesday, February 7, 2023 9:20:12 AM
To: Rachel Amster <ramster@gkglaw.com>
Cc: Daniel Elliott <delliott@gkglaw.com>
Subject: FW: [External Email]Adverse abandonment application for a railroad filing

Please see below. Let me know if you want to keep them on the list or remove them.

GKG LAW
Heather Holland
Legal Assistant | GKG Law, P.C.
1055 Thomas Jefferson Street NW | Suite #620
Washington, DC 20007
Tel: 202.342.6779 | Fax: 202.342.5299
hholland@gkglaw.com | www.gkglaw.com

From: Leidner, Laura - FS, CA <Laura.Leidner@usda.gov>
Sent: Tuesday, February 7, 2023 2:03 PM
To: Heather L. Holland <hholland@gkglaw.com>
Subject: RE: [External Email]Adverse abandonment application for a railroad filing

Hi Heather,
This railroad north of Hwy 20 is not on Mendocino National Forest. According to our lands specialist, there is no state-owned land, BLM, or NPS owned land near the railroad either. You may already be in touch with the U.S Dept. of Transportation, Federal Railroad Administration. If not, here is the link:

https://railroads.dot.gov/

Hope that helps!

Laura

From: Heather L. Holland <hholland@gkglaw.com>
Sent: Tuesday, February 7, 2023 9:38 AM
To: Leidner, Laura - FS, CA <Laura.Leidner@usda.gov>
Subject: RE: [External Email]Adverse abandonment application for a railroad filing

Attached is a map of the rail line. It goes from the coast in Fort Bragg to Willits. It is just the part of the line on the map in the middle that goes east west and not the longer line the goes north south. Let me know if this answers your questions. Thank you for your assistance.

GKG LAW

Heather Holland
Legal Assistant | GKG Law, P.C.
1055 Thomas Jefferson Street NW | Suite #620
Washington, DC 20007
Tel: 202.342.6779 | Fax: 202.342.5299
hholland@gkglaw.com | www.gkglaw.com

From: Leidner, Laura - FS, CA <Laura.Leidner@usda.gov>
Sent: Monday, February 6, 2023 5:43 PM
To: Heather L. Holland <hholland@gkglaw.com>; FS-Mendocino Public Affairs <SM.FS.mendopao@usda.gov>
Subject: RE: [External Email]Adverse abandonment application for a railroad filing

Hi Heather,

I need some more information. What is the location you're referring to? Is the railroad on the Mendocino National Forest? Any details you can share will help me get this request to the right office.

Thank you,
Laura

Laura Leidner
Public Affairs Specialist
Forest Service
Mendocino National Forest
Berryessa Snow Mountain
National Monument
p: 530-934-1137
c: 530-884-4325
Laura.Leidner@usda.gov
825 N. Humboldt Ave.
Willows, CA 95988
www.fs.usda.gov/mendocino

Caring for the land and serving people

From: Heather L. Holland <hholland@gkglaw.com>
Sent: Monday, February 6, 2023 8:05 AM
To: FS-Mendocino Public Affairs <SM.FS.mendopao@usda.gov>
Subject: [External Email]Adverse abandonment application for a railroad filing

[External Email]
If this message comes from an **unexpected sender** or references a **vague/unexpected topic;**
Use caution before clicking links or opening attachments.
Please send any concerns or suspicious messages to: Spam.Abuse@usda.gov

I will soon file an adverse abandonment application for a railroad. Do I send a copy to you via email or regular mail? If I do not send to you, can you please advise who I send it to?

GKG LAW

Heather Holland
Legal Assistant | GKG Law, P.C.
1055 Thomas Jefferson Street NW | Suite #620
Washington, DC 20007
Tel: 202.342.6779 | Fax: 202.342.5299
hholland@gkglaw.com | www.gkglaw.com

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Daniel Elliott

From: Daniel Elliott
Sent: Tuesday, June 6, 2023 2:22 PM
To: Heather L. Holland
Subject: Re: [JIRA] (IMOV-10339) Follow-up Re: Proposed Adverse Abandonment of Mendocino Railway in Mendocino County, CA

Thanks!

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From: Heather L. Holland <hholland@gkglaw.com>
Sent: Tuesday, June 6, 2023 12:04:08 PM
To: Daniel Elliott <delliott@gkglaw.com>
Subject: FW: [JIRA] (IMOV-10339) Follow-up Re: Proposed Adverse Abandonment of Mendocino Railway in Mendocino County, CA

GKG LAW

Heather Holland
Legal Assistant | GKG Law, P.C.
1055 Thomas Jefferson Street NW | Suite #620
Washington, DC 20007
Tel: 202.342.6779 | Fax: 202.342.5299
hholland@gkglaw.com | www.gkglaw.com

From: NOS NGS JIRA <ngs.infocenter@noaa.gov>
Sent: Tuesday, June 6, 2023 12:02 PM
To: Heather L. Holland <hholland@gkglaw.com>
Subject: [JIRA] (IMOV-10339) Follow-up Re: Proposed Adverse Abandonment of Mendocino Railway in Mendocino County, CA

A comment is added on your issue:

Re: Follow-up Re: Proposed Adverse Abandonment of Mendocino Railway in Mendocino County, CA

I have reviewed the proposed railroad abandonment from the Great Redwood Trail Agency (GRTA) from milepost 0 at Fort Bragg to milepost 40 at Willits, CA. I have found no bench marks of value in danger of destruction along the route that would require a reset.

CALIFORNIA COASTAL COMMISSION
NORTH COAST DISTRICT OFFICE
1385 EIGHTH STREET, SUITE 130
ARCATA, CA 95521
VOICE (707) 826-8950
FAX (707) 826-8960

April 7, 2023

Daniel R. Elliott, Attorney for Great Redwood Trail Agency
GKG Law
The Foundry, 1055 Thomas Jefferson Street, NW, Suite 620
Washington, D.C. 20007-4492
Email: DELLIOTT@GKGLAW.COM

RE: Proposed Adverse Abandonment of Mendocino Railway in Mendocino County, CA, STB Docket No. AB-1305 (Sub-No. 1)

Dear Mr. Elliott:

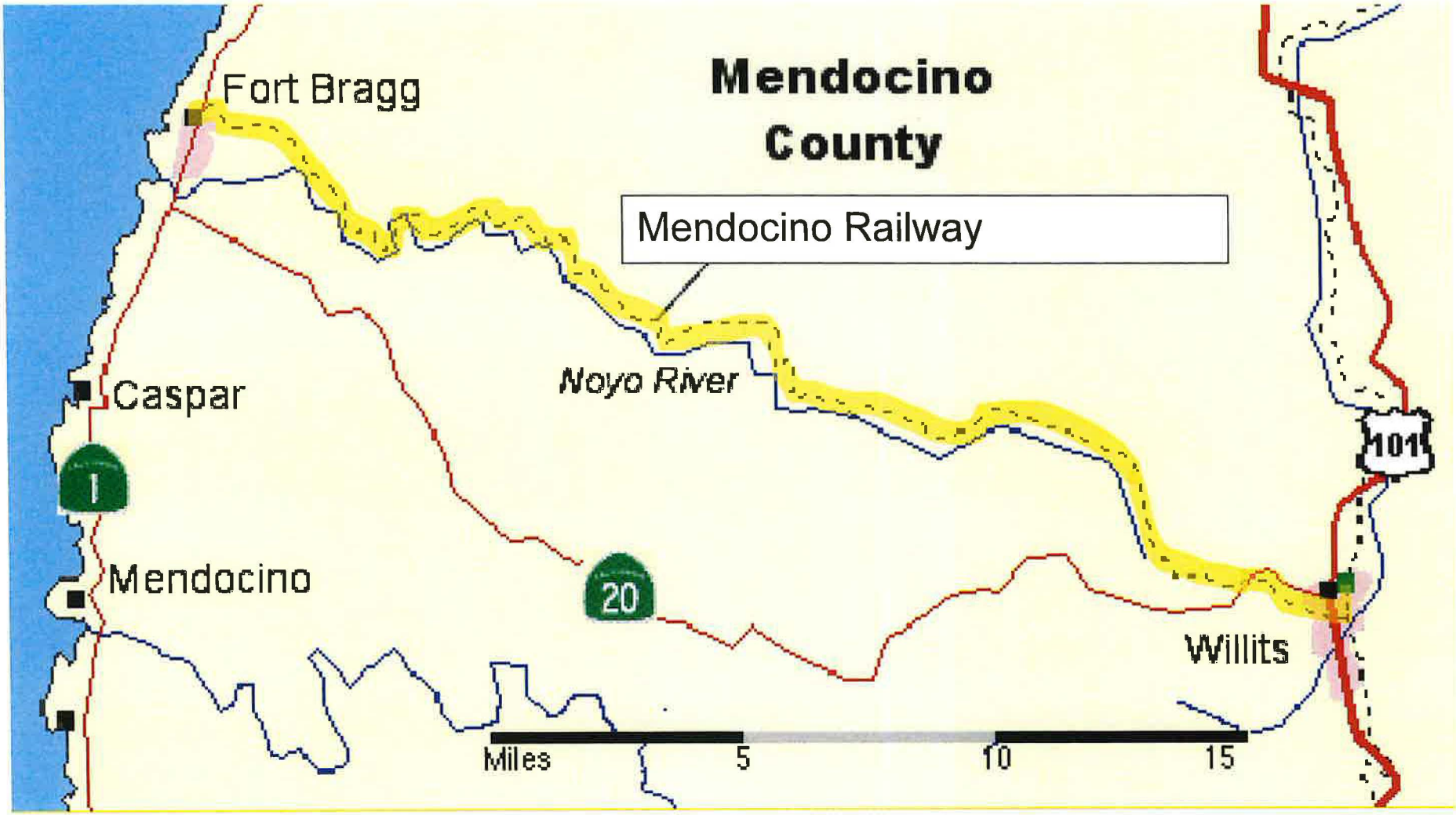
We are in receipt of your letter dated April 3rd regarding the Great Redwood Trail Agency's (GRTA's) plans to request authority from the Surface Transportation Board (STB) to abandon a rail line that extends between Fort Bragg and Willits, CA owned by the Mendocino Railway. The letter requests assistance in identifying any potential effects of this action on the coastal zone (and, by extension, on coastal resources).

Commission staff is not aware at this time of any adverse effects of this action on the coastal zone or on coastal resources.

Sincerely,

Melissa B. Kraemer
North Coast District Manager

EXHIBIT C


Mendocino County
Fort Bragg
Mendocino Railway
Noyo River
Caspar
1
Mendocino
20
101
Willits
Miles
5
10
15

USGS
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U.S. GEOLOGICAL SURVEY
The National Map
US Topo
FORT BRAGG QUADRANGLE
CALIFORNIA-MENDOCINO CO.
7.5-MINUTE SERIES
T18N R18W
T18N R17W
T17N R18W
FORT BRAGG
PACIFIC OCEAN
Produced by the United States Geological Survey
SCALE 1:24 000
CONTOUR INTERVAL 40 FEET
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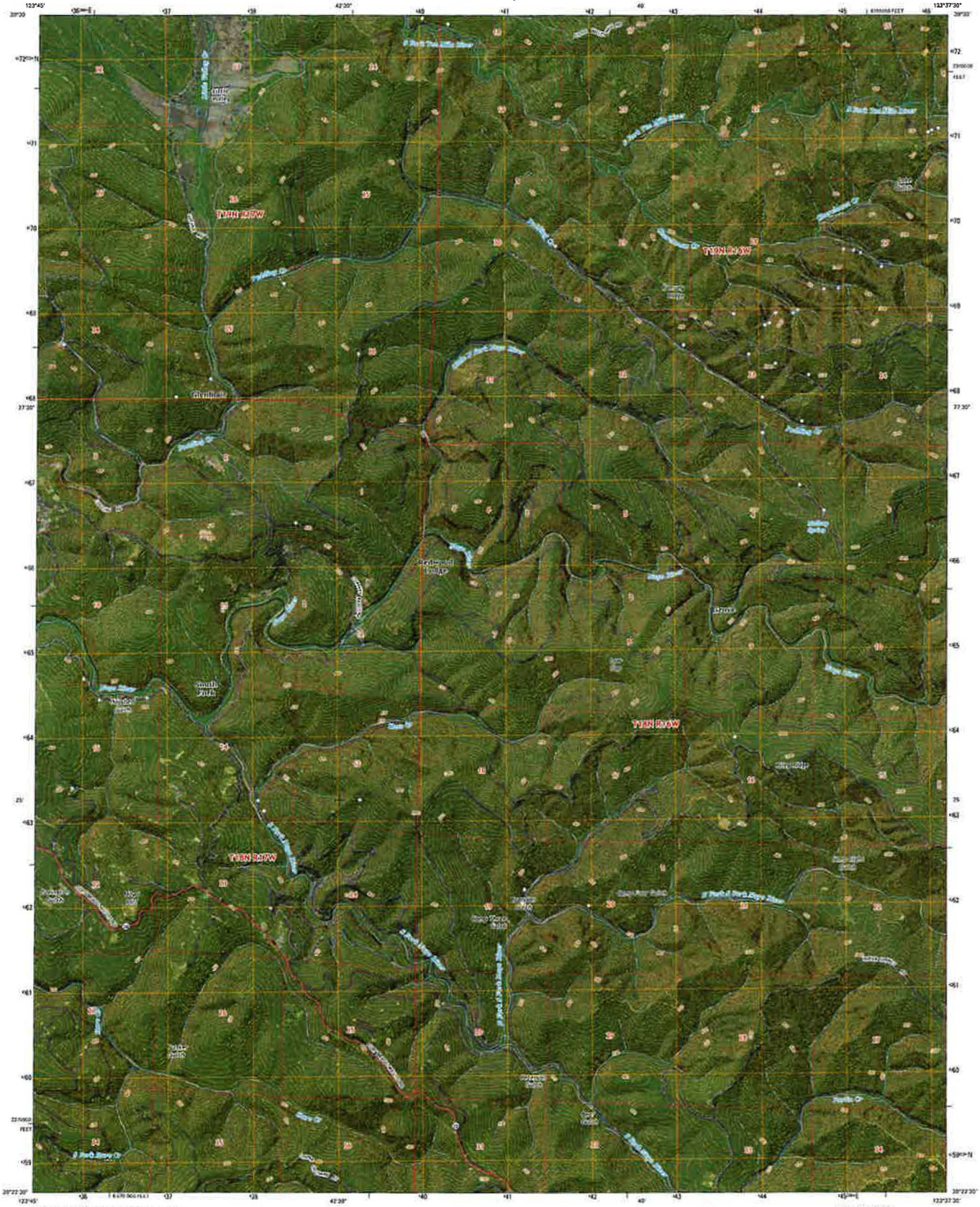
ROAD CLASSIFICATION
FORT BRAGG, CA
2015
MN REF NO. USGS 24 K 15 660



NOYO HILL QUADRANGLE
CALIFORNIA-MENDOCINO CO.
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SCALE 1:24 000

CONTOUR INTERVAL 40 FEET
NORTH AMERICAN VERTICAL DATUM OF 1988

ROAD CLASSIFICATION

NOYO HILL, CA
2015

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REDWOOD VALLEY QUADRANGLE
CALIFORNIA-MENDOCINO CO.
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World Geodetic System of 1984 (WGS84). Projection and 1 000-meter grid: Universal Transverse Mercator, Zone 10S
1 000-foot ticks: California Coordinate System of 1983 (zone 2)

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Imagery ..... NAIP, May 2012
Roads ..... HERE, ESRI, 2014
Names ..... GNIS, 2013
Hydrography ..... National Hydrography Dataset, 2012
Contours ..... National Elevation Dataset, 2008
Boundaries ..... Multiple sources; see Publication File 1902 - 2014
Public Land Survey System ..... BLM, 2011

SCALE 1:24 000

CONTOUR INTERVAL 40 FEET
NORTH AMERICAN VERTICAL DATUM OF 1988

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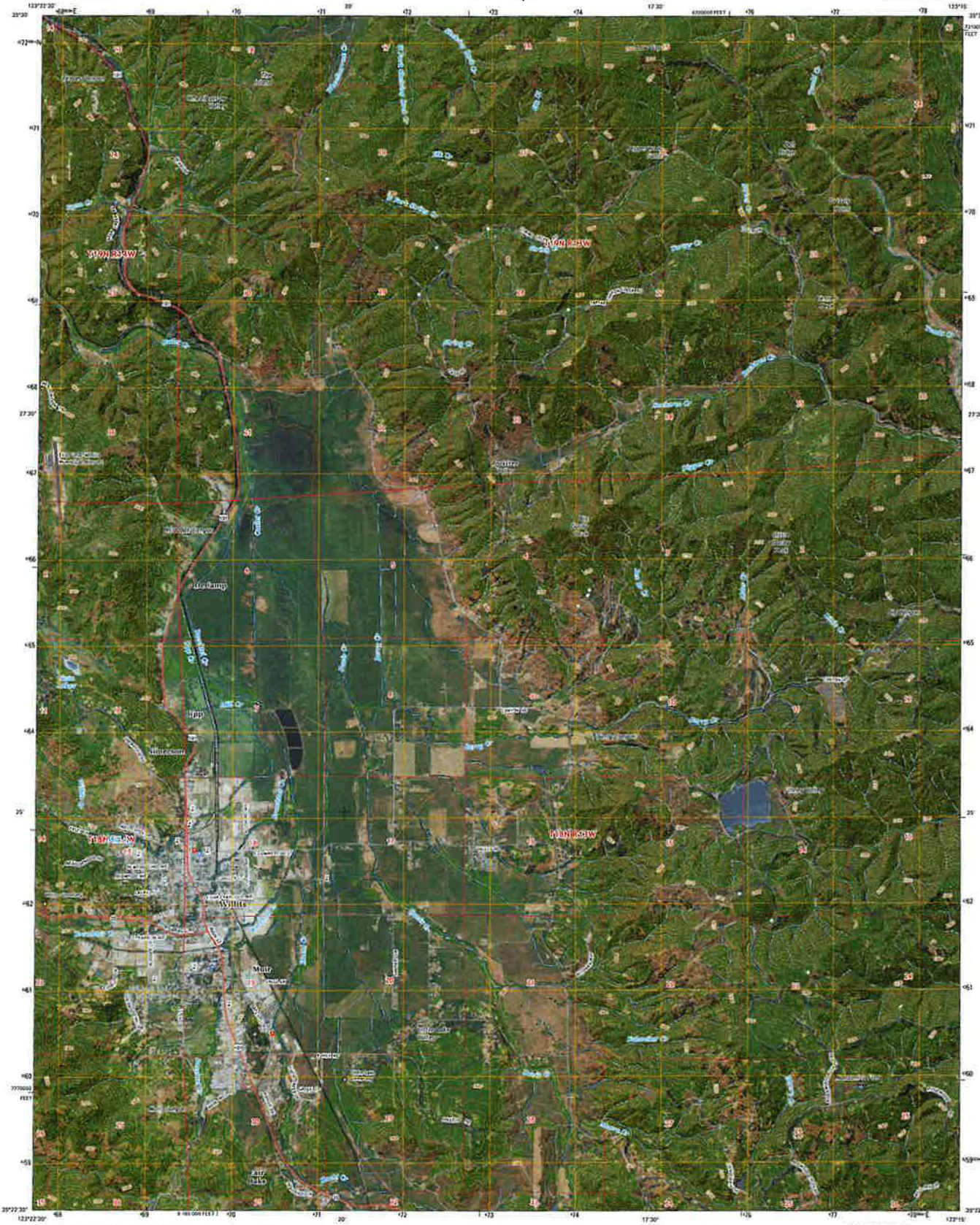
ROAD CLASSIFICATION
Expressway
Local Connector
Secondary Hwy
Local Road
Ramp
4WD
Interstate Route
US Route
State Route

1 Willits
2 Potter Mountain
3 Yen Ancalee Reservoir
4 Laughlin Range
5 Potter Valley
6 Orrs Springs
7 Ukiah
8 Cow Mountain

REDWOOD VALLEY, CA
2015

NOAA REF NO. USGS24K37506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The National Map
US Topo
WILLITS QUADRANGLE
CALIFORNIA-MENDOCINO CO.
7.5-MINUTE SERIES
T19N R14W
T19N R13W
T18N R14W
T18N R13W
Willits
Hwy 101
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10 000-foot ticks: California Coordinate System of 1983 (zone 3)
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NORTH AMERICAN VERTICAL DATUM OF 1988
This map was produced to conform with the National Geospatial Program US Topo Product Standard, 2011.
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ROAD CLASSIFICATION
Expressway
Secondary Hwy
Ramp
Local Connector
Local Road
4WD
Interstate Route
US Route
State Route
WILLITS, CA
2015
NGA REF NO. USGS X24K92162

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CALIFORNIA-MENDOCINO CO.
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CONTOUR INTERVAL 40 FEET
NORTH AMERICAN VERTICAL DATUM OF 1988

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ROAD CLASSIFICATION

Expressway
Secondary Hwy
Ramp
Local Connector
Local Road
4WD
Interstate Route
US Route
State Route

BURBECK, CA
2015

MAP REF. NO. US 6524 NE 2018

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NORTHSPUR QUADRANGLE
CALIFORNIA-MENDOCINO CO.
7.5-MINUTE SERIES

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World Geodetic System of 1984 (WGS84). Projection and 1 000-meter grid: Universal Transverse Mercator, Zone 10S
10 000-foot ticks: California Coordinate System of 1983 (zone 2)

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CONTOUR INTERVAL 40 FEET
NORTH AMERICAN VERTICAL DATUM OF 1988

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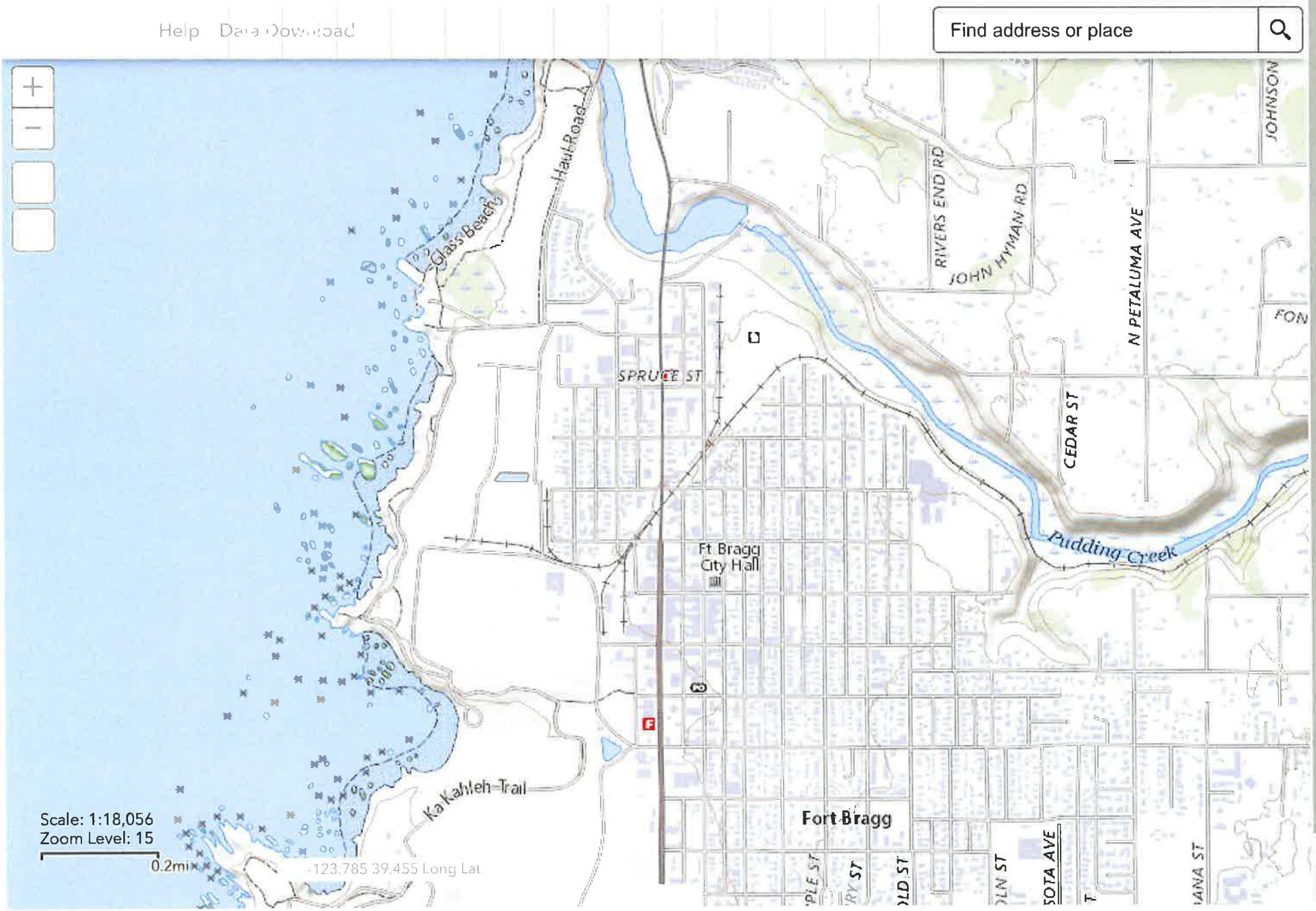
ROAD CLASSIFICATION
Interstate Route
US Route
State Route

1 Dutchmans Knoll
2 Sherwood Peak
3 Longvale
4 Hays Hill
5 Purdeck
6 Harrison Pass
7 Campbell
8 Greenough Ridge

NORTHSPUR, CA
2015

NGA REF NO. USGS24K22510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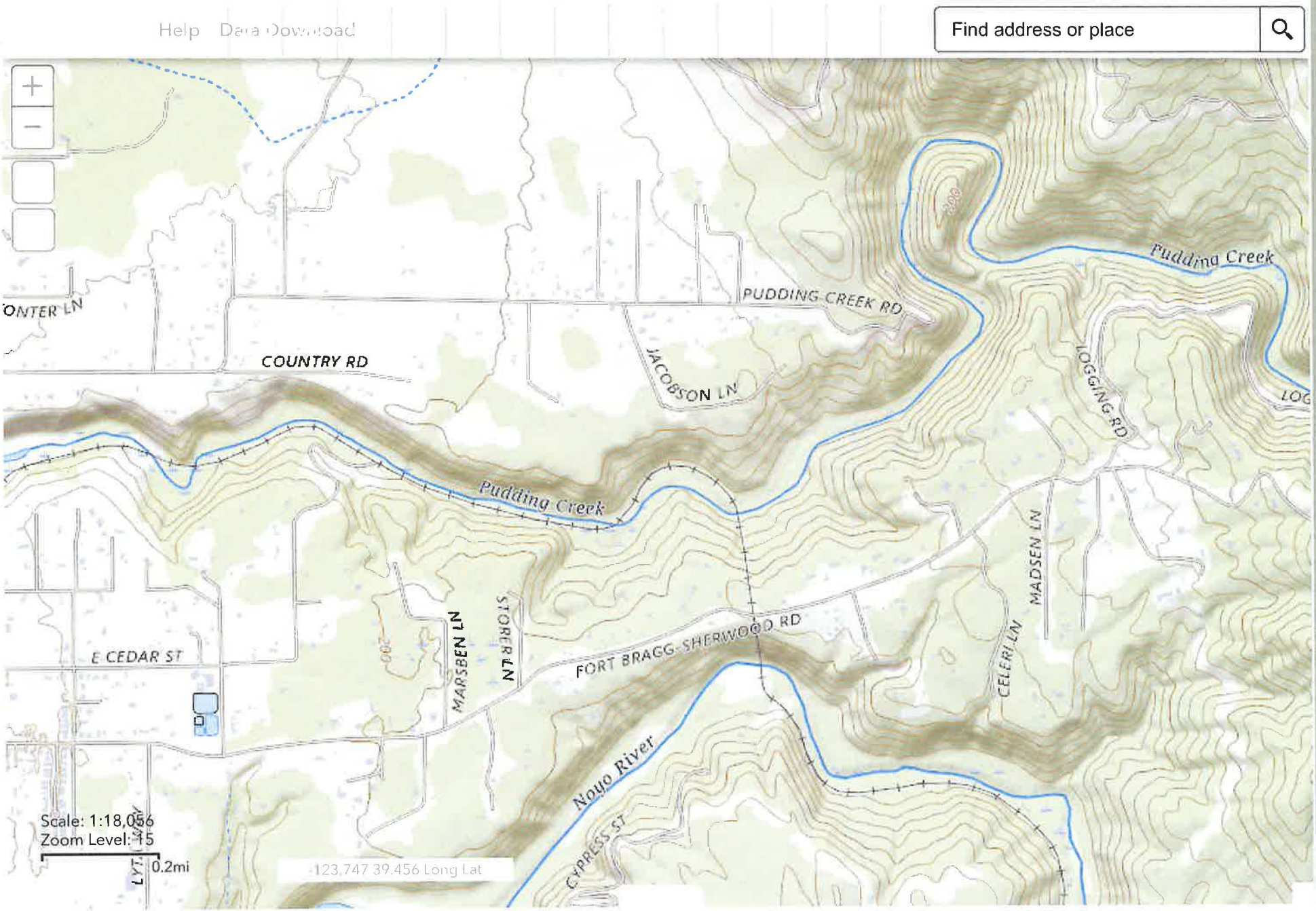
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STORER LN
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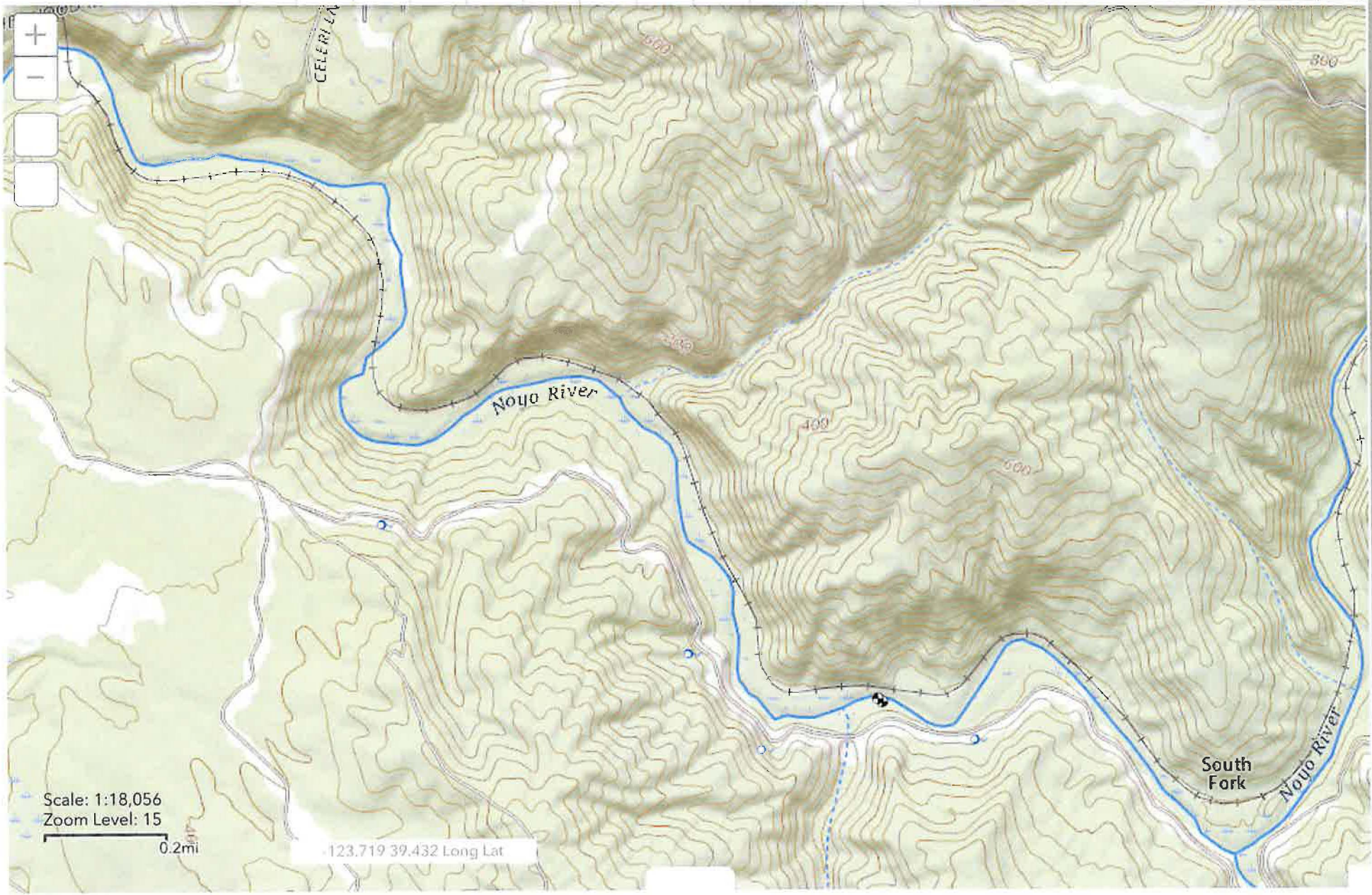
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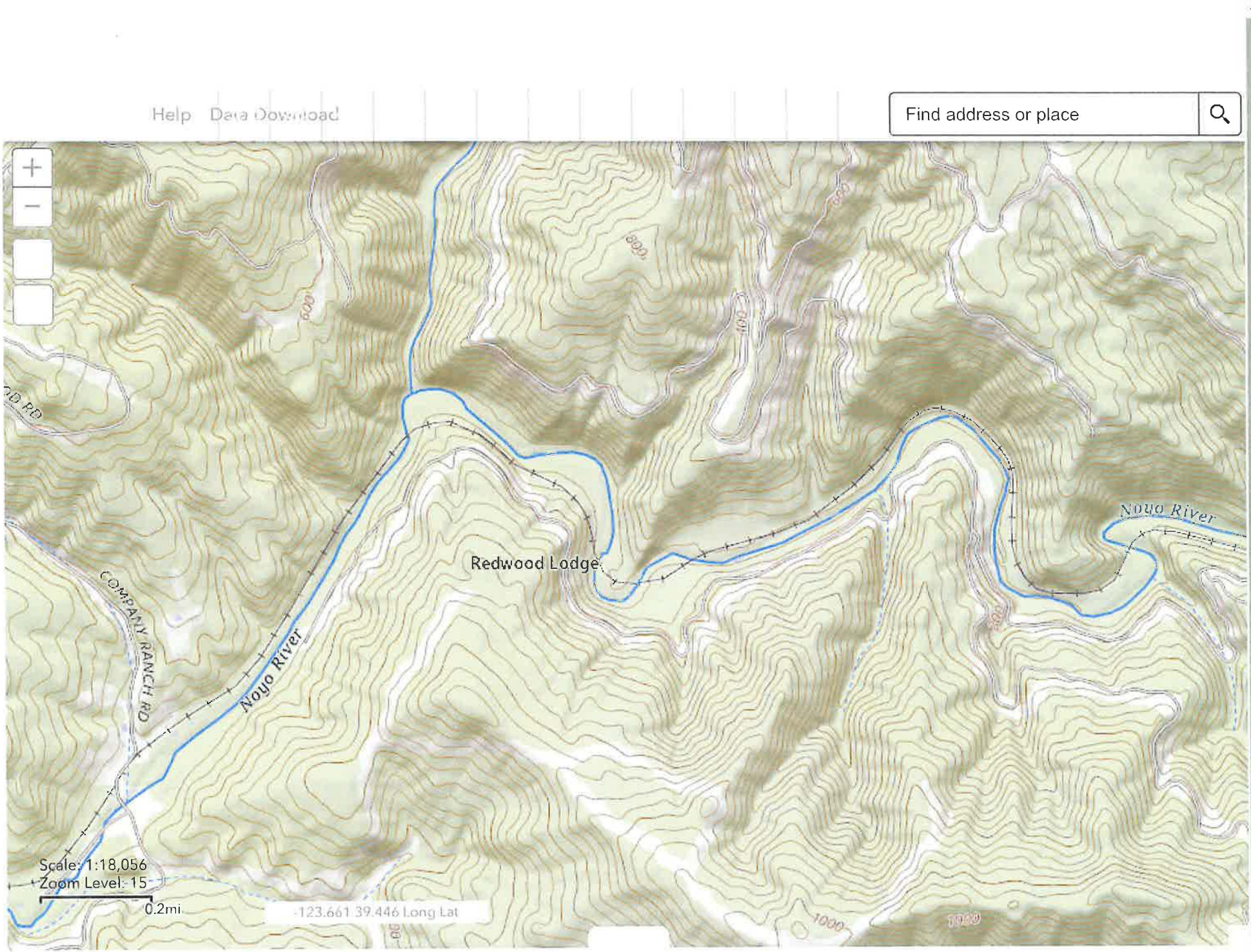
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CALIFORNIA
Noyo River

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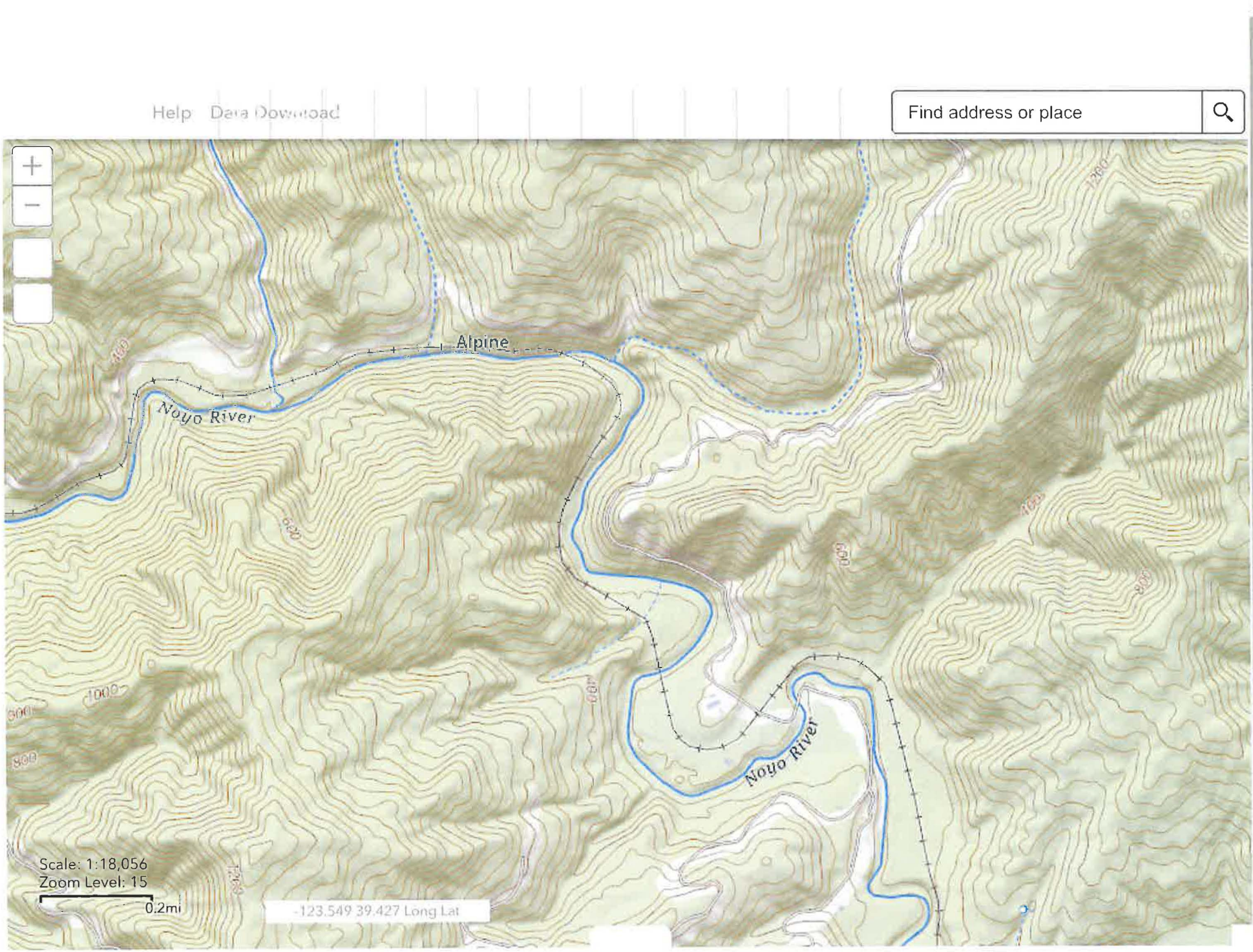
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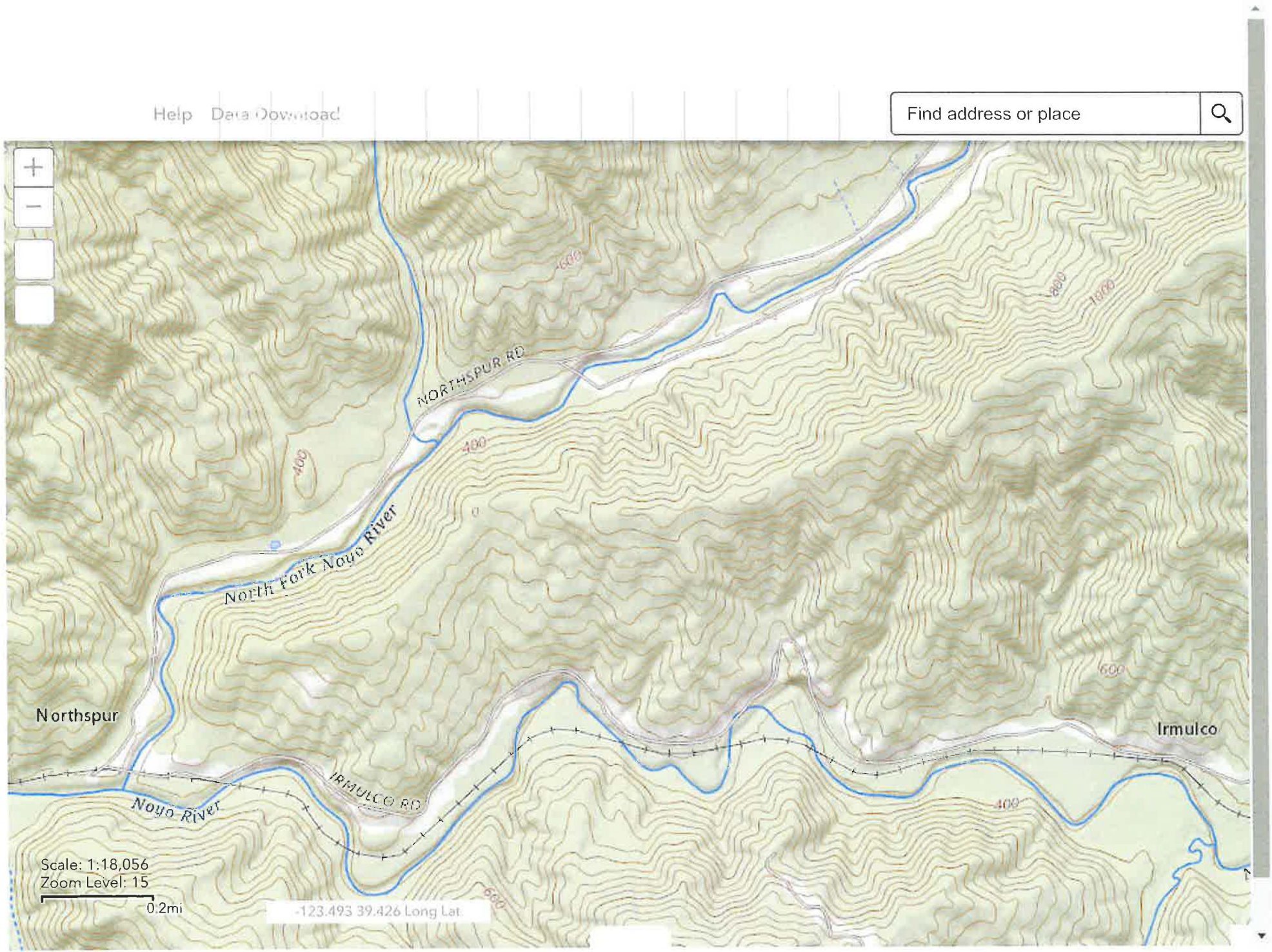
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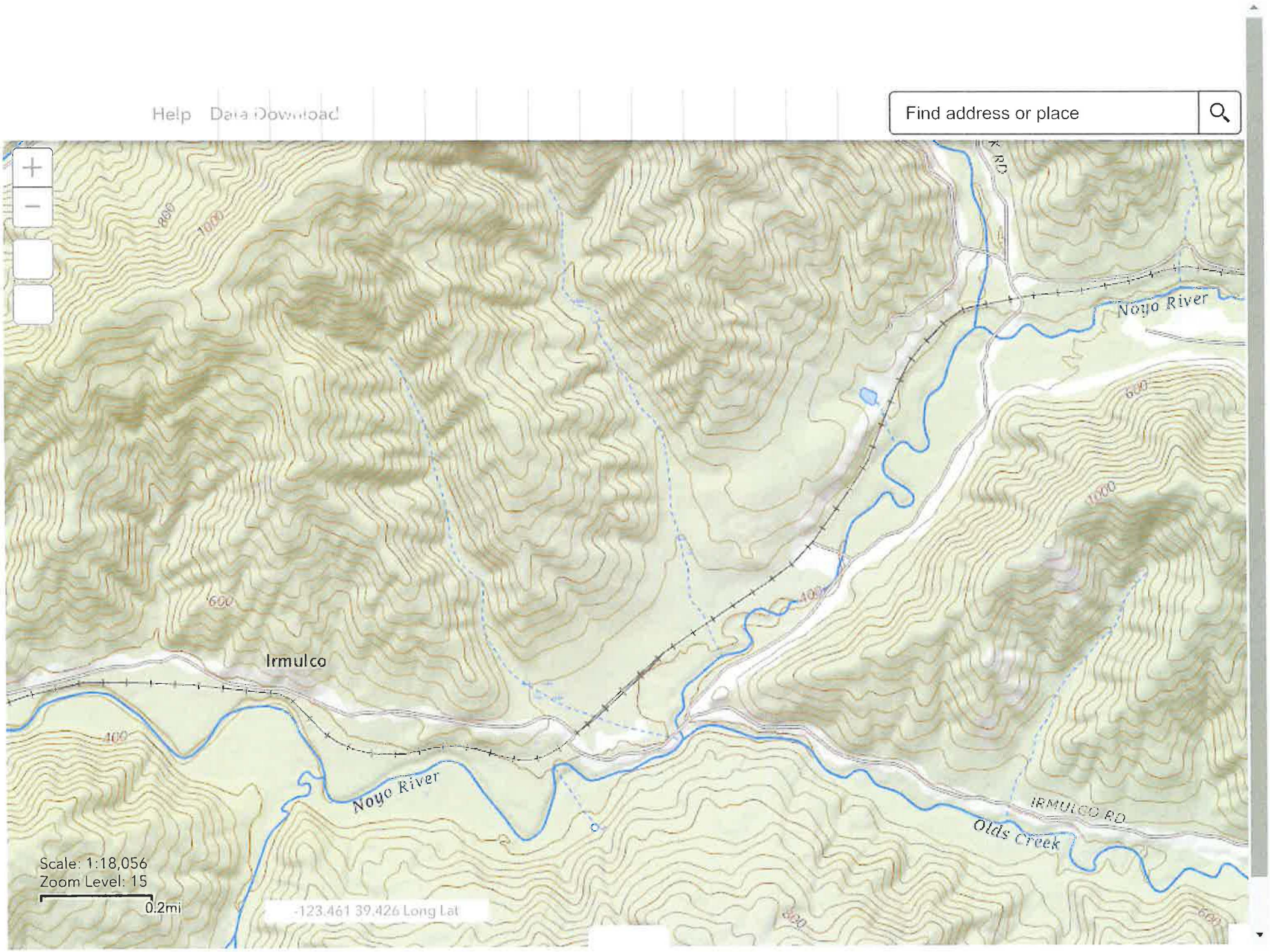
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Zoom Level: 15
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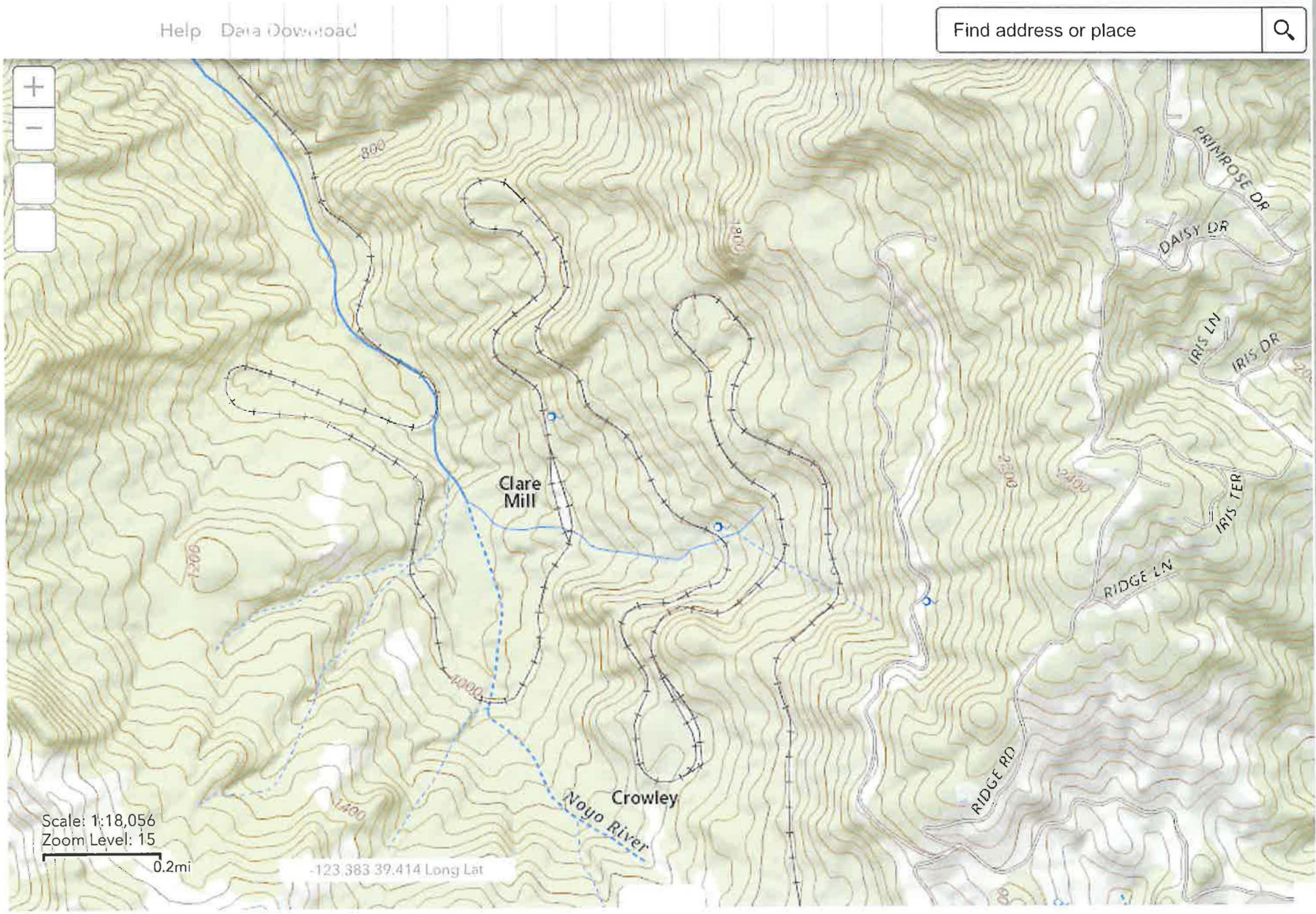
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DAISY DR
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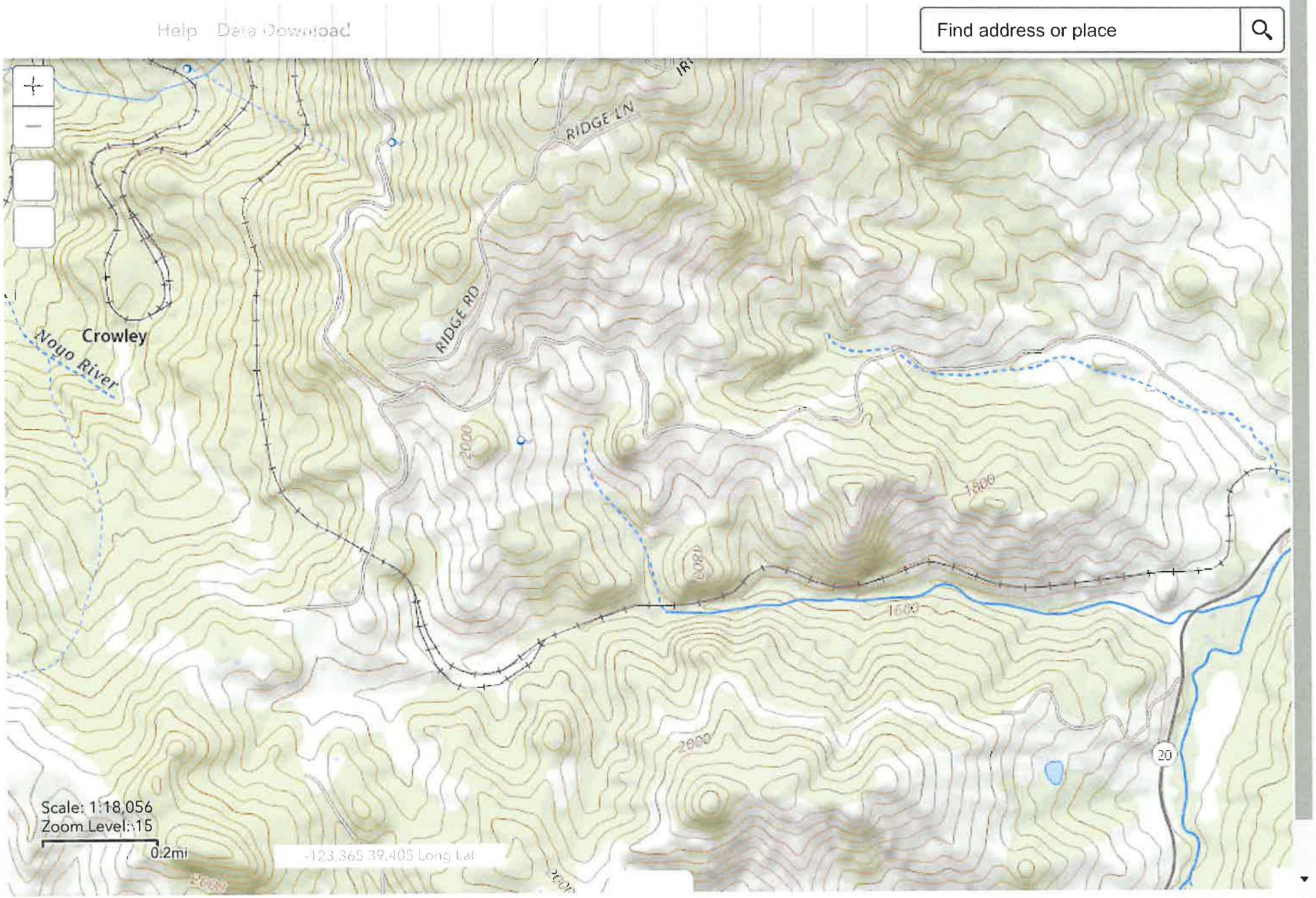
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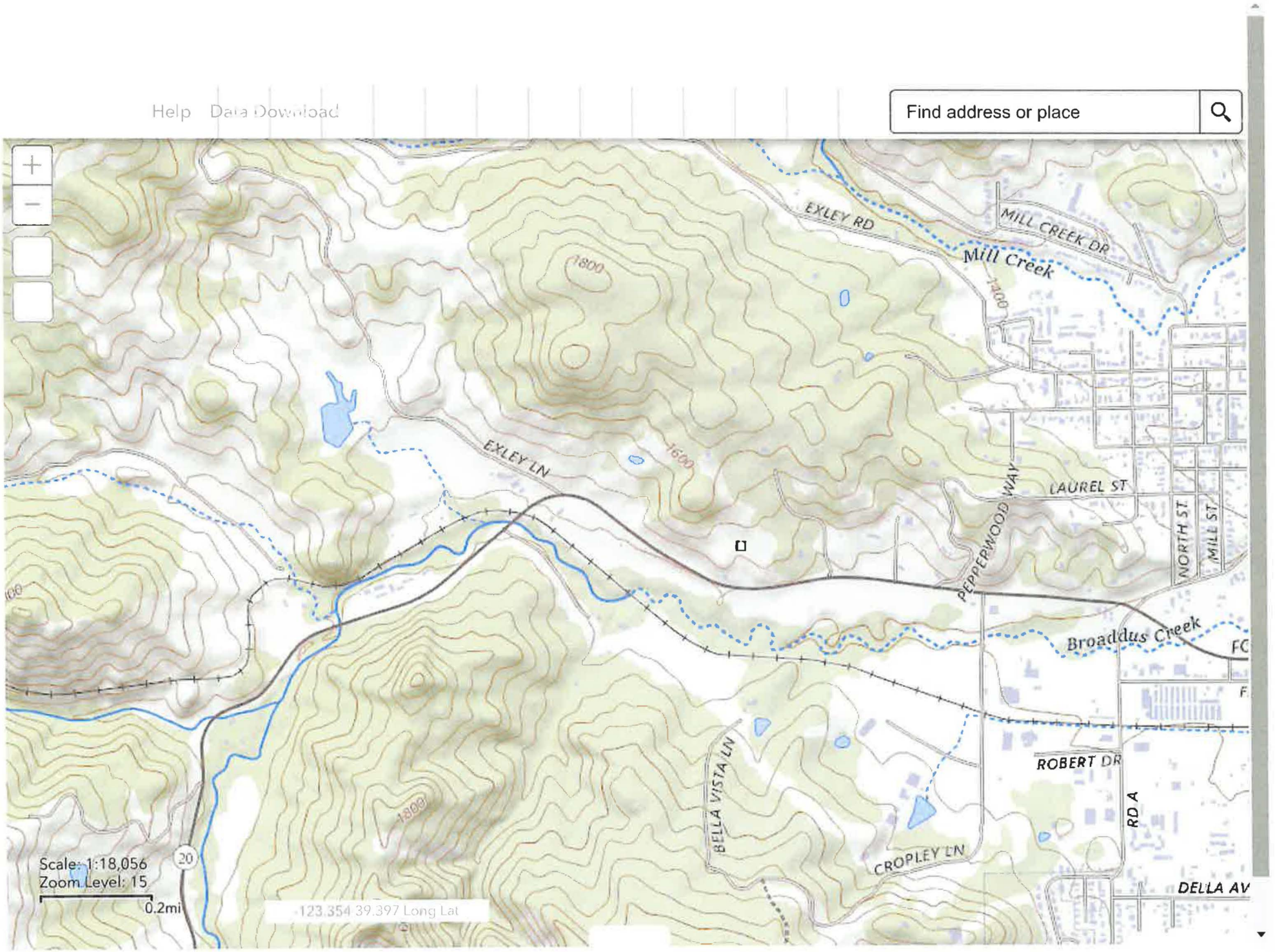
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MILL CREEK DR
Mill Creek
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1400
EXLEY LN
1600
PEPPERWOOD WAY
LAUREL ST
NORTH ST
MILL ST
Broaddus Creek
BELLA VISTA LN
ROBERT DR
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CROPLEY LN
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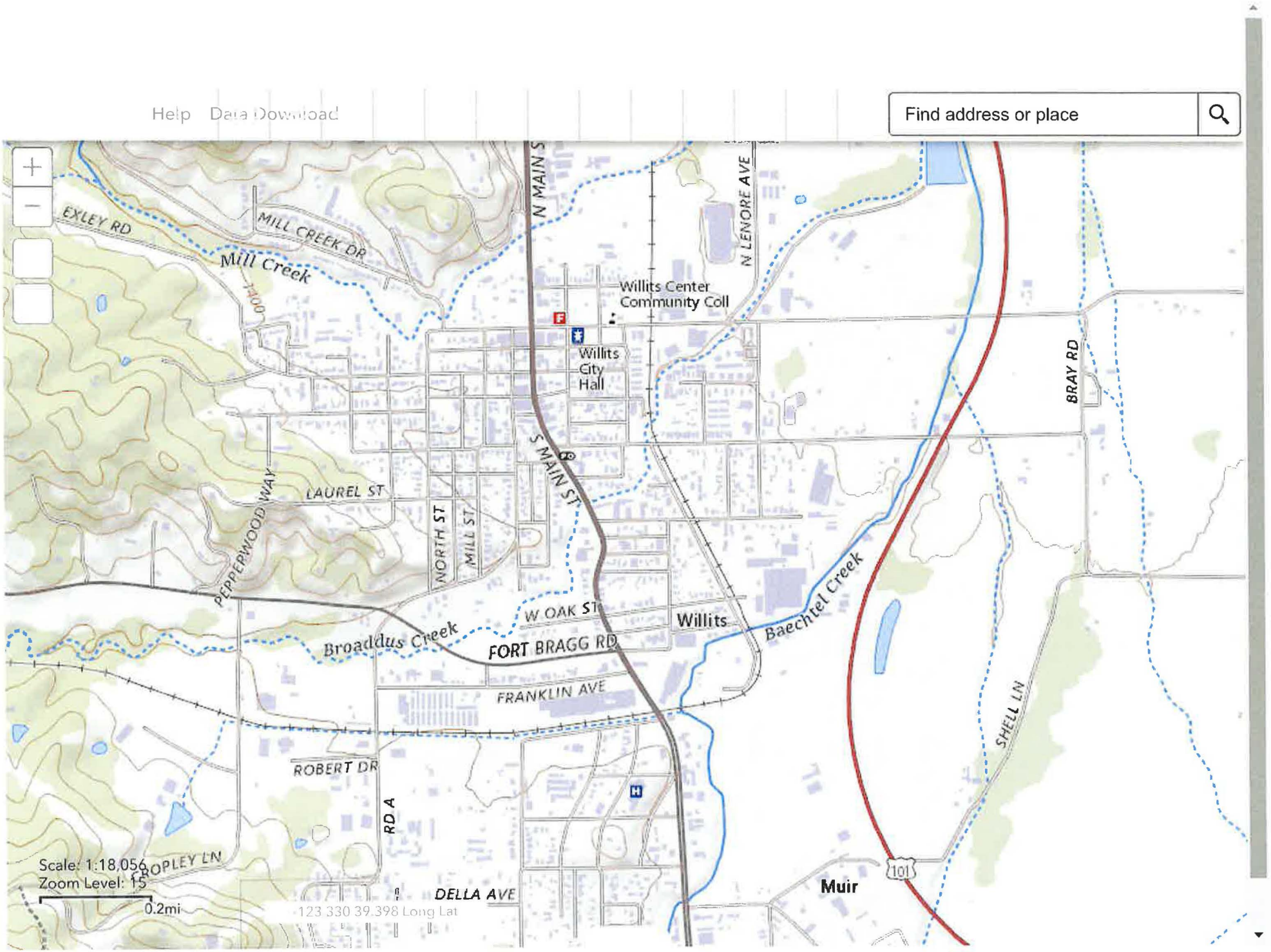
Help
Data Download
Find address or place
EXLEY RD
MILL CREEK DR
Mill Creek
N MAIN ST
N LENORE AVE
Willits Center Community Coll
Willits City Hall
BRAY RD
PEPPERWOOD WAY
LAUREL ST
NORTH ST
MILL ST
S MAIN ST
W OAK ST
Willits
Baechtel Creek
Broaddus Creek
FORT BRAGG RD
FRANKLIN AVE
SHELL LN
ROBERT DR
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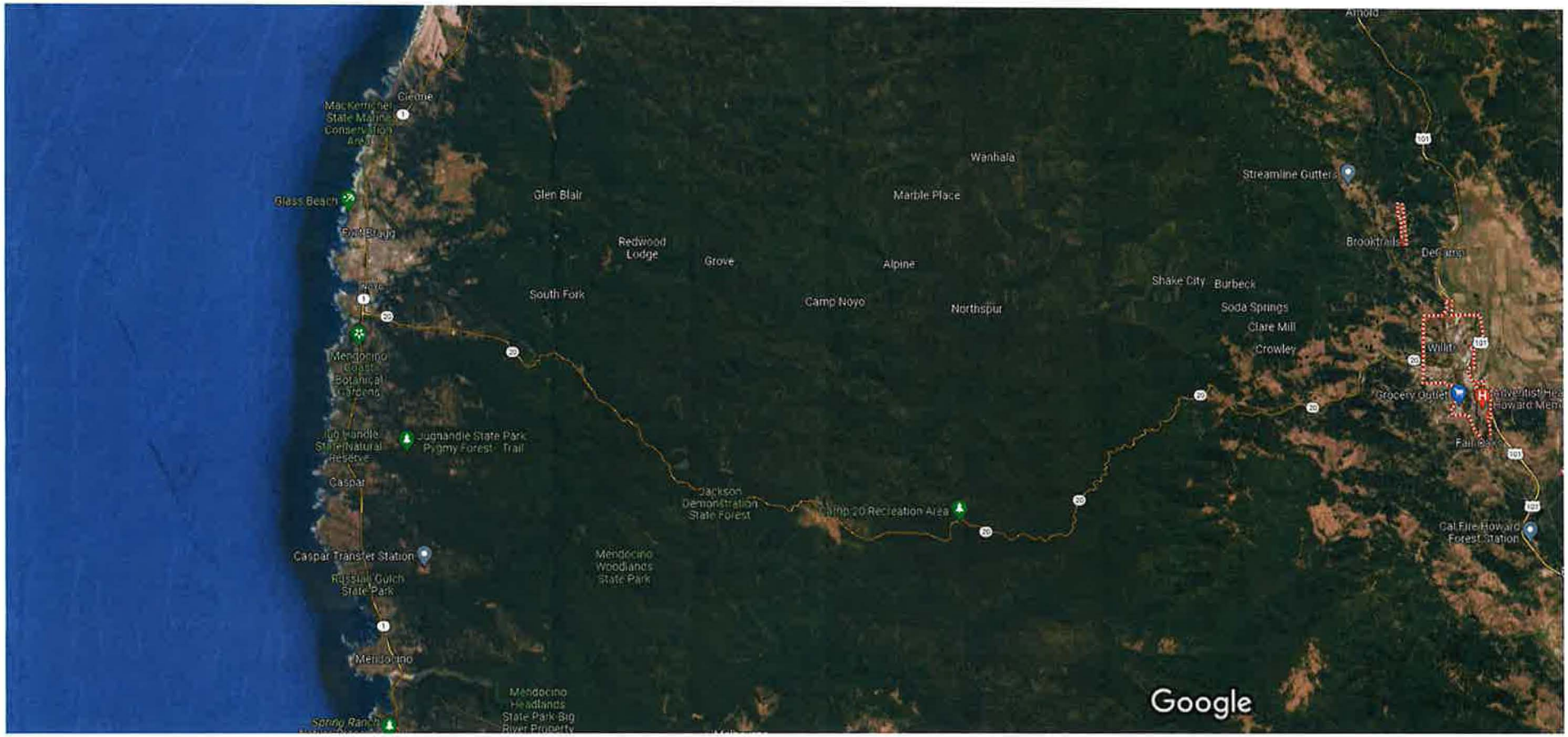
Google Maps Willits



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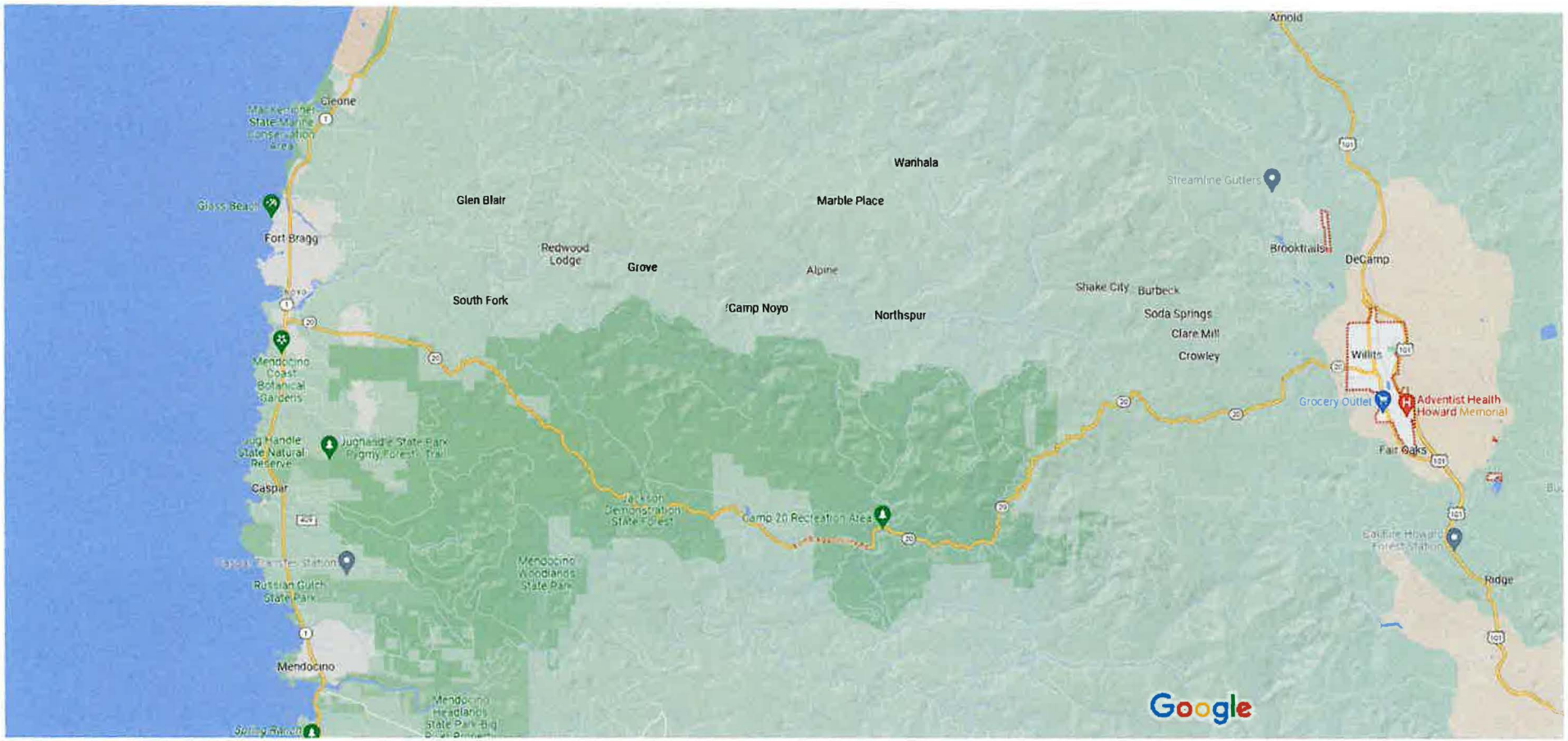
Google Maps Willits



Map data ©2023 2 mi

EXHIBIT D

FILED
04/19/2023
KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MENDOCINO
Delgado, Samuel
DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO

MENDOCINO RAILWAY

Plaintiff,

v

JOHN MEYER; MARYELLEN SHEPPARD; REDWOOD EMPIRE TITLE COMPANY OF MENDOCINO COUNTY; SHEPPARD INVESTMENTS; MENDOCINO COUNTY TREASURER-TAX COLLECTOR; all other persons unknown claiming and interest in the property; and DOES 1 through 100 inclusive.

Defendants.

Case Nos.: SCUK-CVED-2020-74939

Decision After Trial

Trial Dates: 8/23,24,24,29 and 11/10/22

This matter came on regularly for trial on August 23, 2022, and after a short delay concluded on 11/10/22. Plaintiff Mendocino Railway ("MR") was present through its President Robert Pinoli ("Pinoli") and represented by Glenn L. Block. Stephen Johnson appeared on behalf of John Meyer ("Meyer") who was also present. No other Defendant was required to appear. After trial, the parties were granted the opportunity to submit written closing briefs and reply briefs. The matter was submitted on February 8, 2022. In this case, Plaintiff seeks to acquire through eminent domain a 20-acre parcel owned by Meyer. The property is located west of the town of Willits and abuts Highway 20. It is known as 1401 West Highway 20 and Mendocino County Assessor Parcel Number 038-180-53. ("Property"). It is alleged by MR that it wants the property to construct and maintain a rail facility related to its ongoing and future freight and passenger rail operations.

Relevant Facts

Robert Pinoli, the President, and Chief Executive Officer of MR was the only witness who testified at trial. He testified that MR is a privately held corporation that owns and operates a railroad line commonly known as the "California Western Railroad" ("CWR") which is also most known as the "Skunk Train." In 2002, CWR filed a petition in Bankruptcy Court under Subchapter IV (Railroad Reorganization) of Chapter 11 of the Bankruptcy Code. Sierra Railroad Company (SRC), a holding company without carrier status was the successful bidder for the assets of CWR. SRC then formed Mendocino Railway, also a non-carrier, as a holding company to acquire the assets of CWR. The Articles of Incorporation for MR do not reflect the intent to operate as a

railroad. Rather, the Articles simply state that *"The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California…":* According to Pinoli, MR was a holding company and a "non-carrier" intending to initially operate CWR with the help of its affiliated entities, Sierra Northern Railway (a class III carrier) (SNR) , Midland Railroad Enterprises Corporation (a railroad construction and track maintenance company) (MREC) and Sierra Entertainment (a tourism entertainment and passenger operations company) (SE), all subsidiaries of SRC. MR certified that its projected revenues would not exceed revenue regulations that would render a designation other than a Class III rail carrier. A class III carrier is one that is a small or midsized railroad company that operates over a relatively short distance. (See Surface Transportation Board Notice of Exemption. (EX21). There was no designation of MR's status by the STB offered by MR. MR acquired CWR in 2004 when it purchased its assets through bankruptcy and operated it as a non-carrier.

The railroad line is approximately 40 miles in length and runs from its main station in the City of Fort Bragg to its eastern depot in the City of Willits. According to Pinoli the Fort Bragg Station is developed as a rail facility, with spur and siding tracks, a depot building, locomotives, passenger and freight cars, an engine house and storage facilities for its equipment. Presently, MR contends that it does not have adequate maintenance, repair and freight rail facilities to serve its ongoing operations at the Willits end of the line. MR contends that the acquisition of the Meyer property which is on the rail line will allow MR to fully operate its freight rail services with storage yards, maintenance, and repair shops, transload facilities, rail car storage capacity and a passenger depot.

In 2015, there was a landslide in "Tunnel No.1" that has prevented the trains from running the full length of the line since that date. No transportation between Fort Bragg and Willits has occurred since the tunnel was closed. It will take considerable funds to repair the tunnel so that it can function and there is no specified time frame for its completion.

MR concedes that currently its main function is the operation of a popular excursion train known as the Skunk Train for sightseeing purposes on the line through the redwoods. At present, the Skunk Train can leave the Willits station and travel west approximately 7.5 miles before turning around and traveling back to Willits. From Ft. Bragg, due to the tunnel collapse, the train can only travel east for 3.5 miles before it turns around and returns to Ft. Bragg. MR also operates motorized train bikes, and trail walks along the tracks. The excursion service generates ninety percent of MR's income. The other ten percent of MR's income is from leases and easement revenue.

In 1998, the California Public Utilities Commission made findings regarding MR's predecessor, CWRR regarding its status as a public entity. [1] The CPUC found that "[I]n providing its excursion service, CWRR is not functioning as a public utility, ….we conclude that CWRR's excursion service should not be regulated by

[1] The court takes judicial notice of the decision pursuant to Evidence Code Section 451(a)

the CPUC." (1988 Ca. PUC LEXIS 189 (1998). The CPUC through its counsel in 2022, concluded that MR is subject to inspections of railroad property as part of the Commission's obligation to ensure the safe operation of all railroads in California. (Pub. Util. Code §309.7) MR is designated as a Class III Commission regulated railroad. The Class III designation relates to the safety regulations and does not mean that it advances MR's status to public entity. MR does not dispute the 1998 findings and agrees that the term "transportation" for purposes of the public utility analysis excludes excursion services. Instead, according to Pinoli, MR is a public utility because it is a common carrier.

Analysis

1. **Public Utility Status**

Article 1, Section 19 of the California Constitution and CCP§1240.010 specify that private property can be taken by eminent domain for public use. The power of eminent domain by a public entity or utility is balanced with its constitutional obligation to pay "just compensation" to the owner of the property interest being acquired. This power is clearly defined and limited to certain circumstances by statute. The appropriate entity's right to take property must meet both constitutional and statutory limitations, to ensure the property owner of his or her right to be justly compensated for such taking. "The power of eminent domain may be exercised to acquire property for a particular use only by a person authorized by statute to exercise the power of eminent domain to acquire such property for that use." (CCP§1240.020.)

MR claims that it is entitled to avail itself of the eminent domain statute because it is a railroad corporation, a common carrier and through its activities it qualifies as a public utility.

Eminent Domain proceedings in the utility sector are permitted so long as the utility is a corporation or person that is a public entity. Public Utilities Code §610. A railroad corporation may condemn any property necessary for the construction and maintenance of its railroad. Public Utility Code §611. A railroad corporation includes every corporation or person owning, controlling, operating, or managing any railroad for compensation with this state. (See §230). PUC §229 provides that a "railroad" includes every commercial, interurban, and other railway.... owned, controlled, operated, or managed for public use in the transportation of persons or property." By definition a "common carrier" means every person and corporation providing transportation for compensation to or for the public or any portion thereof, including every railroad corporation providing transportation for compensation. (See §211). The central issue in this case is whether MR can be deemed a public utility for purposes of this eminent domain proceeding.

As stated above, MR operates a popular excursion train for sightseeing purposes on the line through the redwoods. MR also operates motorized train bikes and trail walks along its tract. Courts have defined and the parties do not dispute that "transportation" in the public utility context means "the taking up of persons or property at some point and putting them down at another." *City of St. Helena v Public Utilities Com. (2004) 119 Cal. App. 4th 793,902 (Quoting Golden Gate Scenic S.S. Lines, Inc. v Public Utilities Com. (1962) 57 Cal. 2d*

373). Round trip excursions do not qualify as "transportation" under Section 211 of the Public Utilities Code. (*City of St. Helena, supra).* As stated above, MR does not dispute the 1998 findings of the CPUC and agrees that the term "transportation" for purposes of the public utility analysis excludes excursion services.

Counsel for MR argues that "transportation" is not the only qualifier, but that the court should also interpret the term "provide" as it is stated Public Utilities Code §211. MR contends that to "provide" a service is to offer it by making the service available. In other words, MR should not be penalized simply because it is not transporting freight or passengers, it is the availability of the services that matters. MR argues that the "volume of service actually accepted by the public or a portion thereof is not relevant to whether the provider is a common carrier or any other kind of public utility." Addressing the participation of the affiliate entities, MR alleges a further distinction between providing the service and performance of the service. MR argues that even though it was not a common carrier it made the service available and its affiliate entities which may have been recognized as common carriers performed the service until at least 2022 when MR took over the operations of SNR. Assuming the court accepts this distinction, the testimony demonstrates otherwise.

A common carrier is a private or public utility that transports goods or people from one place to another for a fee. Unlike a private carrier, a public utility carrier makes no distinction in its customers as it is available to anyone willing to pay its fee. Pinoli testified that in addition to the excursion service, MR operates commuter passenger and freight services between Ft. Bragg and Willits and has been doing so since it purchased CWR in 2004. This testimony was later amended by Pinoli to reflect it was the affiliate entities SNR, MREC and Sierra Entertainment that performed the services through its own employees. Except for the excursion services, freight and passenger were minimal. This clarification came after Meyer discovered a Decision of the Railroad Retirement Act (45 U.S.C.§231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C.§351 et seq.). MR had requested the Board to re-consider whether it, along with Sierra Entertainment, would be required to pay into the respective funds when they were not employers as defined under the act. (CWRR had been terminated as an employer effective September 30, 2003.) MR was merely a holding company and had no employees and Sierra Entertainment only provided excursion services. The Board found that MR was not a carrier performing freight and passenger services between the time of its acquisition in 2004 when it took over operations from Sierra Northern Railway in 2022 and to date. The Board further advised that their opinion could change upon proof of MR's carrier status. Pinoli agreed with this finding.

Pinoli clearly testified that 90% of the railroad revenue comes from the excursion train activities. The other 10% of its revenue comes from leases and revenue. When questioned, Pinoli finally clarified that MR did not actually perform common carrier services between the time it purchased the assets of California Western Railroad in 2004 through 2022 when it took over operations from Sierra Northern Railway. Those services were allegedly performed by the affiliate companies. No evidence was submitted to support this allegation. MR did not offer evidence in the form of contracts with the affiliated entities, operating agreements, ledgers, receipts, payments etc. The court can infer that such agreements would be appropriate to address at least compensation for services, liability, and indemnification, if in fact, the services were provided. MR is the

Plaintiff in this action and has the burden of proof to establish its legal status as a public utility. There is no dispute that the only evidence of railroad income during the relevant time was and is earned from the excursion services only. MR concedes that the excursion service does not fall under the category of "transportation" and does not qualify MR as a public utility.

Despite agreeing with the findings made by the Retirement Board, Pinoli testified that MR as the successor to CWR is doing today what CWR has been doing for 137 years of existence. Pinoli testified that besides hauling approximately 100 loads of aggregate and steel for two environmental restoration projects along the line, it hauls a very limited amount of freight at present. [2] He offered into evidence various letters from local businesses that have expressed an interest in obtaining freight services once they become available. Pinoli also acknowledged that any freight service from Ft. Bragg to Willits cannot happen until "Tunnel No. 1" is repaired. There was no specified time frame for completion of the repairs. In addition, it was not clear as to whether MR had the available funds to complete the necessary repairs anytime soon. The letters were purposely solicited by MR in connection with a grant application to obtain funds from the federal government to improve its line for freight services. The letters are no more than letters of a possible interest in services should they become available. The court gives little weight to the letters of support.

Pinoli also testified that over the years passenger service was provided to residents of the various cabins along the route between Fort Bragg and Willits. Despite the court's comments that Pinoli appeared to be a credible and knowledgeable witness, the best evidence would have been written documentation in the form of ticket receipts, ledgers evidencing income, contracts with Mendocino Transit Authority, and contracts for freight transportation. When given the opportunity by the court, MR was unable to provide any documentary evidence of MR's claim for the freight or passenger services it allegedly provided either through MR or its affiliates. The court therefore gives little weight to Pinoli's testimony regarding the abundant array of services provided. (CACI 203.) The court ultimately was not persuaded by Pinoli's testimony alone.

Pinoli testified that when MR assumed control of SNR services in 2022, it planned to expand freight and passenger services with equipment and new business opportunities. While the efforts were noted, the intention to provide services in the future is not sufficient to establish the railway as a public utility. (*See City of St. Helena v. Public Utilities Commission (2004) 119 Cal. App. 4th 793)* Through its enhanced efforts MR may be able to obtain public utility status in the future but court is not convinced that such status is appropriate at this time based on the evidence provided by MR at trial.

2. Eminent Domain

[2] No documents, including but not limited to contracts, invoices, receipts were produced regarding this alleged " freight transportation" with Trout Unlimited. The oral testimony reflected a contract with Trout Unlimited and all funding was from state or federal funds. The work appeared to this court to be a combined project to benefit the environment including the rail line.

Assuming for purposes of this opinion that MR has public utility status, it still needs to meet the statutory requirements of the eminent domain law. As stated above, a railroad company is entitled to condemn property that is necessary for the construction and maintenance of its railroad. (See Public Util. Code §611). "The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established: (a) the public interest and necessity require the project.; (b) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (c) the property sought to be acquired is necessary for the project." CCP§1240.30. The power to take property under eminent domain is not unlimited. Such power "[M]ay be exercised to acquire property only for public use." *(CCP §1240.010; City of Oakland v. Oakland Raiders (1982) 32 Cal. 3d 60,69.)* "The statutory authorization to utilize the power of eminent domain for a given "use, purpose, object, or function' constitutes a legislative declaration that the exercise is a 'public use.'" (*City of Oakland.*)

Acquisition of the 20-acre site would enhance the operations of MR's excursion service that admittedly does not fall within the definition of transportation. MR cannot exercise the power of eminent domain to carry on its private business activities. In *City & County of San Francisco v. Ross (1955) 44 Cal 2d 52,54*, the City sought to acquire by eminent domain a site that would subsequently be leased to private individuals who were planning to build and operate a parking structure and other facilities including private commercial retail. The court stated, "[w]hile it might be argued in the present case that the percentage area to be used for other commercial activity is small enough to be merely an incident to the parking activity and not in itself enough to invalidate the whole plan, nevertheless it aids in characterizing the whole operation as a private one for private gain." "The Constitution does not contemplate that the exercise of the power of eminent domain shall secure to private activities the means to carry on a private business whose primary objective and purpose is private gain and not public need." *(Council of San Benito County Governments v. Hollister Inn, Inc. (2012) 209 Cal. App. 4th 473,494 (citations omitted.)* As stated previously, the income generated from the Skunk Train excursion service is 90% of MR's revenue. The court can easily find that MR's primary objective is to obtain the property to serve the excursion service. No explanation was offered to distinguish the private operations from the "proposed" freight and passenger enhancements.

Notwithstanding the above, MR's proposed use of the property conflicts with the statutory requirements of public use and least private injury. At trial, approximately seven months of internal MR emails were admitted into evidence. Pinoli conceded the emails revealed that the original conception of the MR project reflected a train station, campground, and RV park. He also testified that his boss was known to brainstorm ideas and concepts for the acquisition and use of property acquired by MR, but those ideas were not always fully vetted. The only conceptual drawing for the Meyer property prepared by MR at the time it filed its complaint however, depicted a station/store, campground, and long-term RV rental park. It wasn't until June 2022, approximately 18 months after the eminent domain action was filed that a preliminary site plan was prepared. The site plan offered at trial is one that generally depicts maintenance/repair facilities, a yard, vehicle parking, a rail transloading facility, dept offices, a platform and a natural habitat preserve. The site plan is considerably different from the original conceptual drawing.

Pinoli admitted that the use of the property for a private campground was not consistent with the operation of a railroad and could not be the basis for eminent domain. Instead, he said that the current purpose is to develop the necessary maintenance and depot facilities on the Willits side of the line and to create a transload facility. The transload facility would not be operational or even necessary until "Tunnel No. 1" was usable. In addition to the original drawing utilized at the time the case was filed, the site drawing was the only evidence offered to address the use of the property. There was no evidence of an actual plan for development or funding for the project. "[A]n adequate project description is essential to the three findings of necessity that are required to be made in all condemnation cases. Only by ascertaining what the project is can the governing body made those findings." *(City of Stockton v. Marina Towers LLC (2009)171 Cal. App. 4th 93,113.)* While the plan in the City of Stockton case was severely lacking in detail, which arguably differs from the instant case, the principle that a property owner is entitled to know what is being planned for the land remains the same. The court questions the credibility of the late hour evidence of a site drawing presented in the instant case. Particularly so, when a transload facility was added with MR's knowledge that freight transportation could not happen until "Tunnel No. 1" was available. No evidence was presented to establish whether or when the tunnel would be available for use.

The credibility of the testimony is also questionable when the initial plan prepared at the time the complaint was filed included a campground. Following the initial plan, in preparation for trial, MR develops a new site plan that eliminates the initial concept. This was done presumably to satisfy the requirements of the statute. Also lacking is an analysis from MR as to the impact the maintenance and transload facility would have on the residents (including Meyer) living directly adjacent to the proposed 20 acre site. The court finds that Pinoli's testimony that there would be no real impact on the residents is simply insufficient. Without such information the court is unable to determine if the project would impose a greater injury to the residents. The court finds that MR did not meet its burden to establish that the current site plan supports a project that is planned or located in the matter that will be most compatible with the greatest public good and least private injury which is required by statute and case law. *(See CCP §1240.030 and SFPP v. Burlington Northern & Santa Fe Ry. Co. (2004) 121 Cal. App. 4th 452.)*

The court concludes that MR has failed to meet its burden of establishing that its attempt to acquire Meyer's property through eminent domain is supported by constitutional and statutory powers. The court finds in favor of Meyer.

Dated: 4/19/2023

Hon. Jeanine B. Nadel
Judge of the Superior Court

Superior Court of California, County of Mendocino
PROOF OF SERVICE

Case: **SCUK-CVED-2020-74939** **MENDOCINO RAILWAY VS. MEYER, JOHN**

Document Served: Decision After Trial

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

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

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

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

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Krista MacNevin Jee kmj@jones-mayer.com	☐	☐	☐	☐	☐	☐	☒
	☐	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐	☐

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

☒ Ukiah, California ☐ Fort Bragg, California

Date: 04/19/2023

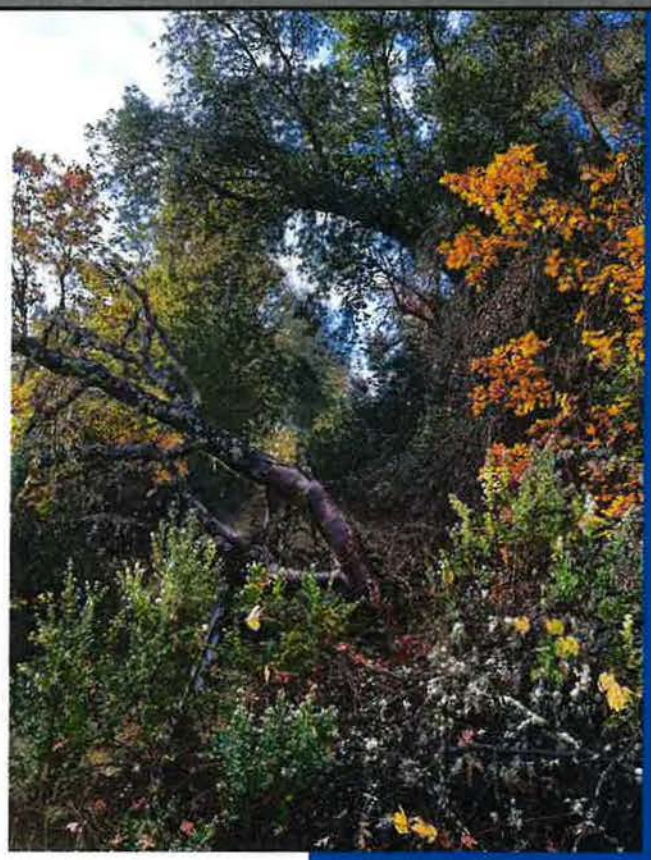
KIM TURNER, Clerk of the Court

By: Samuel Delgado, Deputy Clerk

EXHIBIT E

November 30, 2023

Railroad Rehabilitation Assessment
Cloverdale MP 85.6 to Willits MP 139.5



Great Redwood Trail Agency

D&A Enterprises LLC

Contact: Dave Anderson, (714) 943-4068

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3. Track Rehabilitation 12
4. Structure Assessment 20
5. Crossings Public & Private 25
6. Maintenance 31
7. Rehabilitation Costs 32

1. Introduction

This Assessment was completed to determine an estimated cost necessary to rehabilitate approximately 52.6 miles of GRTA Rail Line from Cloverdale, CA MP 85.6 at the First Street Crossing to Willits, CA MP 139.5 to FRA Class 1 track standards for freight rail service.

This segment of the railroad was last in-service 25 years ago. It was embargoed on December 9, 1998 by the FRA due to washouts and flooding events associated with El Niño storms and crossing signal disrepair rendering the track unsafe. The 52.6 miles of rail line had minimal maintenance prior to the embargo and has not been maintained since the embargo. Therefore, obtaining access was challenging given the inherent geohazards, washouts from storms since the embargo, and heavy vegetation over much of the right-of-way.

The assessment team includes several senior individuals with decades of railroad experience. The separate individual's areas of expertise include:

- Geotechnical engineering with extensive experience working with shortline and Class 1 railroads addressing slides, erosion, and tunnels.
- Roadmaster responsibilities for track maintenance and safety with extensive knowledge of FRA regulations for Class 1 track.
- Railroad Bridges and Structures experience with extensive knowledge of FRA related requirements for Bridge Management Programs, inspection requirements and load capacity determinations. Railroad CEO responsible for overall operations and profit and loss.

Bios of the team members and their roles are included at the end of this document.

The current condition of the railroad was determined by field inspection of approximately 30 miles of the line and low-level photography and LiDAR collected by helicopter in 2022. The LiDAR was helpful in areas of heavy vegetation for detection of land formations, such as outlining landslides and washouts. It, however, was not helpful for more detailed information like tie conditions in areas that were not accessible on foot. In addition, past assessments in 2002, 2005, 2007, and 2019 provided insight to railroad condition over time.

2. Geotechnical Assessment

Line Segment Description

The railroad segment generally parallels Highway 101 from Cloverdale at the First Street crossing MP 85.62 to Commercial Street crossing, Willits MP 139.5. SMART is the owner of the line from Cloverdale MP 85.62 to the Sonoma County/Mendocino County border at MP 89.00. Within this entire segment, Cloverdale to Willits, certain improvements would be required for freight traffic. The current reconnaissance found landslides, erosion around culvert outlets, rockslides, and scour at bridge abutments and piers. Landslides that were assessed by Shannon & Wilson in 2005 showed signs of accelerated side movement and erosion at several locations. In general field observations of slides found that the lengths identified in 2005 have deteriorated by an additional 25% to 100%. In addition, new washouts since that time were identified. There is over 7,200 feet of hanging track that needs to be rebuilt including roadbed varying from 4-feet to 15-feet high.

Geotechnical Work items

To re-open the rail line to freight traffic several improvements will be required to repair or restore track conditions due to geological hazards. These include surface drainage improvements, repairing or replacing culverts, installing culvert extensions, repairing erosion at culvert outlets, excavating rock and sediment slide debris, stabilizing landslide areas, repairing scour at bridges, and restoring track embankment. Table 1 is a summary of the work items and the estimated quantities.

Costs associated with these work items and projected ongoing maintenance related to these items is provided in Section 6 Maintenance and Section 7 Rehabilitation Costs. The cost recognizes that from the 2002 detailed assessment to the 2005 assessment there was a 24% increase in cost, mainly due to increased deterioration of geotechnical hazards. Since another 18 years have passed, and the reconnaissance clearly showed continuing degradation, an average deterioration of 62.5% was applied, along with current pricing for the types of improvements required.

Table 1 – Geotechnical Work Items and Quantities

MP	Geotechnical Issue	Repairs	Track Length (ft)
85.6	150' slope failure	Grade ditches to drain, add trench drains, place rip rap	150
88.7-88.8	Rock Fall and debris flow with up to 4' diameter boulders A large stockpile of past rock falls, see photo 3025, estimate 150 yds to be removed from track area over 500 '	Remove and clear ditch and track	500
88.95	Rockslides affecting 100' of track	Clear track and ditch	100
89.2-89.76	Rockslides affecting 130' +100' of track	Clear track and ditch	130
90.5	Track effected by failure of slope above and below track. Track severely affected. In last two years the area and severity and increased	There is about 1000 ft of track that need significate grading and drainage improvements	1000
91.25	Track moving out chronic track issue. About 6-7' vertical set down has occurred over time. Water ponds on wide shoulder.	Condition of culvert and ditching in area in poor condition and area of ground movement 200' track	200
92.4	Track shifted away from river embankment steep 45- to 50-degree slope to river.	400 ft of Track needs to be shifted further away from river and install erosion control	400
92.6	Slide	200-feet of track affected (300 yds)	200
92.7	Slides	1000 feet of track affected (1000 yds)	1000

MP	Geotechnical Issue	Repairs	Track Length (ft)
92.8	Slide	100 ft impacted drainage, filled left ditch (was 20' in 2005)	100
92.9	Slide	50 feet of track impacted	50
93.3	Slide	100 ft of track affected (150yds)	100
93.5	Rotational slide affecting 1,000 feet of track (was 160' in 2005)	Replace existing culverts with larger culverts at ends of affected area and deepen ditch on uphill side of track to drain to culverts and reconstruct track bed and track requires an engineered fill	1000
94.79	Slope failure 102 feet of track affected	Remove material from slide estimated at 120yds	102
96	200 ft washout	Install culvert and reconstruct track	200
96.3	150' washout caused by Russian River flooding	Reconstruct track	150
96.33	100' mud slide	Need diching and removal and cut back slide	100
96.4	120' long hillside erosion with 2 ft boulders	Need diching and removal of boulders from track shoulder, long term maintenance issue	120
102.8	Rockslide area, shear zone in slope, slide debris fills ditch, partially undermined trees and root wads at top of slope	Excavate debris, restore ditch 100' of track	100
104.46	McNabb Creek 12'x12' Concrete Arch Culvert washout	Culvert to be replaced by 50 ft bridge.	50
104.9	Left embankment washout	Repair and install erosion protection 100'	100
107.8-107.9	Track crosses large landslide with more than 15' of vertical displacement over time, shoulder loss for another 160' in this area.	Replace shoulder loss and install culvert.	160
108.46-108.5	Track bed erosion, 100' of track affected	repair track	100
118.7	Track between steep upslope on the left and Russian River on the right left drainage very poor and track heavy with vegetation. Track not possible to walk.	1800' requires removal of heavy track vegetation, removal of fallen trees and rock, clearing track ditches & installing of culverts to maintain drainage	1800
124.98	Right ditch and track covered with slope soil erosion; ditch very wet	300' (80' in 2005) of ditching and track ballast replacement required. Right ditch needs positive drainage	300

MP	Geotechnical Issue	Repairs	Track Length (ft)
125.0	Baker Creek embankment failure	Replace with concrete arch culvert and fill (15,000 yds +/-). This assumes 160' track bed affected, 36' top to bottom & 1/1 slopes	160
126.5	Track experiences vertical and horizontal displacements, likely historic slide area. Culvert washout 250'	Install concrete box with headwall & wingwalls & rip rap and rebuild washed out track bed	250
127.48	Track misalignment & erosion & lack of proper drainage affecting 109' of track	Regrade area & reconstruct track bed and install larger concrete pipe culvert	109
127.65	Very old complex slide area 2200' long (was 1000' in 2005)	Segment has set down several feet and has moved out of alignment, reconstruct track embankment (requires engineered fill) & install trench drains, rebuild track with all new ballast	2200
128.2	Culvert washout & 250' of right shoulder erosion	Install concrete box with headwall & wingwalls & rip rap and rebuild washed out track bed & reestablish right shoulder	250
130.2	Chronic track sun kink area 180' of track effected (was 80' in 2005). Area where track bed has been built with river rock and needs to be rebuilt.	Rebuild track embankment (requires engineered fill); install larger culvert at north end of kink with 120 sheet pile wall along erosion of left track embankment; existing track bed consists of several feet of river rock	180
134.45	Embankment failure	Reconstruct 150' of embankment & track	150

Rock and Debris Slides: There are several areas that require ditching due to rock and debris slides. The rockslides consist of fractured rock, mixed soil, and woody debris resulting in talus slopes. It is evident at several of these slide areas that they have required substantial clearing over time based on large stockpiles of material on the opposite side of the track from ditching. In areas of recurring larger rock falls present significant hazards to train movement.

Ph 2999 Ditching of boulders/rock example

Ph 2894 Slide requiring removal/re-establishment of ditch

Ph 2997 Ditching Vegetation Example

Ph 3025 Stockpile of previous ditching

Erosion Repair: Erosion issues are prevalent in areas of climbing grade and in areas where culverts are undersized.

Ph 2633 MP 95 Erosion from Russian River

Ph 2478 MP 129.7 Erosion & washout undersized culvert

Aerial Ph: MP 129.67 Erosion of 3-span Timber Trestle

Aerial Ph: MP 127.65 Culvert Washout 40' long

Aerial Ph: MP 125 Baker Creek Washout & Erosion 160' long by 35' deep from unmaintained & undersized culvert

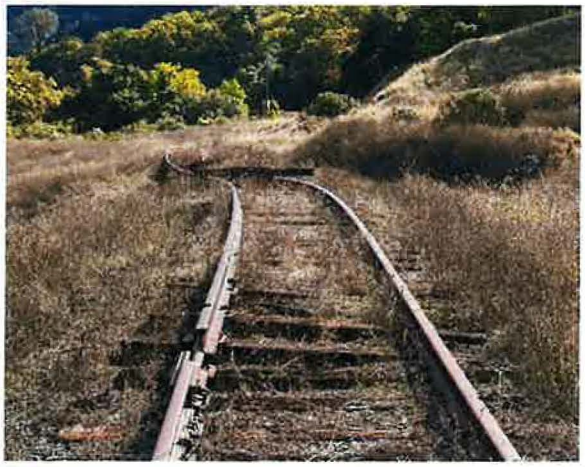
Landslide and Unstable Slope Repairs: The following pictures show areas that have historically required substantial reoccurring maintenance activity due to continual land movement. This is an example of why maintenance of way is challenging for this stretch of railroad.

Ph 2461 MP 130 Chronic Track Issue 180'

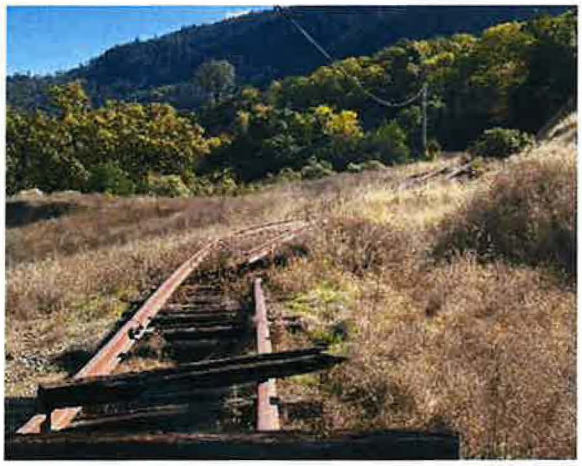
LiDAR: MP 127.65 Very old complex slide area 2200'

Aerial Ph within Complex Slide area

Aerial Ph within Complex Slide area



Ph 2960 MP 90.5 1000' Slide Area with Toe at Russian Rvr



Ph 2964 Within same 1000' Slide Area

Tunnel Work items

Five tunnels designated as Tunnels 5 through 9 are located within the assessment area. The five tunnels are among the earliest constructed for the railway, in approximately 1889. The tunnels were excavated by drill and blast methods and initially left unsupported. Over time, several types of lining were installed in less stable tunnel segments including timber sets and lagging, concrete, and later steel sets and gunite. Tunnel 8 and two segments of Tunnel 6 are situated in relatively competent rock and were left unlined. However, in June 2011 Tunnel 6 experienced substantial damage as a result of a tunnel fire. Tunnel lengths range from 267 to 1,762 feet.

Tunnel work items are shown in Table 2. Costs associated with these work items and projected ongoing maintenance are provided in Section 6 Maintenance and Section 7 Rehabilitation Costs.

Table 2 – Tunnel Work Items and Quantities

Geotechnical / Tunnel	MP	Track Length (Ft)	Repairs
Tunnel 5 – Good condition	85.62	347	Minor Maintenance
Tunnel 6 - Collapsed	87.79	1,762	Given the damage noted prior to the fire, and the damage noted during and after the fire, the tunnel is presumed to require mining to reopen the tunnel.
Tunnel 7	89.12	261	Replace 4 rotten timber sets between concrete panels w/ shotcrete, clean debris from ditches, monitor timber sets that are deteriorating
Tunnel 8	93.9	1,270	Rockfall of approx. 8 cy total in unlined segment, needs scaling, ditching and shotcrete
Tunnel 9	94.88	446	Clean ditches thru tunnel, add drainage improvements in wet zones, repair crown lagging at north portal, replace sets at north portal

Tunnel 6 inspections in 2002 and 2005 noted rockfall and deterioration of timber lining, especially in two sections that were bulging from high loads on the sidewalls. The timber sets in those locations were bowed up to 5 inches. Some sets had cracked in tension and had broken the concrete footing. Some pieces of lagging were dislodging from behind the sets. The June 2011 tunnel fire is known to have burned through the entire tunnel. Burned timber sets and bent steel sets were witnessed. To put out the fire, the tunnel was first flooded, and when that was ineffectual, both portals were sealed to smother the fire. The tunnel is unsafe to enter and has not been fully inspected since 2005.

Ph 3033 Tunnel 6 – Burned/Collapsed

Ph 429 Tunnel 6 prior to collapse from 2005 Capital Assessment Report

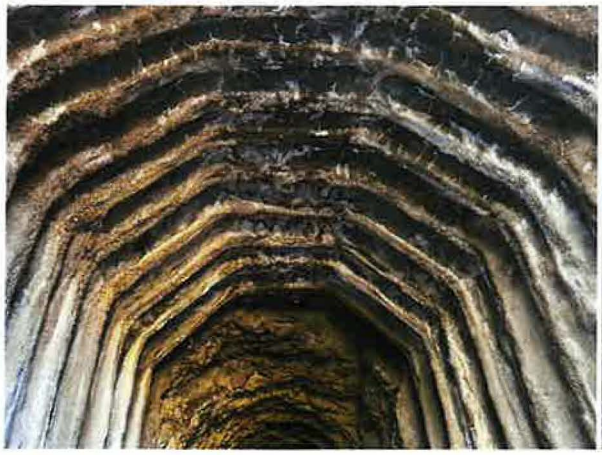
Other than Tunnel 6 which is highly likely to require complete restoration, the repairs include ditching, scaling of loose rock in unlined segments, and minor lagging repair. In areas where scaling is recommended, installation of rock bolts and shotcrete may be necessary. The need for bolting and shotcrete should be determined based on detailed tunnel mapping and rock mass characterization.

Ph 0110 Tunnel 5 South Portal

Ph 3042 Tunnel 5 Shotcreted Sets

Ph 3014 Tunnel 7 – So. Portal Rockfalls

Ph 3011 Tunnel 7 Deteriorated Timber Sets



Ph 2850 Tunnel 8 North Portal

Ph 2854 Tunnel 8 Rockfalls

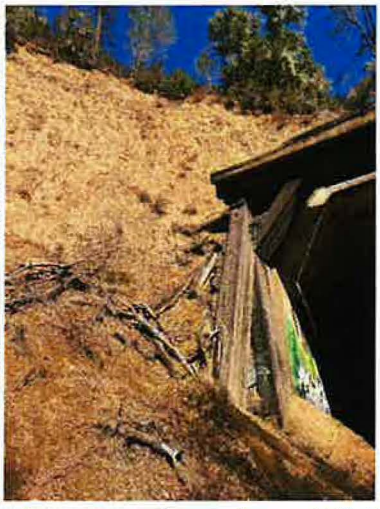
Ph 2806 Tunnel 9 North Portal failure

Ph 2809 Tunnel 9 North Portal material

Ph 2811 Tunnel 9 internal

Ph 2814 Tunnel 9 South Portal material

Ph 2816 Tunnel 9 South Portal hillside



Ph 2817 Tunnel 9 South Portal hillside

3. Track Rehabilitation

Brush Cutting and Vegetation Removal

The summary findings below are based on a November 2023 field inspection of approximately 60% of the right of way and review of aerial photography acquired in 2022:

Table 3 – Vegetation Condition

Classification	Miles	Scope of Work
Cleared	6	Brush cutting
Light	15	Brush cutting
Medium	13.4	Brush cutting
Heavy	18.2	Manual Tree/Shrub Removal and brush cutting

Cleared = Able to hi-rail; locals have cleared track for speeder use
Light = No trees; small shrubs; track 90% visible able to walk.
Medium = Trees up to 4" diameter; difficult to walk; track 50% visible
Heavy = Trees up to 6" to 8" diameter; not walkable; track 20% visible

Ph 2378 Example of Heavy Vegetation Willits MP 137 (dashed line is centerline of track)

Ph 2430 Example of Heavy Vegetation MP 131

Vegetation needs to be cleared 15 feet to 20 feet horizontally from the centerline of track and 20 feet vertically to provide required site distance, safety of train crew, and to minimize fire hazard. The cost to clear vegetation assumes using an on-track mounted brush cutter to clear light vegetation and spreading the chipped debris on the right of way. Medium vegetation will require a combination of felling trees up to 4" in diameter and brush cutting. Heavy vegetation includes trees up to 12" in diameter mixed with low level shrubs, small trees and fallen trees from up slopes. For heavy vegetation areas the removal cost assumes that there would be a combination of brush cutting and manual labor falling trees and a flatbed

grapple truck to assist with the clearing. Several areas of heavy vegetation are in a narrow corridor requiring removal of material to a disposal area. The larger vegetation that is growing within the track bed will require the removal of stumps and root system. This also assumes manual labor and use of a grapple truck. This will disturb and destroy several ties. The tie program discussed below takes this into account.

Ph 2837 Example of Cleared Vegetation

Ph 2803 Example of Light Vegetation

Ph 3028 Example of Medium Vegetation

Culverts

Based on historical track inspection data, there are 425 culverts from MP 85.45 to MP 139.52. The table below summarizes the types of culverts found on the Line.

Table 4 – Culverts Cloverdale to Willits

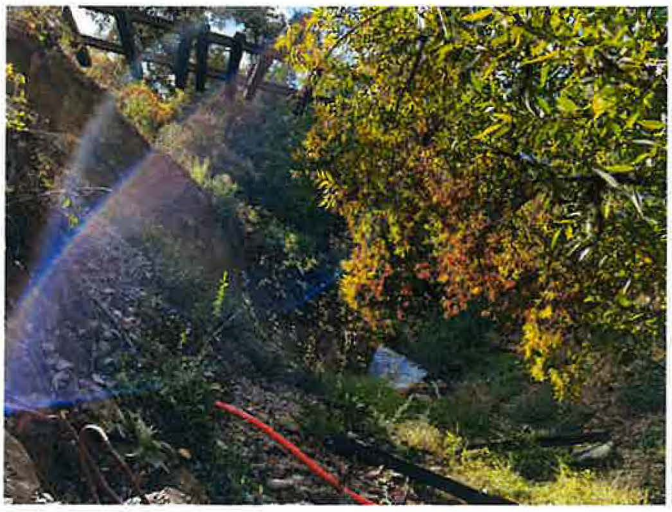
Culvert Type	No. of Culverts	Material	Dimensions	Approximate Length (ft)
Concrete Arch Culvert (CAC)	16	Concrete	Ranging from 5' x 5.5' to 16' x 12'	834
Corrugated Metal Pipe (CMP)	49	CMP	12" diameter	1,473
CMP	34	CMP	15" – 16" diameter	1,059
CMP	97	CMP	18" diameter	3,288
CMP	2	CMP	21" diameter	70
CMP	1	CMP	22" diameter	30
CMP	1	CMP	23" diameter	40
CMP	32	CMP	24" diameter	1,474
CMP	15	CMP	30" diameter	854
CMP	11	CMP	36" diameter	650
CMP	2	CMP	42" diameter	76
CMP	4	CMP	48" diameter	200
CMP	1	CMP	60" diameter	56
CMP	1	CMP	72" diameter	34
CMP Arch (CMPA)	1	CMP	30" x 52"	40
Concrete Pipe (CPC)	2	Concrete Pipe	12" diameter	44
CPC	7	Concrete Pipe	18" diameter	248
CPC	49	Concrete Pipe	24" diameter	1,926
CPC	5	Concrete Pipe	30" diameter	195
CPC	23	Concrete Pipe	36" diameter	1,122
Drop Inlet (DI)	3	Metal Pipe	12" diameter	731
Multi-plate Pipe (MPP)	1	Pipe	72" diameter	48
Rail Topper (RT)	3	Rail	8' – 11'	71
Smooth Steel Pipe (SP)	7	Steel Pipe	16" – 48" diameter	343
Vitreous Clay Pipe (VCP)	1	VCP	24" diameter	100
Wood Box Culvert (WBC)	61	Timber box	Ranging from 1' x 1' to 6' x 6'	2,564

The following culverts have failed and require replacement. These replacements are going to include track embankment that has washed out as a result, both inlet and outlet erosion correction, and will all be reinforced concrete pipe and will be double the size of the washed-out culvert. The improvements will include headwalls and wingwalls. The cost associated with the track work will be included in a special section of the track costs to incorporate cost for areas needing track reconstruction like blown out culverts and rotational slides.

Table 4a – Washed-out Culverts Cloverdale to Willits

MP	Description	Repair	Culvert Length (ft)
90.5	Five culverts destroyed slope failure	Need to reconstruct 3 larger culverts with lateral French drain	20
91.4	Culvert washout	Replace with larger culvert and erosion control reconstruct track bed	20
92	Culvert washout, Head of washout 3 ft from track	Replace with larger culvert and reconstruct track bed (estimated erosion of track embankment 150 yds), install erosion control effects 20' of track	20
121.68	Culvert with shoulder erosion	Install larger concrete pipe & rebuild track bed & add riprap	20
126.5	Track experiences vertical and horizontal displacements, likely historic slide area. Culvert washout 250'	Install concrete box with headwall & wingwalls & rip rap and rebuild washed out track bed	20
127.35	Concrete box culvert with inlet & outlet erosion	Place inlet and outlet erosion control	30
127.5	Culvert washout 50' long	Install concrete box with headwall & wingwalls & rip rap	36
127.6	Culvert washout 40' long	Install concrete box with headwall & wingwalls & rip rap and rebuild washed out track bed	100
128.2	Culvert washout & 250' of right shoulder erosion	Install concrete box with headwall & wingwalls & rip rap and rebuild washed out track bed & reestablish right shoulder	37
129.8	Culvert washout 15' long	Install concrete box with headwall & wingwalls & rip rap and rebuild washed out track bed	30
134.4	Culvert erosion	Replace culvert with larger concrete pipe culvert	30
135.63	24"CMP Culvert failure with extensive erosion	Replace culvert with larger concrete culvert extensive earthwork	100
136.79	MP 136.79, 7' rise x 8' wide concrete arch with poor floor and 6' deep erosion at outlet,	Repair concrete arch floor and slab cutoff walls & install riprap erosion protection	50

The following photos are examples of washouts found in the November 2023 site visit.



Ph 2702 McNab Creek

Ph 2701 McNab Creek

Aerial Ph: MP 92.03 culvert washout

LiDAR: MP 92.03 Showing Extent of Erosion

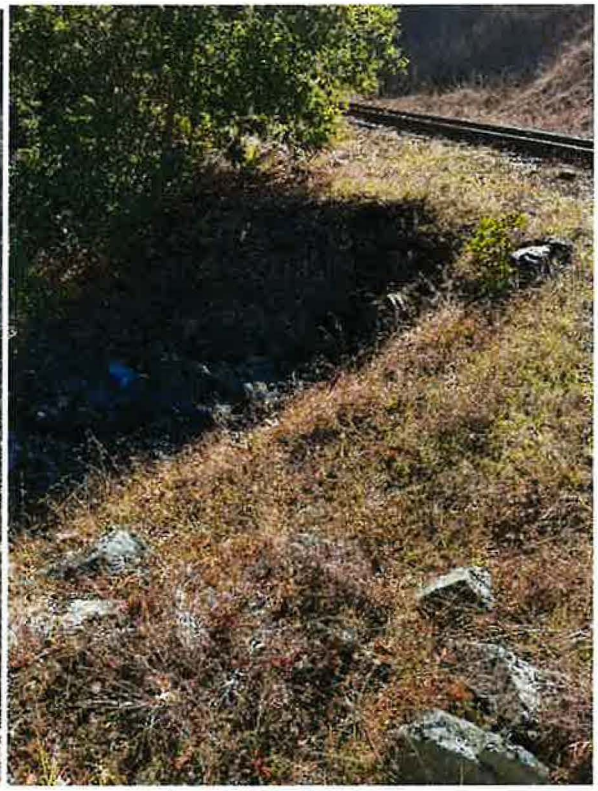
Aerial Ph: MP 127.50 Culvert Washouts

The lack of culvert maintenance since 1998 was evident in the field inspection. In general, culvert inlets need clearing of debris and sedimentation and repair of headwalls and wingwalls; and in many cases outlets require repair or installation of headwalls and wingwalls and have erosion that requires remediation, including riprap and possible tight lining down embankments. Based on the evidence of railroad track over-topping and review of drainage watersheds, many culverts are undersized, which is prevalent in railroads constructed in the early 1900's.

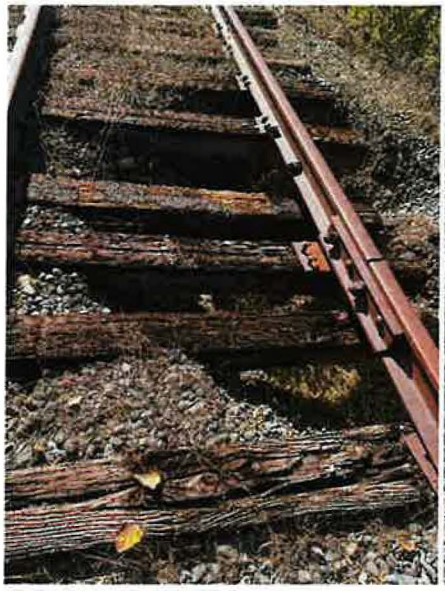
The determination of cost for culvert rehabilitation is based on general observation and their inherent need for debris removal. One-fifth of them are over 100 years old. The wood and steel culverts are susceptible to rot and invert corrosion. In addition, there is a long history of erosion and general knowledge that they are undersized. For the remaining 412 culverts, the following work is included in the cost estimate:

- The final program will require a detailed inspection of all culverts after removal of vegetation
- All culvert sizes need to be reviewed for capacity based on watershed hydraulics
- All culverts will need to be located and cleared of obstructions
- Replace small timber culverts (53 WBC) with 36" concrete pipe
- Replace large timber culverts (7 WBC) with 60" concrete pipe
- Replace rail toppers (3) with 36" concrete pipe
- Larger culverts (concrete arches) are assumed to have more erosion at inlets and outlets
- All CMPs and SPs greater than 36" in diameter to be replaced with concrete pipes and require headwalls and wingwalls

Ph 2826 Typical Example Outlet Erosion



Ph 2843 Typical Example Outlet Erosion



Ph 2862 Culvert Undersized

Ph 2853 Buried Culvert

Track Ditching

It is estimated that ditching will take 2-5 days per mile for the 52.6-mile segment. Track drainage is one of the most significant factors of track integrity and safety. The ditching depth is assumed to range between three- to six-feet to maintain drainage to culverts. The work will require a hi-rail backhoe with a 3-person crew with spoils side-cast on the right-of-way at appropriate locations.

Rail and Tie program

Field inspection of the rail revealed that 90% of the rail is in fair condition with signs of wear, but sufficient for freight rail service at 10 mph. However, there are some areas impacted by the large amounts of unstable roadbed due to slides, some sun-kink issues, and the washouts mentioned in the geotechnical section.

Ph 2916 Representative ditching requirement

Ph 2890 Impact of tree removal on ballast

The ties on this segment are in very poor condition reflecting the 25 years the track has been out of service. The track bed ballast is very fouled, and vegetation growth includes trees with 6"- to 12"-diameters and mature shrubs. The fouled ballast has accelerated tie deterioration, and the vegetation removal process will destroy many ties. Before a tie program is implemented it is assumed that vegetation and ditching will be complete.

Ph 2975 Tie and ballast condition

Ph 2932 Tie and ballast condition

The estimated cost for track rehabilitation to FRA Class I standards will include a tie program of 1,000 ties per mile. A ballast program of 4" to 8" is required because of the amount of heavily fouled ballast and non-compliant river rock. The entire line will need surfacing and regulating after the installation of the tie program.

Ph 2798 Track Condition

Ph 2793 Tie and Ballast Condition

Ph 2832 Spike kill and track moving through curve

Ph 2792 Poor ballast

4. Structure Assessment

There are 43 structures within the MP 85.6 and MP 139.5 segment, however, two have been included in the Mendocino Railway (MR) Assessment Report because MR is operating over the bridges (MP 139.29 and MP 139.73) in Willits Yard through a track use agreement. The bridges and walls included in this Report are a combination of timber trestles, concrete boxes, deck plate girders, steel bridges, and pile walls as shown in the Table 5 Structure Inventory and Repair Summary below.

FRA 49 CFR Ch. II Part 237 Bridge Safety Standards requires that any railroad bridge that has been out of service for the previous 540 days must be inspected in accordance with the requirements of Part 237 prior to resumption of rail service.[1] The reinstatement of service would require an update to the existing Bridge Management Program, all bridges to have a detailed inspection including any appropriate underwater and/or scour inspection, and the determination of each bridge's safe load capacity. These activities would be required to be conducted under the review of a Railroad Bridge Engineer.

Below is a summary table of repairs for startup of freight service that will require updating after the above inspections and load ratings are completed. These repairs were noted in a detailed inspection in 2005. The cost estimate updates the 2005-noted repairs to current dollars.

Table 5 – Bridge Inventory and Repair Summary Cloverdale MP 85.6 to Willits MP 138.23

Item No.	Bridge Type	MP	Length Ft	Crossing	Repairs Summary
1	Rail Pile Wall	85.6	75	n/a	Reconstruct wall

[1] Section 237.101 (d) states, "Any railroad bridge that has not been in railroad service and has not been inspected in accordance with this section within the previous 540 days shall be inspected and the inspection report reviewed by a railroad bridge engineer prior to the resumption of railroad service."

Item No.	Bridge Type	MP	Length Ft	Crossing	Repairs Summary
2	TPG-BD	86.1	65	Oat Valley Creek	Not listed
3	BDT	89.67	14	Farm Road U/P	Repair ballast guards and ballast and repair concrete wingwalls
4	ODT	91.82	239	Cummiskey Creek	Repair deck walkway, replace 55 deteriorated bridge ties and timber guards and replace bracing on 4 bents and post 3 piles and replace 20 walkway planks
5	OD SB	97.63	36	Creek	Not listed, however field visit noted bridge tie, walkway, railing, and guard timbers replacements are required
6	BDT	98.96	15	Farm Rd & Cattle Passage	Not listed
7	ODT	99.11	28	Drainage	Clear vegetation and replace 4 deteriorated bridge ties
8	BDT	99.53	15	Rosetti Creek	Replace deteriorated deck plank and railing and deck ballast leaks
9	DPG	99.72	208	Feliz Creek	Repair walkway and repair scour and remove drift
10	BDT	102.26	15	Drainage	Replace stringers and replace capbeam bent 1
11	SB	103.03	22	Creek	Replace 2 deteriorated ties and tighten hardware
12	BD SB	104.46	50	McNabb Creek	New Bridge (replacing washed out concrete arch culvert)
13	BDT	104.5	15	Farm Rd U/P	Repair ballasted deck
14	ODT	105.34	14	Farm Rd U/P	Replace all stringers and guard timber and 2 deteriorated bridge ties and repair concrete wingwall
15	BDT	107.34	15	Farm Rd U/P	Replace ballasted guard add ballast and clear debris
16	BDT	107.71	15	None	Raise ballast guard add ballast and replace deteriorated cross ties
17	ODT	109.21	26	None	Clear veg and replace guard timber left side and repair erosion
18	BDT	110.4	180	Robinson Creek	Replace 34 walkway planks and repair and railing and replace 5 deteriorated bridge ties and extend erosion protection
19	ODT	111.32	15	None	Replace all stringers and 5 bridge ties and walkway out riggers and repair concrete wingwall
20	ODT	111.68	30	Norgard Ln	Replace guard timbers and repair concrete backwall, and replace 4 deteriorated bridge ties

Item No.	Bridge Type	MP	Length Ft	Crossing	Repairs Summary
21	ODT	113.08	30	Doolan Creek	Replace guard timbers and deteriorated walkway supports and deteriorated bridge 9 ties
22	BDT	113.36	10	None	Repair handrail and repair ballasted deck
23	ODT	114.42	72	Orr Creek	Replace backwall, frame bent 6 including cap, repair bracing bent 4, replace deteriorated walkway planks and outriggers and guard timbers
24	BDT	114.88	15	None	Clear vegetation
25	ODT	115.2	15	None	Clear Vegetation, replace abutment sill and Replace guard timbers, replace deteriorated bridge 6 ties and walkway planks
26	P/S Conc Box Girder	115.93	120	Alkerman Creek	Repair channel and remove drift and repair scour and sheath 3 bents
27	SB	116.41	50	Hensley Creek	Replace deteriorated bridge 8 ties, repair channel, replace deteriorated walkway planks and clear drift and vegetation
28	BDT	117.62	60	York Creek	Splice deteriorated piles, repair end back wall and deteriorated wingwall planks, clear vegetation
29	Steel Sheet Pile Wall	119	70	Tributary to Russian River	New steel sheet pile wall and 500 yds of fill
30	Concrete	119.02	30	None	Clear drift
31	BDT & P/S Precast Box Girder	120.49	209	Russian River	Repair scour of pier 2 and install concrete sheathing on all piers in flow of north approach on south approach repair timber bent bracing
32	ODT	121.27	45	Salt Hollow Creek	Add sash bracing bent 3 and chord bolts
33	ODT	122.18	15	None	Repair severe erosion under west end of wingwall and floor
34	ODT & Steel thru Girder	122.31	125	Russian River	Complete bent repairs to piles and bracing and replace west backwall and clear drift and Repair walkways and replace 24 deteriorated bridge ties and guard timbers
35	ODT	124.34	14	None	Replace guard timbers right side, 2 decayed outriggers, and 5 decayed ties
36	BDT	129.67	55	None	Replace bridge with 1 span steel bridge with erosion protection ($15,000 per foot)
37	Rail Pile Wall	131.95	20	None	Extend north end of rail pile wall due to erosion

Item No.	Bridge Type	MP	Length Ft	Crossing	Repairs Summary
38	Rail Pile Wall	132.1	60	None	Reconstruct failing rail pile wall, shoulder eroded & track ties skewing
39	Steel thru Girder	135.61	30	County Rd U/P	Repair ballast leak and replace left side girder anchor bolts
40	DPG	138.23	52	Haehl Creek	Replace deteriorated walkway planks left side and walkway railing and remove drift and address scour
41	ODT	138.86	105	Baechtel Creek	Repair west end back wall, replace missing walkway planks and 14 decayed ties. Field inspection noted all bridge ties need replacement and additional walkway, stringer, and bent repairs are needed.

There are two Deck Plate Girder (DPG) bridges. The bridge at MP 99.72 (208') has multiple spans and crosses Feliz Creek. The bridge at MP 138.2 (52') has multiple spans over Haehl Creek. During the November 2023 inspection, neither creek was overflowing its banks.

There are three concrete structures including a section over the Russian River at MP 120.5. Also, a P/S Concrete Box Girder at MP 115.9 over Alkerman Creek (130') with debris and scour in channel needing channel repairs and a concrete bridge at MP 119 (30') with no improvements noted in the 2005 CAR.

There is one Rail Pile wall located at the base of a cemetery. The rail and timber wall is near the south Tunnel 5 portal. The timbers are bulging because of the ground movement above the wall.

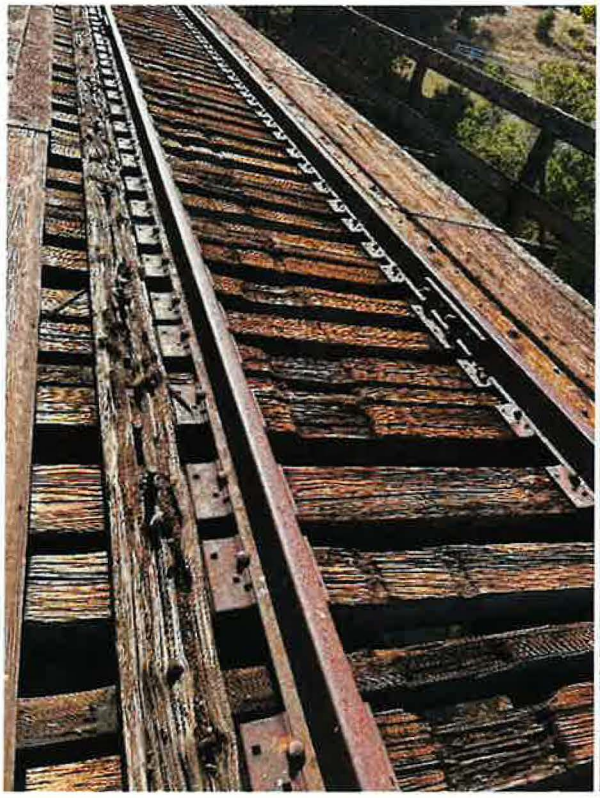
Ph 3037 Failing wall at Tunnel 5

There are 27 timber structures with a total of 81 spans. Timber spans are likely to have more deterioration than found during the 2005 inspection provided in the table above. The field inspection noted walkway, deck, stringer, bent, and tie decay on virtually every timber bridge accessed. Of the 14

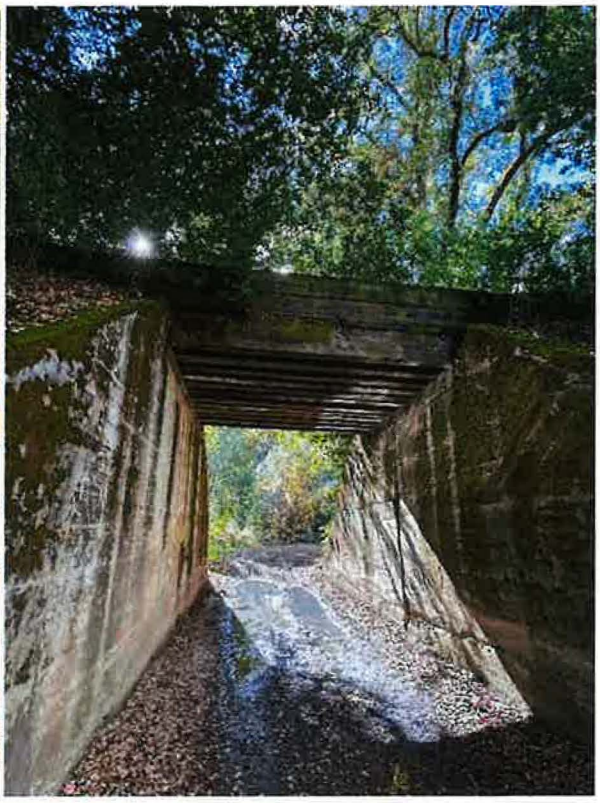
ballasted deck structures, 60% need deck repair or replacement due to timber deck decay and fouled ballast and lack proper drainage of maintenance.

Ph 2662 MP 99.11 vegetation

Ph 2551 MP 122.18 Scour at concrete floor



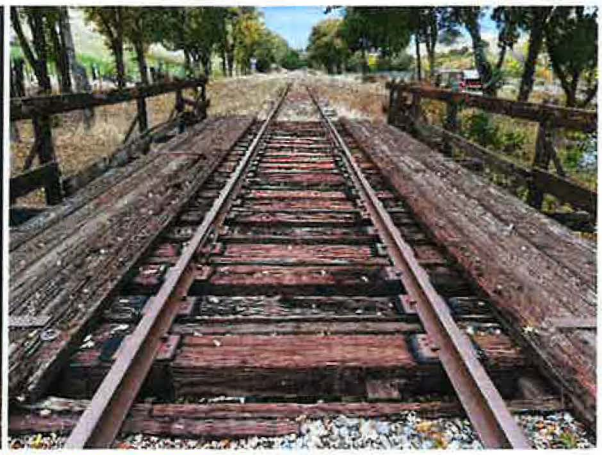
Ph 2936 Bridge over Cummiskey Creek MP 91.82



Ph 2700 Typical Farm Bridge U/P MP 104.5

There are six steel beam and girder bridges, and all are in fair condition with minimal signs of corrosion. The main concern for some of these bridges is their timber decks that require bridge tie replacements and walkway and railing repairs.

Ph 2719 MP 97.63



Ph 2719 MP 97.63 Deck

5. Crossings Public & Private

Public Road Crossings

There are 18 public crossings as shown in Table 6 Public Crossings Assessment. The California Public Utility Commission (CPUC) has jurisdiction over safety mitigations at all public railroad crossings. The public crossings will require a formal on-site diagnostic to finalize the required railroad crossing warning measures for public safety. Implementation of the warning measures will require a formal approval process through the submittal of a GO 88B form to the CPUC. This document is required to be signed by the agency that owns the roadway (i.e., Caltrans, Counties of Mendocino and Sonoma, Cities of Willits, Ukiah, Hopland, and Cloverdale), agreeing to the safety measures to be implemented.

The cost associated with these crossings includes the submittal of GO 88B's, reconstructing each of the track roadway crossings, the installation of required signals, approach warning signs, pavement markings, and roadway traffic control.

Also, the FRA Embargo was driven by the poor condition of signals at public crossings. The FRA will require design document review and will inspect each crossing and test performance before lifting the embargo. Preparation of signal design documents is included in the cost with each crossing.

Below is a brief description of each crossing and the rehabilitation expected.

Table 6 – Public Crossings Assessment

Crossing Roadway	MP	Width	Condition / Material	Descriptions	Rehabilitation
First Street	85.40	65	Fair / Bituminous	One cantilever with one flasher on pole and 4 flashers	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install new prediction equipment, track leads,

Crossing Roadway	MP	Width	Condition / Material	Descriptions	Rehabilitation
				on cantilever 2 each way	batteries, perform diagnostic, update signage and pavement markings, may need two new Standard 9' flashers and shelter
US Highway 175	99.90	38	Fair / Bituminous	Two standard 9's with 8 flashers total	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install new prediction equipment, new batteries, perform diagnostic, update signage and pavement markings, may need new shelter
Henry Station Rd	105.80	24	Poor/Timber with bit. overlay	Two standard 9's with 8 flashers total	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install new prediction equipment, new batteries, perform diagnostic, install new track crossing with concrete panels, update signage and pavement markings, may need new shelter, replace track crossing
Norgard Lane	111.70	16	Poor / Bituminous	Two Crossbuck signs	Clear trees & vegetation 15 ft back from edge of crossing, update signage and pavement markings, install new track crossing, may need active warning signals
Commerce Lane	112.90	36	Good / Concrete	Two standard 9's with a total of 10 flashers	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install new prediction equipment, new batteries, new track leads, perform diagnostic, update signage and pavement markings, may need new shelter
Talmage Rd	113.00	43	Track removed	One cantilever with 8 flashers	Update flashers to 12", install new prediction equipment, new batteries, track leads, perform diagnostic, update signage and pavement markings, reinstall removed track (80 ft), install concrete crossing panels, may need to add west bound Standard 9 and walkway flashers,
Gobbi Street	113.60	40	Good / Concrete	Two cantilevers with 8 flashers each, GRAT	Update flashers to 12", install new prediction equipment, new batteries, new track leads, perform

Crossing Roadway	MP	Width	Condition / Material	Descriptions	Rehabilitation
				Redwood Trail crosses track on south side of crossing	diagnostic, add trail crossing warning devices, update signage and pavement markings, new shelter, new crossing arm equipment.
Perkins Street	114.00	56	Poor / Bituminous	Flashers only, total of 6 flashers, two tracks (main & siding)	Install all new active warning equipment including two standard 9's, two cantilevers, new shelter, advanced warning signs and pavement markings and install new concrete track crossings, may need sidewalk gates
Clara Ave	114.40	36	Track removed	One cantilever with 8 flashers, one standard 9 with 7 flashers	Update signage and pavement markings, update all flashers to 12", perform diagnostic, reinstall removed track (50 ft), install concrete crossing panels, may need sidewalk gates
Ford Street	114.50	36	Paved over	One cantilever with 8 flashers, one standard 9 with 4 flashers, single arm equipment east bound traffic	Update flashers to 12", install new prediction equipment, track leads, batteries, perform diagnostic, update signage and pavement markings, clear track groves, may need two new Standard 9's and shelter
Buch Street	114.60	40	Good/Concrete panels	Two standard 9's with 8 flashers total	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install new prediction equipment, track leads, batteries, perform diagnostic, update signage and pavement markings, may need two new Standard 9's and shelter
Ford Rd	115.20	20	Pour/Bituminous	Two flashers with 4 flashers each	Update flashers to 12", install new prediction equipment, track leads, batteries, perform diagnostic, update signage and pavement markings, may need two new Standard 9' flashers and shelter, replace track crossing
Lake Mendocino Drive	117.00	36	Pour/Bituminous	Two standard 9's with 8 flashers total	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install new prediction equipment, track leads, batteries, perform diagnostic,

Crossing Roadway	MP	Width	Condition / Material	Descriptions	Rehabilitation
					update signage and pavement markings, install new track crossing with concrete panels, may need two new Standard 9' flashers and shelter
Moore Street	119.80	20	Pour/Bituminous	Two standard 9's with 8 flashers total	Clear trees & vegetation 15 ft back from edge of crossing, replace complete signal warning system, perform diagnostic, update signage and pavement markings
East School Way	122.10	30	Good/Concrete panels	All new equipment (2016), batteries stored, system never activated	Add batteries, activate signal warning system
West End	123.00	24	Good/Concrete panels	One out of date standard 9 with 4 flashers and one out of date cantilever with 4 flashers	Clear trees & vegetation 15 ft back from edge of crossing, replace complete signal warning system, perform diagnostic, update signage and pavement markings
Laughlin Way	123.90	20	Poor/Timber	Two out of date cantilevers with 4 flashers each and two out of date gates	Clear trees & vegetation 15 ft back from edge of crossing, replace complete signal warning system, perform diagnostic, update signage and pavement markings, install new track crossing with concrete panels
East Hill Rd	137.80	24	Fair/Bituminous	Two cantilevers with 8 flashers and two out of date gates	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install two new standard 9's, install new prediction equipment, track leads, batteries, perform diagnostic, update signage and pavement markings, may need two new cantilevers and shelter and new crossing surface

Private Road Crossings

Field inspections and aerial photography identified 50 private crossings, and it is likely that there are additional crossings unidentified. There are a variety of uncertainties regarding ownership and responsibility for repair costs at the 50 private crossings. According to the current DOT crossing Inventory, there are several private crossings that are not listed and will require DOT Inventory sheets to be

submitted and DOT Numbers assigned. Private crossing records have not been found to assist with the determination of responsibilities for maintenance.

In addition, in a diagnostic meeting with the CPUC in 2018 in Calpella, some private crossings were reviewed that were found to have sufficient public access that they would no longer be considered private crossings. The following table identifies potential crossings that would need to become public requiring active warning devices to be installed. This cost has not been included in this assessment.

The rehabilitation costs for the private crossings include effort to submit inventory sheets and obtain DOT Numbers, rehabilitation of each crossing, the installation of required private crossing signage, and the vegetation clearing for line of sight. It is expected that the crossing owner would pay for the crossing installation or upgrades. Table 7 shows the inventory for identified private crossings.

Table 7 – Private Crossings Inventory

MP	Condition / Material	Descriptions
87.32	Fair /Gravel	Vineyard
89.90	Fair /Gravel	Vineyard
97.65	Fair /Gravel	Rancher
99.10	Fair /Gravel	Vineyard
99.57	Fair /Gravel	County wastewater treatment plant
100.00	Fair /Gravel	Old Yard crossing, Hopland
100.65	Fair /Gravel	Winery
101.00	Fair /Gravel	Vineyard
101.44	Fair /Gravel	Vineyard
101.16	Fair /Gravel	Vineyard
103.18	Fair /Gravel	Vineyard
105.03	Fair /Gravel	Farm Road
106.70	Fair /Gravel	Vineyard
109.21	Fair /Gravel	Vineyard
109.40	Fair /Gravel	Vineyard
109.58	Fair /Gravel	Vineyard
109.88	Fair /Gravel	Vineyard
110.30	Fair /Gravel	Vineyard
110.80	Fair /Gravel	Vineyard
111.31	Bituminous	Plant Road
112.16	Bituminous	Airport Rd – very poor grades, possible to close
115.75	Fair /Gravel	Hollow Tree 1st
115.90	Fair /Gravel	Kunzler Ranch Rd
116.26	Bituminous	Mendocino Forest Products - Heavy traffic may require flashers
116.40	Bituminous	Hollow Tree 2nd
116.42	Bituminous	Mendocino Forest Products - Heavy traffic may require flashers
116.57	Bituminous	Hollow Tree 3rd
116.95	Bituminous	Pvt resident & industry

MP	Condition / Material	Descriptions
117.60	Bituminous	Carousel Lane - heavy truck traffic, CPUC has indicated that this should be a public crossing
117.80	Bituminous	Granite Plant - heavy truck traffic, track removed, likely to require flashers
119.20	Timber	Sanitary sewer plant Rd
119.91	Bituminous	Resident and Industry - heavy truck traffic, CPUC has indicated that this should be a public crossing
120.00	Bituminous	Industry
120.33	Bituminous	Mendocino Forest Products
120.70	Fair /Gravel	2 Vineyard crossings within 30 ft
120 .9	Poor/Gravel	Vineyard, appears to be recent
121.90	Fair /Gravel	Vineyard
121.40	Fair /Gravel	Vineyard
122.00	Fair /Gravel	2 within 40ft, Yard limits, Industry
125.10	Poor/Gravel	Used by bikers
125.80	Poor/Gravel	Rancher
126.75	Good/Bituminous	Rancher
130.70	Poor/Gravel	Rancher
131.50	Poor/Gravel	Rancher
136.80	Poor/Gravel	Resident
137.80	Good/Bituminous	Hospital Housing, flashers likely to be required
138.40	Poor/Gravel	Shell Lane
138.80	Poor/Gravel	Sparetime Supply Distribution, heavy truck traffic, track buried 3 feet, flashers likely to be required
138.90	Poor/Gravel	Sparetime Supply Distribution, heavy truck traffic, track buried 3 feet, flashers likely to be required
139.00	Good/Bituminous	Sparetime Supply Distribution, heavy truck traffic, track buried 3 feet, flashers likely to be required

6. Maintenance

The items listed below are related to preventative measures and routine required safety inspections of track and structures. These include chemical spraying for weed control, routine brush cutting, tree trimming, culvert maintenance, bridge repairs based on annual inspections, and track repairs based on required routine track inspections. See table below of expected annual maintenance.

Table 8 – Annual Maintenance Cost Estimate

Work Item	Maintenance Item	Frequency	Cost
Timber Bridges (27 bridges, 81 spans)	Examples: stringer replacements, cap replacements, bridge tie replacements, erosion mitigation	Annual	$162,000
All Bridges Inspection	Bridge inspection as required under Part 237	Annual	$41,000
Grade Crossings	Inspect and maintain per regulation	Annual	$75,000
Culverts (371-400)	Debris and sediment removal, erosion mitigation	Pre- and Post-rainy season, and any significant storm	$110,000
Weed Control	Spray pre-emergent and weed spraying	Spring and Fall	$120,000
Vegetation Management	Brush cutting and tree trimming	Annual	$75,000
Track Maintenance	Track ties, OTM – tie plates, anchors, rail joints	As required to maintain track safety	$200,000
Drainage Management	Track ditching	Annual	$375,000
		Total Annual Maintenance	$1,159,000

7. Rehabilitation Costs

The following table summarizes the rehabilitation costs based on the assumptions outlined in the previous sections.

Table 9 – Rehabilitation Cost Estimate

Scope of Work	Quantity	Unit	Unit cost	Estimated cost
Public Crossings[2]				
18 Public Crossings	1	LS	$6,875,000	$6,875,000
GO88-B	18	LS	$7,500	$135,000
			Subtotal Public Crossings	*$7,010,000*
Private Crossings[3]				
Crossing Agreements/DOT Inventory Numbers	50	LS	$1,500	$75,000
Legal for Illegal Encroachments	5	LS	$10,000	$50,000
			Subtotal Private Crossings	*$125,000*
Bridge Repairs				
41 Structures (Bridges and Walls)	1	LS	$3,650,000	$3,650,000
Detailed Inspection per FRA Part 237	41	EA	$1,500	$61,500
Bridge Rating per FRA Part 237	41	EA	$7,500	$307,500
			Subtotal Bridge Repairs	*$4,019,000*
Geotechnical Hazards				
Tunnel 6	1	LS	$14,291,000	$14,291,000
Tunnel 7	1	LS	$30,000	$30,000
Tunnel 8	1	LS	$20,000	$20,000
Tunnel 9	1	LS	$300,000	$300,000
Slides/Embankment Failure/Washouts	1	LS	$6,250,000	$6,250,000
Geotechnical Support During Tunnel Construction	1	LS	$890,000	$890,000
			Subtotal Geotechnical	*$21,781,000*
Track - Rehabilitation to Class 1 – 52.6 miles				
Ditching	200	DAYS	$7,500	$1,500,000
Debris Removal	5	MI	$15,000	$75,000
Tie Marking Days/Paint	30	DAYS	$750	$23,000
Ties (Class 1) 52.6 miles at 1000 tie per mile	52600	EA	$275	$14,465,000
Tie Disposal	52600	EA	$15	$789,000
Ballast	23144	CY	$42.85	$992,000
Place Ballast & Regulate	60	DAYS	$5,000	$300,000
Surface Track	60	DAYS	$16,000	$960,000
			Subtotal Track Rehab to Class 1 (52.6 miles)	*$19,104,000*

[2] The cost for public crossings may be offset by through Federal Section 130 funds. Once the devices are installed the railroad is responsible for all maintenance and inspections.

[3] Work on private crossings should be required to be paid by users. New crossing agreements will be required. It is the responsibility of the railroad to obtain the DOT numbers.

Scope of Work	Quantity	Unit	Unit cost	Estimated cost
Track Vegetation & Signing & Testing- 52.6 miles				
Vegetation Removal	1	LS	$2,355,000	$2,355,000
Milepost and Whistle Signs/Posts	82	EA	$250	$21,000
Rail testing	52.6	MI	$2,000	$105,000
Subtotal Track Rehabilitation – 52.6 miles				*$2,481,000*
Culvert Rehabilitation				
Clear and Repair	1	LS	$185,000	$185,000
Culvert Replacement	1	LS	$1,856,000	$1,856,000
Subtotal Culvert Rehabilitation				*$2,041,000*
Rehabilitation Cost				**$ 56,561,000**

8. Contributing Authors:

- David Anderson, P.E. of American Rail Engineers Corporation (ARE) served as Project Manager and Senior Engineer in ARE's capacity as prime consultant for the project. He is licensed as a Professional Engineer in California and has worked with the state agencies overseeing the NWP corridor for over 20 years. Mr. Anderson's roles for this project included senior-level reviewer and editor of this report.
- Carl Belke, Principal Engineer of D&H Rail Consulting prepared the Operations Assessment. Carl served as President and Chief Operating Officer for the Western New York & Pennsylvania Railroad for 10 years, General Manager and Vice President of Canadian Operations for Genesee & Wyoming for 7 years and has more than 40 years' experience in railroad operations for a dozen of short line railroads with responsibility for labor management, fleet management, bankruptcy reorganizations, and mergers and acquisitions.
- Steve McMullen served as S&W's project manager and primary author of the report. He has been part of S&W's railroad services group for 29 years. Mr. McMullen is licensed as a Professional Civil Engineer in Washington, Idaho, Montana, North Dakota, and South Dakota. He is also a Licensed Engineering Geologist in Washington. Mr. McMullen has over 20 years of experience with the Northwestern Pacific Railroad corridor, having performed geotechnical and geological evaluations of corridor segments in 1999, 2002, 2005, 2007, and 2021.

EXHIBIT F

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

CLEANUP AND ABATEMENT AND 13267 ORDER NO. R1-2016-0036

FOR

MENDOCINO RAILWAY
SKUNK TRAIN
West Portal of Tunnel No. 1
39.4468°, -123.7629°

MENDOCINO COUNTY

This Order is issued to Robert Jason Pinoli, Owner and Operator of the Skunk Train (hereinafter referred to as Discharger) based on provisions of Water Code[1] section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order (Order).

The Assistant Executive Officer finds, with respect to the Discharger's acts, or failure to act, the following:

1. **Purpose of the Order:** This Order requires the Discharger clean up and abate the effects of the discharges of sediment and earthen material into Pudding Creek and to eliminate the threat of future discharges. The Discharger's actions associated with construction repair activities at the collapsed western portal of the Discharger's railway tunnel, Tunnel No. 1 (hereinafter referred as Site), have resulted in the unauthorized discharge of sediment and other pollutants and have created, and threaten to create, a condition of pollution and/or nuisance by unreasonably affecting the beneficial uses of waters of the state. Continuing discharges, from unprotected stockpiles, unstabilized slopes, inadequately sized and maintained sediment basins, and lack of effective erosion and sediment controls, violate provisions of the Basin Plan, the Porter-Cologne Water Quality Control Act, and the Federal Clean Water Act (33 U.S.C. § 1251 et seq.). These conditions threaten to continue unless the discharge or threatened discharge is permanently cleaned up and abated.

2. **Responsible Parties:** The Discharger, as the owner and operator and/or persons discharging or creating a threat of discharge, is the responsible party for purposes of this Order.

[1] Unless otherwise indicated, all references to the "Water Code" refer to the California Water Code.

3. **Site Location and Description:** The Skunk Train is a scenic historic passenger railway that runs approximately 40 miles between Fort Bragg and Willits. The railway passes along the Pudding Creek estuary and through two tunnels: Tunnel No.1 and Tunnel No. 2. The Site is located on the western portal of Tunnel No. 1. The approximate map coordinates of the Site are latitude 39.4468° north and longitude 123.7629° west, approximately 2.5 miles east of Fort Bragg.

4. **Site History:** The hillside surrounding the western portal of the Skunk Train's Tunnel No. 1 is reportedly unstable, and in February 2015, the portal collapsed. Subsequent to the collapse, the Discharger began efforts to repair the damaged tunnel. The Discharger ceased repair work sometime in June, reportedly as a result of lack of funds. The total acreage of land disturbance associated with the repair work is about 1.7 acres.

5. **Case Background**:

   A. On October 23, 2015, Regional Water Board staff (Staff) received a complaint which included photographic documentation depicting conditions at the Site. The photographs revealed exposed soil stockpiles and hillslopes abutting both banks of Pudding Creek without any erosion or sediment controls.

   B. On October 28, 2015, Staff inspected the Site. During the inspection, Staff observed the conditions noted below, which have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and the United States and creates, or threatens to create, a condition of nuisance and pollution.

      1. Unstabilized earthen materials on steep hillslopes above, and adjacent to, the western portal of Tunnel No. 1.
      2. Evidence of equipment tracking and terracing on the slopes associated with construction activities.
      3. Exposed stockpiles of bare soil/spoils generated during construction activities on the west and east banks of Pudding Creek.
      4. Uncontained bags of Quikrete Shotcrete that had ripped and spilled concrete onto exposed soil on the east bank of Pudding Creek.
      5. A lack of erosion and sediment controls to prevent discharge to Pudding Creek.

   C. At the conclusion of the October 28, 2015, inspection, Staff verbally requested that the Discharger submit a short-term erosion control plan and implementation schedule.

   D. On November 4, 2015, the Discharger submitted a document titled "Temporary Erosion Control Plan" to the Regional Water Board. The document was determined to be inadequate by Staff due to the lack of detail of best

management practice (BMP) implementation and maintenance, and an implementation schedule.

E. On November 13, 2015, the Regional Water Board issued a Requirement for Information Pursuant to California Water Code 13267 to the Discharger requiring the submission of the following information:

1. By November 20, 2015, the Discharger shall submit an emergency short-term erosion control plan.
2. By December 11, 2015, the Discharger shall submit a long-term erosion control plan.
3. Starting on November 30, 2015, the Discharger shall submit monthly progress reports. To date, the Discharger's compliance with the monthly progress report requirement is as follows:

   a. November 2015 report: Not submitted
   b. December 2015 report: Received January 4, 2016, four (4) days late.
   c. January 2016 report: Received February 2, 2016, two (2) days late.
   d. February 2016 report: Received February 29, 2016, on time.
   e. March 2016 report: Received March 31, 2016, on time.
   f. April 2016 report: Received April 29, 2016, on time.
   g. May 2016 report: Received May 31, 2016, on time.
   h. June 2016 report: Received June 30, 2016, on time.

F. On November 13, 2015, the Discharger submitted an erosion control plan titled "Construction Erosion Control Plan" (CECP), which was determined to be inadequate by Staff, as documented in a Notice of Violation (NOV) dated February 1, 2016. For example, section 3.1 of the CECP states that BMPs "[g]enerally will be deployed whenever excavation and grading expose soils. BMPs shall be modified, as necessary, and maintained throughout the duration of construction activities. Modification of the BMPs should be based on the phases of construction." While this section mentions a general implementation plan, it does not discuss the controls that will be implemented, as required by Requirement A.4 of the November 13, 2015, 13267 Order.

G. On December 16, 2015, the Regional Water Board issued a Notice of Noncompliance (NNC) to the Discharger for failure to obtain Construction Storm Water General Permit (CGP) coverage. Pursuant to California Water Code section 13399.30 (a), the NNC required the Discharger to submit a Notice of Intent (NOI) to obtain CGP coverage within 30 days from the date of the NNC.

H. On December 17, 2015, Staff inspected the Site. During the inspection, Staff observed conditions, which have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and the United States and creates, or threatens to create, a condition of nuisance and pollution.

I. On December 18, 2015, the Discharger created a Storm Water Multiple Application and Report Tracking System (SMARTS) account to obtain coverage under the CGP, but did not submit any of the required Permit Registration Documents (i.e., NOI, Storm Water Pollution Prevention Plan [SWPPP], Site Map, a Risk Assessment, an Annual Fee, and a Signed Certification Statement).

J. On January 14, 2016, pursuant to California Water Code section 13399.30 (b), the Regional Water Board issued a Second Notice of Noncompliance (Second NNC) for failure to obtain CGP coverage within the 30-day deadline set forth in the NNC.

K. On February 1, 2016, Staff conducted a joint-inspection of the Site with State Water Resources Control Board (State Water Board) staff and California Department of Fish and Wildlife staff. During the inspection, Staff observed conditions which have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and the United States and creates, or threatens to create, a condition of nuisance and pollution.

L. On February 16, 2016, 60 days from the date the Regional Water Board issued the NNC, Staff verified that the Discharger had not submitted an NOI to obtain coverage under the CGP.

M. On February 19, 2016, the Regional Water Board issued an NOV for unauthorized discharges to Pudding Creek on December 17, 2015, and February 1, 2016, and for failure to submit reports required by the November 13, 2015, Requirement for Information Pursuant to California Water Code 13267. The NOV required the Discharger to take the following actions:

1. Submit a revised short-term erosion control plan that addresses the deficiencies summarized in the NOV.
2. Submit the long-term erosion control plan that was required by the November 13, 2015, Requirement for Information Pursuant to California Water Code 13267.
3. Submit monthly progress reports in accordance to the revised requirements set forth in the NOV and in a timely manner.
4. Submit an update on the status of the Site's enrollment for coverage under the CGP and the implementation of a SWPPP.

N. On May 6, 2016, the Discharger submitted an NOI to obtain CGP coverage, 112 days past the deadline January 15, 2016 in the NNC.

6. **Current Water Quality Threats:**

On February 1, 2016, Staff inspected the Site and observed the conditions noted below, which have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and the United States and creates, or threatens to create, a condition of nuisance and pollution. To date, these conditions remain water quality threats.

A. The collapsed and disturbed hillside area, estimated to be around 70 feet long and 23 feet wide, remains unstable and continues to slump downslope towards the sediment basins and Pudding Creek.

B. On the southern slope of the bank of Pudding Creek, sediment deposits and flattened and eroded vegetation on the water line indicate recent discharges of sediment. The discharge passed through the straw bale "barrier" and silt fence intended to contain sediment-laden runoff from the Site (see Photos 20 and 21 of the Seidner and Elder February 1, 2016, Inspection Report, pp.18-19). This indicates that straw bales are not an effective BMP to prevent discharges of sediment to Pudding Creek. To date, the straw bales are implemented as sediment control.

C. Plastic sheeting applied to the disturbed hillside areas was not installed to specification and requires maintenance, rendering it ineffective to control erosion (see Seidner and Elder February 1, 2016 Inspection Report, p. 12). Additionally, coverage of the slopes with sheeting is incomplete when compared to the CECP, which required complete coverage. Partial installation of plastic sheeting on slopes in this area has concentrated runoff, increasing its velocity, and funneling it into the downslope portions not covered by sheeting, which are the most heavily eroded and steepest portions of the Site.

D. BMPs located at the toe areas or perimeters of the soil stockpiles are improperly installed and inadequate to contain the stockpiled soil and prevent sediment discharges or threatened discharges. Staff observed sediment deposits beyond the perimeter BMPs demonstrating evidence of sediment-laden runoff discharges around, under or through BMPs and down the banks into Pudding Creek (see Photos 19-25 of Seidner and Elder February 1, 2016, Inspection Report, pp. 17-20).

E. Staff observed a surface sheen on pooled water at the Site, warranting evaluation for other potential pollutants, and additional BMPs (see Photo 13 of Seidner and Elder February 1, 2016, Inspection Report, p. 12).

F. Three sediment basins were installed on the south bank of Pudding Creek. The largest sediment basin extended into the collapsed tunnel to an unknown distance; the approximate volume of the basin was estimated at 136,000 gallons. The intermediate and smallest sediment basins were estimated at 32,000 gallons and 3,000 gallons, respectively. Staff noted in the February 1, 2016, Inspection Report that the sediment basins were at or near capacity and threaten to discharge sediment if not properly managed.

7. Unauthorized Discharges Reported in Monthly Progress Reports:

Inadequate sediment basin design, ineffective BMPs, and lack of BMP maintenance on the Site have continued to result in unauthorized discharges of sediment to Pudding Creek, a water of the state and the United States, in violation of Basin Plan prohibitions. The monthly progress reports include a summary of activities on the Site, photographs, and inspection forms from Site inspections. Photographs depict that water samples were taken, but there is no indication that water quality testing was conducted to verify the effectiveness of the BMPs at sediment control, the quality of the discharge, or the impacts to Pudding Creek. The following unauthorized discharges were reported by Ms. Teri Jo Barber, the Discharger's appointed Qualified Storm Water Practitioner (QSP), in the monthly progress reports required by the November 13, 2015, 13267 Order.

A. January Monthly Report

1. On January 7, 2016, a discharge from the Site to Pudding Creek occurred. The discharge seeped through the geotextile-lined sediment basin to underneath the bridge and into the creek (p. 9).

2. On January 14, 2016, a sediment plume in Pudding Creek was photo-documented. The discharge was a result of seepage through the sediment basins (p.10).

3. Ms. Barber included two photos from her January 21, 2016, inspection that indicate recent discharges of sediment to Pudding Creek from the Site. Evidence of sediment discharging to the Pudding Creek from the south bank of the creek was documented in both of the photos (pp. 14-15).

B. February Monthly Report

1. On February 8, 2016, spring water seeped through BMPs and discharged to Pudding Creek (page 33).

2. On February 16, 2016, evidence of a discharge from the primary and secondary sediment basins to Pudding Creek was documented (page 36).

C. March Monthly Report

1. On March 3, 2016, a discharge occurred from the northwestern corner of the secondary sediment basin to Pudding Creek (page 13).

2. On March 5, 2016, a discharge occurred from the Site to Pudding Creek. The collapsed area of the tunnel was the source of the plume of sediment underneath the bridge (pages 16, 17, and 21).

3. On March 6, 2016, the Site was inundated by Pudding Creek during a large rain event, resulting in the discharge of sediment from the southern and northern stockpiles (page 24).

4. On March 8, 2016, a discharge occurred from the primary and secondary basins to Pudding Creek. Water seeped through the straw bale barrier, through an opening in the geotextile material, and discharged to the creek (page 26).

5. On March 10, 2016, the primary sediment basin overflowed, but that the water was successfully routed to the secondary sediment basin. However, a photo depicts discharge located beyond the secondary sediment basin on the bridge and adjacent to Pudding Creek, indicating that a discharge likely occurred (page 35).

6. On March 15, 2016, a discharge occurred from the primary sediment basin to Pudding Creek (page 68).

7. On March 22, 2016, material from the southern stockpile seeped through the straw bale barrier. Photos depict deposited sediment and standing sediment-laden water that had penetrated the straw bale barrier, providing evidence of a previous discharge (page 53).

5. **Factual Basis of Order:** As noted above, the Discharger owns and operates the Skunk Train and its railway. The Discharger's construction repair activities and/or the conditions revealed at the Site through investigations, and as detailed above, have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into Pudding Creek and creates, or threatens to create, a condition of nuisance and pollution by unreasonably impacting water quality and the beneficial uses of Pudding Creek. Pudding Creek is tributary to the Pacific Ocean; both are waters of the state and the United States. (References hereinafter to waters of the United States are inclusive of waters of the state.)[2] The construction activities at the Site have discharged sediment-

[2] The Regional Water Board administers and enforces the Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those waters as "waters of the United States." Waters of the United States have been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters

(footnote continued on next page)

laden storm water into Pudding Creek and continue and/or threaten to discharge sediment-laden storm water thereby creating a condition of nuisance and pollution to the beneficial uses of Pudding Creek in violation of section 301 of the federal Clean Water Act, section 13376 of the California Water Code, and the Basin Plan.

6. **Beneficial Uses and Water Quality Objectives:** The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference, plans and policies adopted by the State Water Resources Control Board (State Water Board).

   A. The existing and potential beneficial uses of waters of the North Coast Region are outlined in Table 2-1 of the Basin Plan. Pudding Creek is within the Noyo River Hydrologic Area (HA). The existing beneficial uses of the Noyo River HA are: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Groundwater Recharge (GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Water Contact Recreation (REC-1); Non –Contact Water Recreation (REC2); Commercial and Sport Fishing (COMM); Cold Freshwater Habitat (COLD); Wildlife Habitat (WILD); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); Estuarine Habitat (EST); and Aquaculture (AQUA). The sole potential beneficial use is Industrial Process Supply (PRO).

   B. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan's Action Plan for Logging, Construction and Associated Activities (Action Plan) includes two prohibitions (page 4-29.00) as follows:

   Prohibition 1: *The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.*

   Prohibition 2: *The placing or disposal of soil, silt, bark, slash, sawdust or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.*

(footnote continued from previous page)
and their tributaries. (40 C.FR. 122.2) The Porter-Cologne Water Quality Control Act (Porter Cologne) provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Water Code § 13260.) The term "water of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Water Code § 13050(3).) All waters of the United States that are within the boundaries of California are also waters of the state for purposes of Porter-Cologne.

C. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives that staff believes are of particular importance in protecting the beneficial uses from unreasonable effects due to waste discharges from construction activities include, but are not limited to, the following:

1. Color: "Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses."

2. Suspended Material: "Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses."

3. Settleable Material: "Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses."

4. Sediment: "The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses."

5. Turbidity: "Turbidity shall not be increased more than 20 percent above naturally occurring back ground levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof."

6. Biostimulatory Substances: "Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect the beneficial uses."

7. Oil and Grease: "Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in visible film or coating on the surface of water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses."

8. Floating Material: "Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses."

D. The State Water Board has adopted Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution No. 92-49). Resolution No. 92-49 sets forth the policies and procedures for investigation and cleanup and abatement of discharges under Water Code section 13304, and requires that cleanup levels be consistent with State Water Board Resolution No. 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California* (Resolution No. 68-16), which is included as Appendix 6 of the Basin Plan. Thus, Resolution No. 92-49 requires the

waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board.

7. Legal Authority to Require Cleanup and Abatement:

A. Water Code section 13304, subdivision (a) states, in relevant part:

A person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts...Upon failure of a person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

B. "Waste" is defined by Water Code section 13050, subdivision (d) as,

Sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing , or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

C. Sediment, when discharged to waters of the state, is deemed a "waste" as defined in Water Code section 13050. The Discharger caused or permitted waste to be discharged or deposited where it will be, or has the potential to be, discharged to surface waters draining to Pudding Creek, a water of the state.

D. "Pollution" is defined by Water Code section 13050, subdivision (l)(1) as,

An alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

i. The waters for beneficial uses;
ii. Facilities which serve these beneficial uses

E. "Nuisance" is defined by Water Code section 13050, subdivision (m) as,

i. Injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;
ii. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal;
iii. Occurs during, or as a result or, the treatment or disposal of wastes.

8. **Cleanup and Abatement Action Necessary:** Cleanup and abatement action is necessary to ensure that, any current discharges and associated pollution and/or nuisance to Pudding Creek is cleaned up and abated and that any threatened unauthorized discharges of waste to Pudding Creek are prevented, and any impacts to beneficial uses are mitigated. Issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with policies of the Regional Water Board and necessary for the protection of water quality.

9. **Technical Reports Required:** Water Code section 13267(a) provides that the Regional Water Board may investigate the quality of any water of the State within its region in connection with any action relating to the Basin Plan. Water Code section 13267(b) provides that the Regional Water Board, in conducting an investigation, may require a Discharger to furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained. *Id.* The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the United States. The technical reports are further necessary to demonstrate that appropriate methods will be used to clean up waste discharged to surface waters and surface water drainage courses and to ensure that cleanup complies with Basin Plan requirements. Some of the technical reports required by this Order are also necessary to evaluate the appropriate erosion and sediment control measures to control construction storm water runoff from the Site. In accordance with Water Code section 13267(b), the findings in this Order provide the Discharger with a written explanation with regard to the need for the reports and identify the evidence that supports the requirement to implement cleanup and abatement activities. The Discharger named in this Order owns the site from which waste was discharged, and thus is appropriately responsible for providing the reports.

10. **California Environmental Quality Act:** Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and as such is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061 (b) (3), 15306, 15307, 15308, and 15321. This Order generally requires the Discharger to submit plans for Executive Officer review and approval prior to implementation of cleanup and

restoration activities at the site. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. To the extent that the Order requires earth disturbing and revegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to approval of the applicable plan. The Discharger will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13304 and 13267, the Discharger shall eliminate the threat of future discharges, and clean up and abate the effects of any past discharges, of sediment and miscellaneous debris into Pudding Creek. The Discharger shall clean up and abate the impacts to water quality in accordance with the scope and schedule set forth below, and implement the actions herein. The Discharger shall obtain all necessary permits for the activities required in this Order.

1. In addition to the Risk Level III CGP *Rain Event Action Plan* (REAP) requirements, the Discharger is required to submit all REAPs whenever they are developed pursuant to CGP requirements (page 8 of Attachment E) to SMARTS and include the additional information as follows:

    a. A map depicting the locations of active and inactive construction sites and BMPs at each of the locations.
    b. A summary describing the function of each BMP, including whether it is a stand-alone control, or is dependent on the effectiveness of other controls to function properly.
    c. A summary describing the condition of each BMP, including the date that it was last maintained, its current condition, and whether it requires maintenance to function properly.
    d. A summary of how any equipment onsite will be protected to ensure that it will not be exposed to precipitation.

2. The Discharger is required to submit all visual inspection-related records pursuant to CGP requirements (page 12, I.3.h of Attachment E), including, but not limited to, weekly inspection reports, visual inspection reports from pre-, during, and post-rain events,

and inspection checklists, within 72 hours of the visual inspections conducted to SMARTS.

3. **Immediately** ensure that discharges from the Site to Pudding Creek are in compliance with the CGP Risk Level III requirements[3].

4. **Immediately** ensure that stockpiles are contained and maintained in compliance with CGP Risk Level III Requirements[3]. The stockpiles must be protected and/or located[4] such that discharges to Pudding Creek are eliminated. It is recommended that any waste material that will not be used in the project be removed from the Site by September 1, 2016.

5. **By no later than August 22, 2016,** submit all previously conducted water quality sampling test results.

6. **By no later than August 22, 2016**, submit volume estimates for all previous discharges reported in monthly progress reports. For future monthly progress reports, the Discharger is required to include a volume estimate of any discharges from the Site.

7. **By no later than September 16, 2016**, identify and implement source control measures to stabilize the collapsed hillside area.

8. **By no later than September 16, 2016**, sediment basins must be re-designed and configured so that they are in compliance with CGP Risk Level III, Requirement E, Sediment Controls[5].

9. **By no later than October 14, 2016**, submit a *long-term stabilization plan*[6] . This plan must be reviewed and approved by the AEO and shall include an implementation schedule and:

   A. Maps and figures at 1:12000 scale or larger (e.g., 1:6000)

      1. A map of the site including areas of operations, roads, water bodies, all cleared areas, water diversions and/or sediment traps or storage features, all structures, water crossings, and general drainage patterns and directions. This map will be used as the Base Map.

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[3] For CGP Risk Level III requirements, refer to Attachment 1, *CGP Attachment E- Risk Level III Requirements,* link on page 17.

[4] Prior to disturbance of any riparian vegetation or dredge and fill activities in waters of the state, consultation with the Regional Water Board is required to determine if any additional permits are necessary.

[5] For CGP risk Level III sediment basin requirements, refer to Attachment 2, *CASQA Excerpt Fact Sheet SE-2, Sediment Basin,* link on page17.

[6] This *long-term stabilization plan* supersedes the *long-term erosion control plan* required by the November 13, 2015, 13267 Order, except for enforcement purposes as the *long-term erosion control plan* has not yet been submitted.

2. Site figure using the Base Map showing locations of rubbish, waste, fuel storage and other pollutants including equipment stored, piled, or placed at locations on the Site where the materials or their contents are exposed to rainfall and/or runoff, or where they can enter or leach into surface water or groundwater. Identify locations where soil or water pollution is apparent based on site observations (visual and/or odor).

3. Site figure using the Base Map showing locations or areas with a potential for slope instability, erosion and sediment delivery into surface waters. These may include but are not necessarily limited to roads at stream crossings, fill prisms located in or adjacent to watercourses, and cleared or disturbed, erodible soil areas that drain into surface waters.

B. Design drawings that delineate existing site conditions including existing surface waters, projected restored hillslopes, spoil disposal sites, equipment storage sites, water diversion pipes, permanent hillslope stabilization features, replanting areas, photo monitoring points for construction and post-construction monitoring, and any other features or site construction details to complete the scopes of work; design and construction standards for stabilization and for replanting of exposed soils with native vegetation; design and construction standards for each of the three sediment basins; and erosion and sediment control methods and standards for unanticipated precipitation during remediation.

C. An inventory and assessment of constructed features or placed material (such as earthen dams or sediment traps, fill material piled on the stream bank or stockpiled material, or other erosion control features near or in watercourses or other surface waters) that will remain in place or be removed and provide an appropriate plan to stabilize or remove those features.

D. Design details and schedule to stabilize hillslopes, streamside areas or areas that have been disturbed. List all permits (e.g., Water Quality Certification, Lake and Streambed Alteration Agreement) required and/or obtained for this work.

10. **By no later than October 14, 2016**, submit a *bioassessment monitoring and reporting work plan* and implementation schedule for review and approval by the Executive Officer of the Regional Water Board. Bioassessment Monitoring is required to assess the effect of the discharges from the Site on the biological integrity of Pudding Creek: The bioassessment shall include the collection and reporting of specified instream biological data and physical habitat data upstream and downstream of the Site using the Surface Water Ambient Monitoring Program (SWAMP) protocol[7].

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[7] For SWAMP protocol, refer to Attachment 3, *Standard Operating Procedures (SOP) for the Collection of Field Data for Bioassessments of California Wadeable Streams: Benthic Macroinvertebrates, Algae, and Physical Habitat* on page 17 and Attachment 4, *Supplemental Guidance for the SWAMP Bioassessment Field Protocol*, on page 18.

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Discharger shall provide documentation that plans, and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Discharger shall include a statement of qualification and registration numbers, if applicable, of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp, as applicable, to the report, plan, or document.

2. **Signatory Requirements:** All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his or her knowledge, the report is true, complete, and accurate. The Discharger shall also state if he agrees with any recommendations/proposals and whether he approves implementation of said proposals. Any person signing a document submitted under this Order shall make the following certification:

   I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

3. **Notice of Change in Ownership or Occupancy:** The Discharger shall file a written report on any changes in the site's ownership or occupancy. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.

4. **Submissions:** All monitoring reports, sampling reports, technical reports or notices required under this Order shall be submitted to Shin-Roei Lee, the Assistant Executive Officer, and Devon Jorgenson, Engineering Geologist for the Construction Storm Water Program, either by email or mail:

   Shin-Roei Lee, *Assistant Executive Officer*
   Shin-Roei.Lee@waterboards.ca.gov

   Devon Jorgenson, *Engineering Geologist*
   Devon.Jorgenson@waterboards.ca.gov

   By email to: NorthCoast@waterboards.ca.gov (preferred)
   By mail to: NCRWQCB, 5550 Skylane Blvd. Suite A, Santa Rosa, CA 95403

5. **Other Regulatory Requirements:** The Discharger shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work.

6. **Cost Recovery:** Pursuant to Water Code section 13304, the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.

7. **Delayed Compliance:** If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer.

8. **Potential Liability:** If the Discharger fails to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of administrative civil liability up to the following maximum liability amounts: $1,000 per violation per day pursuant to Water Code section 13268, $5,000 per violation per day pursuant to Water Code section 13350, and/or $10,000 per violation per day pursuant to Water Code section 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including but not limited to, violation of the terms and condition of this Order.

9. **No Limitation of Water Board Authority.** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the site consistent with the Water Code. This Order may be revised as additional information becomes available.

10. **Modifications.** Any modification to this Order shall be in writing and approved by the Executive Officer of the Regional Water Board, including any potential extension requests.

11. **Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and Title 23, California Code of Regulations, section 2050 et al. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

This Order is effective upon the date of signature.

Matthias St.John Water Boards
Digitally signed by Matthias St.John
Date: 2016.08.03 09:31:26 -07'00'

Matthias St. John
Executive Officer

16_0036_Skunk_Train_CAO

Referenced Documents: 1. CGP Attachment E- Risk Level III Requirements:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_att_e.pdf

2. CASQA Excerpt Fact Sheet SE-2, Sediment Basin:
https://www.casqa.org/sites/default/files/downloads/fact_sheet_se-02_rev2.pdf

3. Standard Operating Procedures (SOP) for the Collection of Field Data for Bioassessments of California Wadeable Streams: Benthic Macroinvertebrates, Algae, and Physical Habitat
http://www.waterboards.ca.gov/water_issues/programs/swamp/bioassessment/docs/combined_sop_2016.pdf

4. Supplemental Guidance for the SWAMP Bioassessment Field Protocol
http://www.waterboards.ca.gov/water_issues/programs/swamp/bioassessment/docs/guidance_doc_v4_0516.pdf

5. Seidner and Elder February 1, 2016, Inspection Report

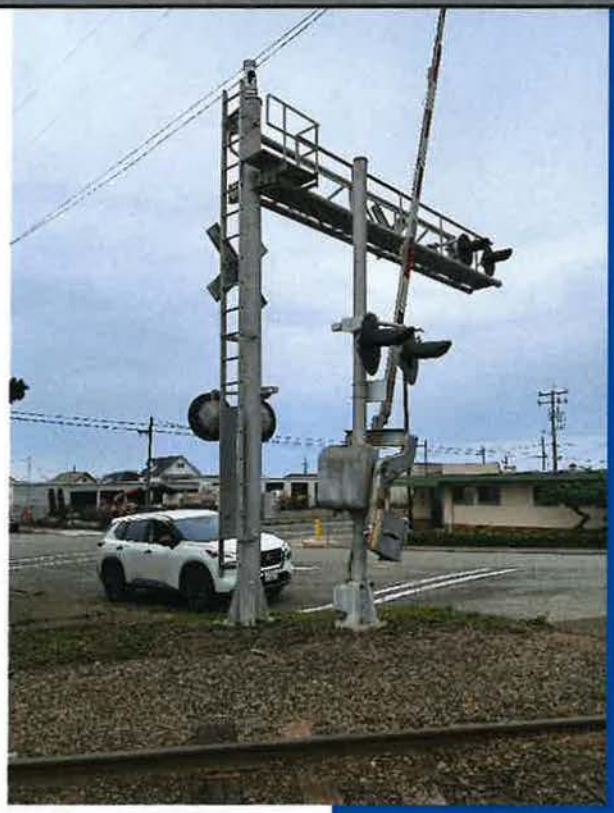
Certified Return Receipt Requested

cc: Angela Liebenberg
California Department of Fish and Wildlife
Angela.Liebenberg@wildlife.ca.gov
Vanessa Young
State Water Resources Control Board
Vanessa.Young@waterboards.ca.gov

EXHIBIT G

November 30, 2023

Railroad Rehabilitation Assessment
Mendocino Railway Fort Bragg to Willits



D&A Enterprises LLC

D&A Enterprises LLC

Contact: Dave Anderson, (714) 943-4068

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3. Track Condition 4
4. Bridge Assessment 5
5. Crossings Public & Private 7
6. Maintenance 9
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1. Introduction

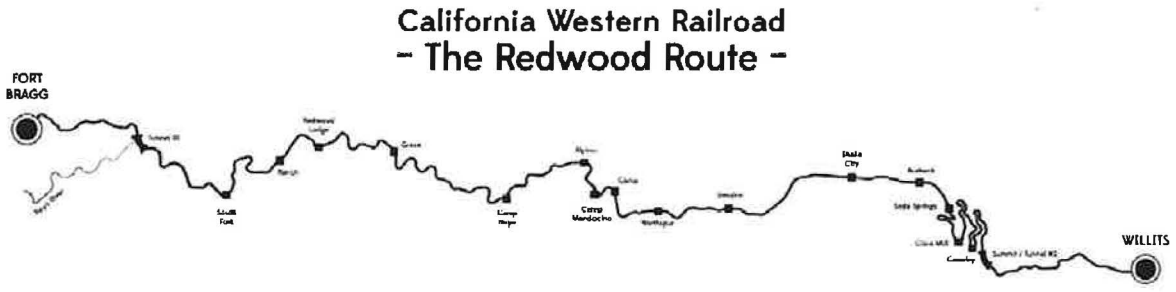
This Assessment was completed to determine an estimated cost necessary to rehabilitate the Mendocino Railway rail line (MR Line) from Fort Bragg to Willits, as well as GRTA owned track, bridges, and signals that MR currently is using to FRA Class 1 track standards for freight rail service.

The team that contributed to operational costs and general understanding of how freight rail standards will apply to this rehabilitation includes several senior individuals with decades of railroad experience. The separate individual's areas of expertise include:

- Geotechnical engineering with extensive experience working with shortline and Class 1 railroads addressing slides, erosion, and tunnels.
- Roadmaster responsibilities for track maintenance and safety with extensive knowledge of FRA regulations for Class 1 track.
- Railroad Bridges and Structures experience with extensive knowledge of FRA related requirements for Bridge Management Programs, inspection requirements and load capacity determinations.
- Railroad CEO responsible for overall operations and P&L.

Bios of the team members and their roles are included at the end of this document.

The current condition of the railroad was determined by field inspection of publicly accessible areas totaling approximately 17 miles of the line, Right of Way and Track Maps and Google Earth of the remaining areas. In addition, MR's Build 2020 Grant Application and Exhibits were used as a basis for repair costs, overall condition, and improvement requirements. The following map from the Build 2020 Grant Application shows the line configuration including several hairpin curves:



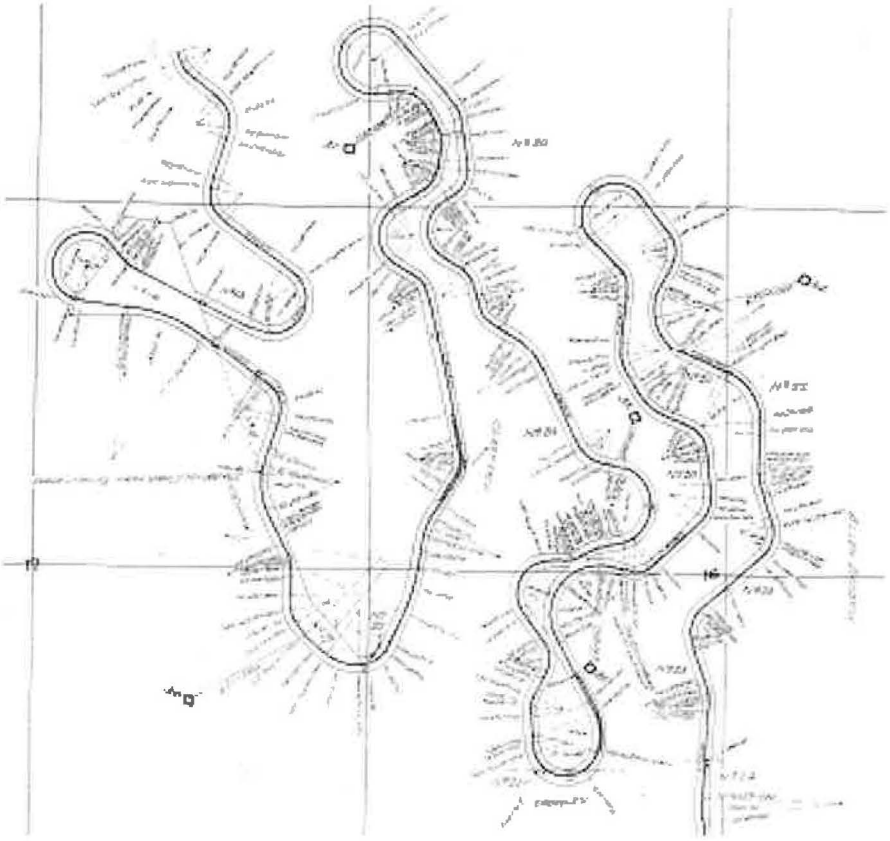
2. Geotechnical Assessment

Line Segment Description

The MR Line beginning at Fort Bragg has several street crossings prior to following the alignment of Pudding Creek to the collapsed Tunnel 1 located at MP 3.52. On the east side of Tunnel 1 it winds along the Noyo Creek toward Willits, with several creek crossings and hairpin switchbacks to Tunnel #2 at MP 35.4 (the summit). From Tunnel #2 the line winds to Willits. After crossing the Baechtel Creek bridge (MR MP 39.49) it switches to GRTA mainline. MR uses GRTA property through existing track right agreements to turn the locomotive. The track crosses E. San Francisco Ave, E. Valley Road, a GRTA bridge over

Broaddus Creek (GRTA MP 139.29), then comes to the Skunk Train Depot. To turn locomotives, it crosses Commercial St. to use the wye in the Willits Yard which includes GRTA bridge (MP 139.73).

The 40 miles of line has many curves, areas of steep hillsides and valleys, and for the most part is remotely accessed. The screenshot below shows five hairpin turns near the summit with a maximum degree of curvature 24 degrees.



Tunnel Work items

Tunnel #1 was constructed in 1893. In 2013 the tunnel experienced a partial collapse. Though some repairs were made, in 2015 the 1,000-foot-long tunnel experienced another collapse. MR hired AECOM to perform a field investigation, geologic site reconnaissance, and repair designs. Due to funding limitations, MR reconstructed the hillside above the tunnel with the intention of reconstructing the tunnel at a future date as funds become available. The work performed included removing a portion of landslide debris and installing drainage at the south portal, welding a ¾-inch steel plate to the south side of the steel portal frame to close the portal opening, backfill, ditching, edge drains along the reinstated hillsides, and a tension basin at the base of the hillside to retain surface water runoff and prevent sediment entering Pudding Creek.

In 2020 Mendocino Railway submitted for the FY 2020 City of Fort Bragg CA's BUILD 2020 Grant Application (BUILD Grant). Exhibit 5 of the application includes a description of items and a preliminary opinion to reconstructing Tunnel #1 based on 2019 unit prices prepared by Granite Construction. The cost of preconstruction and construction, updated to 2023 dollars is as follows:

Table 1 – Tunnel #1 Restoration Cost Estimate

From FY 2020 City of Fort Bragg CA's BUILD 2020 Grant Application (BUILD Grant) Exhibit 5
Prepared by Granite Construction on June 24, 2019 (updated to 2023 by DAE)

	Preconstruction Budget	UNIT	U/M	Unit Price	Total
1	Tunnel Design	1.00	LS	150,000.00	$150,000.00
2	Permitting	1.00	LS	50,000.00	$50,000
3	Geotechnical Inspection	1.00	LS	180,000.00	$180,000
4	Design contingency	5,027,606	PC	5%	$251,380
5	Rail inspection and installation	1.00	LS	150,000.00	$150,000
					$781,380
	Construction Budget	**UNIT**	**U/M**	**Unit Price**	**Total**
10	Temporary silt fence	1,000.00	LF	18.00	$18,000
20	Temporary gravel bag berm	500.00	LF	35.00	$17,500
30	West portal exposure soil nail	11,000.00	LF	68.00	$748,000.00
40	West portal face shotcrete	400.00	CY	1,080.00	$432,000.00
50	Tunnel safety	45,000.00	SF	7.00	$315,000.00
60	Tunnel soil nail shoring	19,600.00	LF	50.00	$980,000.00
70	Tunnel shotcrete	1,600.00	CY	1,080.00	$1,728,000.00
80	Entrance grading	80,000.00	SF	2.50	$200,000.00
90	Erosion Control and landscape	3.00	AC	31,500.00	$94,500.00
100	Fence	500.00	LF	12.00	$6,000
110	Mobilization	1.00	LS	488,606.00	$488,606
	Total preliminary opinion of cost - construction only				$5,027,606
	[1] Total preliminary opinion of cost				$5,808,986
	[2] Budget increase 2020	5,808,986.00		2.7%	$158,489
	[2] Budget increase 2021	5,967,475.00		10.0%	$597,510
	[2] Budget increase 2022	6,564,985.00		15.2%	$999,241
	[2] Budget increase 2023	7,564,226.00		6.5%	$494,111
	Estimated Design and Construction Cost in 2023				$8,058,337

The BUILD Grant cost estimate does not seem to reflect the preconstruction budget, but the design for the tunnel and the other items listed do not appear to have been completed.

Tunnel #2 was constructed with timber sets and timber lagging in the early 1900's and has had some timber sets filled with concrete at both ends of the tunnel. In 2017 Koppers performed a walk through and documented the following conditions:

- Timber lined section in poor condition
- Several rotted timbers
- Hanging timbers throughout
- A section on East Wall of the tunnel has bulged out 4" to 6", cap and timber is crushed
- Ballast is fouled throughout

The report included a Priority 2 to perform a detailed inspection. Koppers photos also indicate that the tunnel has experienced a fire that left fire char on several timber sets and timber lagging. MR states in

the BUILD Grant, "Tunnel #2 is structurally-sound and MR is budgeting for and reserving funds for ongoing maintenance to ensure that inspections and maintenance continue at regular intervals." No capital costs have been included for Tunnel 2, the repairs are assumed to be in MR's maintenance budget.

Steep slope slides: Several track segments are adjacent to steep embankment slopes. In these areas the track experiences several types of slides that require routine maintenance. Slide types include:

- Rockslides
- General debris slides
- Tree falls

Past NWP train crews, that ran trains 40 plus years ago from Willits to Fort Bragg, reported frequent need to stop trains to clear track resulting from slides and tree falls. No capital costs have been included for maintaining slides.

3. Track Condition

On page 24 of the BUILD Grant it states "MR's objective is to use BUILD in connection with RRIF to completely revitalize the Line by replacing 59,499 ties, 4,107 sticks of rail". The 4,107 sticks of rail at 39' per stick is about 15 miles of built track or about 38% of the rail line. It is assumed that 115 lb. rail will be used to replace any remaining 90 lb, rail, especially in curves.

The timing of the track improvements will influence the safe growth in freight train traffic. Increasing train consists can lead to derailments on rail in poor condition. Sharp curves limit the number of cars in a consist due to the large side loading from the resultant pulling force on the rail. This larger side loading also accelerates the wear and maintenance of the track. All the above is exacerbated on steep grades due to the larger pulling force required of the locomotive.

The following cost estimate applies 2023 rates to the above-referenced quantities to "completely revitalize the Line". It is assumed that with this kind of a program, the Line would need to be regulated and surfaced with a minimum of 2" of added ballast.

Table 2 – Rail and Tie Cost Estimate

Item		UNIT	U/M	Unit Price	Total
1	Replacing Ties	59,499	EA	$275	$16,362,000
2	Replace 39' Rail (#1 Relay or New 115#) Assumes 75% Relay/25% New	4107	EA	$750	$3,080,000
3	Ballast (2")	11,733	CY	$43	$503,000
3	Place Ballast (2") and Regulate	40	DAYS	$5,000	$200,000
4	Surface Track	40	DAY	$16,000	$640,000
	Total				$20,785,000

Any track program will require other maintenance items including ditching, culvert maintenance, vegetation management, and debris removal. This is assumed to be included in MR's maintenance budgets.

4. Bridge Assessment

For MR to be part of a general railroad system of transportation they need to comply with Title 49 Bridge safety Standards Part 237. This would require the adoption of a Bridge Management Program, performance of annual bridge inspections by a qualified inspector, and having a qualified "Railroad Bridge Engineer" review the reports and determine the safe load capacity of the bridges based on condition. The safe loading would then govern the safe loading of locomotives and railcar consists.

In 2017 MR hired Koppers Railroad Structures Inc. (Koppers) to inspect their 30 bridges. Their Detailed Bridge Inspection Report is provided in the BUILD Grant Exhibit 4. Below is MR bridge inventory taken from the inspection report. These bridges include a combination of timber trestles, deck plate girders, beam spans, and a through-plate girder. In total there are 185 bridge spans for a total of 4,191 linear feet.

Table 3 – MR Bridge Inventory

Item No.	Subdivision	Bridge Type	MP	No. of Sections	No. Spans	Length Ft	Crossing
1	Fort Bragg	ODPT	2.4	1	6	90	Pudding Creek
2	Fort Bragg	ODPT	2.47	1	4	60	Pudding Creek
3	Fort Bragg	ODPT	3.17	1	8	120	Pudding Creek
4	Fort Bragg	BS	3.78	1	2	120	Creek
5	Fort Bragg	TPG/BS	4.63	2	5	221	Creek
6	Fort Bragg	ODPT/BS/ ODPT	6.97	3	8	195	Creek
7	Fort Bragg	BS	7.88	1	2	128	Creek
8	Fort Bragg	BS	9.68	1	7	147	Creek
9	Fort Bragg	BS	10.18	1	5	160	Creek
10	Fort Bragg	BS	10.26	1	3	153	Creek
11	Fort Bragg	BS	10.37	1	2	114	Creek
12	Fort Bragg	DPG/BS	11.44	2	2	110	Creek
13	Fort Bragg	BS	11.84	1	2	120	Creek
14	Fort Bragg	BS/DPG/ODFT	14.96	3	9	186	Creek
15	Fort Bragg	ODFT/DPG/ODFT	15.03	3	11	240	Creek
16	Fort Bragg	ODPT/DPG/ODPT	18.57	3	17	330	Creek
17	Fort Bragg	ODPT/DPG	19.28	2	6	145	Creek
18	Willits	BDFT/DPG/BDFT	21.31	3	8	129	Noyo River
19	Willits	ODFT/BS/ODFT	21.48	3	9	180	Noyo River
20	Willits	ODFT/BS/ODFT	21.74	3	5	118	Noyo River
21	Willits	ODFT/DPG/ODFT	22.11	3	8	157	Noyo River
22	Willits	ODFT/BS/ODFT	22.32	3	9	177	Noyo River
23	Willits	ODFT/BS/ODFT	22.51	3	7	150	Noyo River
24	Willits	ODFT/DPG/ODFT	22.68	3	8	153	Noyo River
25	Willits	DPG	35.71	1	1	32	Wash
26	Willits	ODPT	37.8	1	9	126	Broaddus Creek
27	Willits	ODPT	39.24	1	5	75	Broaddus Creek

28	Willits	ODFT	39.49	1	7	105	Baechtel Creek
29	Willits	BDPT	39.9	1	6	90	Broaddus Creek
30	Willits	BDPT	40.3	1	4	60	Broaddus Creek

ODPT = Open Deck Pile Trestle	ODFT = Open Deck Framed Trestle
BS = Beam Span	BDFT = Ballasted Deck Frames Timber
TPG = Through-plate Girder	BDPT = Ballasted Deck Pile Trestle
DPG = Deck Plate Girder	

In addition, MR is currently operating over two GRTA bridges in the Willits yard.

Table 3a – GRTA Bridge Inventory

Item No.	Bridge Type	MP	Section No.	No. Spans	Length Ft	Crossing
31	BDT	139.29	1	6	89	Broaddus Creek
32	BDT	139.73	1	4	60	Willits Creek

The Koppers detailed inspection report identifies 50 PRIORITY 2 repair recommendations. On Exhibit 4, p. 18 Koppers defines PRIORITY 2 ratings as: *"Condition is structurally unsound and could cause failure any time. Repair as soon as possible. Condition must be monitored by Railroad personnel at a frequency determined by the Railroad Bridge Engineer until repairs have been completed."*

In addition, Koppers inspection identified 103 PRIORITY 3 ratings. On Exhibit 4, p. 18 Koppers defines PRIORITY 3 ratings as: "*Condition could become structurally unsound should be monitored by Railroad personnel at a frequency determined by the Railroad Bridge Engineer. Condition may need repair in the near future.*" Since 5 years have passed since the inspection, it is highly likely that these conditions, if they were not addressed, have now progressed to PRIORITY 2 ratings.

Of the 30 bridges, 28 have a PRIORITY 2 or 3 rating with a total of 190 conditions to monitor.

The last detailed inspections on the GRTA bridges was in 2005. Since then, a cursory field inspection has been performed. The following conditions and repairs have been identified:

- Bridge 139.29: Add walkway railing on the right side and repair north end wingwall and right side decayed cap, repair ballast leaks
- Bridge 139.73: Post pile 1 of bent 1 and replace 5 deteriorated bridge ties and clear drift.

Below is a summary table of required repairs for startup of freight service. A single maintenance expense credit is provided in the Rehabilitation Costs Summary section at the end of this report.

Table 4 – Bridge Assessment Summary

Item No.	Item	UNIT	U/M	Unit Cost	Amount
1	Bridge ties	1,808	EA	$500	$904,000
2	Stringers	4	EA	$10,000	$40,000
3	Caps	22	EA	$15,000	$330,000

4	Blocks (6 on one bridge)	1	LS	$18,000	$18,000
5	Pile/Post	7	EA	$2,000	$14,000
6	Sills	15	EA	$10,000	$150,000
7	Line and Surface	2	EA	$20,000	$40,000
8	Headwall	4	EA	$30,000	$120,000
9	Drift	4	EA	$2,500	$10,000
10	2 GRTA bridges	1	LS	$110,000	$110,000
11	**Subtotal Construction**				**$1,736,000**
12	Mobilization	0.1	Pct		$173,600
13	Prepare BMP	1	LS	$7,500	$7,500
14	Detailed Bridge Inspection	42	EA	$1,500	$63,000
15	Load Capacity Ratings	42	EA	$7,500	$315,000
	Total				**$2,295,000**

5. Crossings Public & Private

Public Road Crossings

There are five public crossings in Fort Bragg and six public crossings in Willits including the three GRTA crossings at E. San Franciso Lane, E. Valley Road, and Commercial Street. Two private crossings were identified in a cursory field inspection in Willits.

The California Public Utility Commission (CPUC) has jurisdiction over safety mitigations at all public railroad crossings. A formal on-site diagnostic to finalize the required railroad crossing warning measures for public safety may be required and would be an additional cost.

Following is an inventory and repair recommendations for the known crossings in the Line segment.

Table 5 – Crossings Assessment

Item No.	Crossing	City	Condition/ Crossing Material	Cost Estimate	Repair Comments
1	E Pine St.	Fort Bragg	Good/Bituminous	$0	Assume in maintenance budget
2	Shoreline Hwy 1	Fort Bragg	Good/Bituminous	$0	Assume in maintenance budget
3	W Fir St	Fort Bragg	Good/Concrete	$0	Assume in maintenance budget
4	Franklin St	Fort Bragg	Good/Concrete	$0	Assume in maintenance budget
5	E Bush St.	Fort Bragg	Good/Bituminous	$0	Assume in maintenance budget
6	Hwy 20	Willits	Good/Bituminous	$0	Assume in maintenance budget
7	Copley Ln	Willits	Poor/Bituminous	$0	Private crossing has stop sign and crossbucks

Item No.	Crossing	City	Condition/ Crossing Material	Cost Estimate	Repair Comments
8	Blosser Ln	Willits	Poor/Bituminous	$0	Assume in maintenance budget
9	Industry	Willits	Poor/Timber	$0	Private Crossing
10	Hwy 101/Hwy 20	Willits	Fair/Concrete	$0	Assume in maintenance budget
11	E. San Francisco Ave	Willits	None	$525,000	Install complete signal warning system, may need to eliminate fair left track to enable required room to place signal and gates between Railroad Ave and tracks, perform diagnostic, install warning system including a two standard 9's and signal shelter, installation of mainline new track crossing with concrete panels, update signage and pavement markings
12	E. Valley Rd	Willits	Fair/Bituminous	$20,000	Update flashers to 12", perform diagnostic, update signage and pavement markings
13	Commercial St.	Willits	Poor/Bituminous	$375,000	Replace cantilevers and perform diagnostic, update signage and pavement markings, may need two new Standard 9' flashers and shelter, replace mainline track crossing with concrete panels
	Total			**$920,000**	

6. Maintenance

In an interview of a former train crew member that worked this segment 40 years ago, he stated, "there were daily train stops to address obstructions like fallen trees and rock." This type of activity is covered in the Operations Assessment report. Items listed below are related to preventative measures and items related to routine required safety inspections of track and structures. These include chemical spraying for weed control, routine brush cutting, tree trimming, culvert maintenance, bridge repairs based on annual inspections, and track repairs based on required routine track inspections.

With complete revitalization of the MR Line and access to the national rail network, MR becomes subject to all FRA regulations regarding track and bridge inspections and maintenance. This includes annual bridge inspections, daily track inspection (depending on traffic), timetables, and operating plans. They will be subject to regular FRA inspections and access to records.

See table below of expected annual maintenance.

Table 6 – Sample Maintenance Cost Estimate

Operating Costs	Cloverdale to Fort Bragg	MR Line	GRTA Willits to Cloverdale
MAINTENANCE OF WAY AND STRUCTURES			
Track Labor	$ 522,720	$ 224,185	$ 298,535
Fringe Benefits	182,952	$ 78,465	$ 104,487
Materials and Equipment	350,000	$ 150,109	$ 199,891
Programmed Maintenance of Roadbed	150,000	$ 64,332	$ 85,668
Grade Crossing Expenses	75,000	$ 32,166	$ 42,834
TOTAL MAINTENANCE OF WAY AND STRUCTURES	$ 1,280,672	$ 549,257	$ 731,415
MAINTENANCE OF EQUIPMENT			
Mechanical Labor	$ 116,480	$ 49,956	$ 66,524
Fringe Benefits	40,768	17,485	23,283
Locomotive Repairs	90,000	38,599	51,401
Car Repair Expenses	35,000	15,011	19,989
Track Equipment Repairs	40,000	17,155	22,845
TOTAL MAINTENANCE OF EQUIPMENT	$ 322,248	$ 138,206	$ 184,042
TRANSPORTATION			
Locomotive Lease Expense	$ 140,000	$ 60,043	$ 79,957
Car Lease Expense	57,600	24,704	32,896
Train Crew Labor	273,000	117,085	155,915
Fuel	1,688,237	724,054	964,183
Transload terminal manager	45,000	19,300	25,700
Fringe Benefits	111,300	47,735	63,565

Railroad Rehabilitation Assessment – Mendocino Railway Fort Bragg to Willits

Operating Costs	Cloverdale to Fort Bragg	MR Line	GRTA Willits to Cloverdale
Transload facility maintenance	20,000	8,578	11,422
Car Hire Costs	0	0	0
Other - PPE and Comms Equip	25,000	10,722	14,278
TOTAL TRANSPORTATION	$ 2,360,137	$ 1,012,219	$ 1,347,918
GENERAL ADMINISTRATION			
Administrative Personnel	$ 132,000	$ 56,612	$ 75,388
Fringe Benefits	46,200	19,814	26,386
Insurance – General Liability	35,000	15,011	19,989
Insurance – Fire and Auto	5,000	2,144	2,856
Information Services	4,000	1,716	2,284
Contracted marketing services	24,000	10,293	13,707
FRA compliance - Manuals, timetables, Drug & Alcohol testing	12,000	5,147	6,853
Rules, Safety & FRA training - CFR 243, RWP	10,000	4,289	5,711
Audit	12,000	5,147	6,853
Legal	8,000	3,431	4,569
Payroll Service	3,000	1,287	1,713
Telephone	7,200	3,088	4,112
Repairs and Maintenance	2,000	858	1,142
Utilities	3,000	1,287	1,713
Dues and Subscriptions	1,000	429	571
Property Taxes	5,000	2,144	2,856
Conferences	1,000	429	571
Office Supplies, Postage and Other	4,000	1,716	2,284
TOTAL GENERAL ADMINISTRATION	$ 314,400	$ 134,840	$ 179,560
GRAND TOTAL OPERATING EXPENSE	**$ 4,277,457**	**$ 1,834,523**	**$ 2,442,934**

7. Rehabilitation Costs

The following table summarizes the rehabilitation costs based on the assumptions outlined in the previous sections.

Table 7 – Rehabilitation Cost Estimate

Item No.	Item	Cost
1	Tunnel No. 1	$8,058,000
2	Rail and Tie Program	$20,785,000
3	Bridge Program	$2,295,000
4	Public Crossings[1]	$920,000
5	Subtotal	$32,058,000
6	Credit for MR Expenditures since 2019 (including escalation)	(460,000)
	Total Capital Cost	**$31,598,000**

[1] Some of the public crossing cost may be offset through Federal Section 130 funds. Once the devices are installed the railroad is responsible for all maintenance and inspections.

8. Contributing Authors:

- David Anderson, P.E. of American Rail Engineers Corporation (ARE) served as Project Manager and Senior Engineer in ARE's capacity as prime consultant for the project. He is licensed as a Professional Engineer in California and has worked with the state agencies overseeing the NWP corridor for over 20 years. Mr. Anderson's roles for this project included senior-level reviewer and editor of this report.
- Carl Belke, Principal Engineer of D&H Rail Consulting prepared the Operations Assessment. Carl served as President and Chief Operating Officer for the Western New York & Pennsylvania Railroad for 10 years, General Manager and Vice President of Canadian Operations for Genesee & Wyoming for 7 years and has more than 40 years' experience in railroad operations for a dozen of short line railroads with responsibility for labor management, fleet management, bankruptcy reorganizations, and mergers and acquisitions.

EXHIBIT H

FEASIBILITY & MARKET ANALYSIS OF RAIL FREIGHT SERVICE IN THE FORT BRAGG, WILLITS & CLOVERDALE CORRIDOR

March 6, 2023

Prepared by: Marie Jones Consulting

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1. Executive Summary

This report explores freight options for moving goods and commodities between Cloverdale, Willits and Fort Bragg. It also explores if the cost to upgrade the tracks from Cloverdale to Fort Bragg (e.g. capitalization) can be supported by estimated revenues from operating a freight line in the corridor given realistic demand for rail freight and competitive truck freight pricing.

Table 1 summarizes the relative competitive advantage of truck freight versus rail freight for this transportation market. The remainder of the report provides the detailed analysis and backup data and documentation that form the basis for the conclusions.

Table 1: Relative Competitive Advantage of Truck Versus Rail Freight, Cloverdale to Fort Bragg, 2024

Competitive Issue	Truck Freight	Rail Freight
Service Availability	Service is currently provided.	No service provided.
Price/ton from Cloverdale to Willits.	The current delivery price is $29.14/ton (Table 4).	If service were re-established, the minimum cost/ton (annual capitalization/maximum demand) would be $458/ton (Table 6).
Price/ton from Willits to Fort Bragg.	The current average delivery price for this short haul is $38.35/ton. (Table 4)	If service were re-established, the minimum cost/ton (annual capitalization/maximum demand) would be $608/ton (Table 6).
Total Annual Freight Demand Cloverdale to Willits Corridor (Tons)	641,000 tons (Table 2)	24,000 tons (Table 2)
Total Annual Freight Demand Cloverdale to Willits (Loads)	23,737 Truck Loads (Table 2)	303 railcar loads (Table 2)
Door to Door Service	Provided as part of freight cost, through extensive highway and road system (see Figure 3)	Not provided by rail freight service. This would be an additional cost to the customer that would be provided by a local truck at an additional cost.
Schedule Frequency & Flexibility	Freight services are provided by 20+ local trucking companies, which haul 7 days a week and 52 weeks per year (see Table 5).	No current schedule. Estimated demand might result in one freight train of 30 cars per month. This will not meet most potential customer shipping schedules.
Trip Time	The truck drive time from Cloverdale to Fort Bragg is 1 hour and 50 minutes.	Estimated rail travel time from Cloverdale to Fort Bragg is 10 hours. Estimated rail time from Willits to Fort Bragg is 6 hours due

	The truck drive time from Cloverdale to Willits is an hour and from Willits to Fort Bragg is 50 minutes.	to the steep grade and hairpin turns, while rail travel time from Willits to Cloverdale would be an estimated 4 hours.
Trip Risk	Very limited trip risk, as trucks can predictably traverse Highway 101 and 20. When mud slides or a tree falls on these highways, Caltrans quickly removes them.	Trains often run late, and travel time is unpredictable. Additionally, the length of time and bumpiness of a freight train do not lend themselves well to many potential large customers (breweries, wine grapes, etc.).

Freight Options

Fort Bragg to Willits

- **Rail.** There is currently no operating rail freight service between Fort Bragg and Willits. Mendocino Railway advertises freight services on the Skunk Train website at a rate of ($1,440/railcar) + ($400/day for a rail car rental) + ($800/day for the crew) for a total of $2,640/80-ton-railcar or $33/ton. However, this service is either a fiction or subcontracted to a trucking company as the rail line is blocked by a tunnel collapse and rail line is not currently rated for freight. Additionally, the advertised pricing is purely hypothetical, as the Skunk Train would need to charge a higher rate of $608/ton (as illustrated below and in Table 6) to capitalize rail line repairs and recover operating costs.
  - The total capital costs to repair the rail line between Fort Bragg and Willits is $30,982,000, which would be capitalized at 10.58% for an annal payment of $3,277,896.[1]
  - Operating costs for this line would be $2,442,934/year.[2]
  - Total annual operating and capitalized rail repair costs would be $5,720,830 per year.
  - With a maximum annual demand of 118 rail cars (Table 4), the break-even cost would be $48,626/rail car or $608/ton.
  - If Mendocino Railway is awarded a $31 million federal loan to fund the repair of the line between Fort Bragg and Willits, the break-even cost would be $35,227/railcar or $441/ton.
- **Truck.** The truck freight business is very competitive as follows:
  - Highway 20 has many tight curves and can accommodate only shorter trucks, additionally as the average speed of Highway 20 is low, truck freight from Willits to Fort Bragg is currently provided by independent operators and small trucking companies, which provide freight service at $38/ton for delivered freight, which is considerably less than the railcar rate of $608/ton.

[1] D&A Enterprises LLC, Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale, Dec 27, 2023, Page 5

[2] D&A Enterprises LLC, Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale, Dec 27, 2023

Cloverdale to Willits

Highway 101 stretches between Cloverdale and Willits providing freight access to a number of small communities including: Cloverdale, Hopland, Ukiah and Willits.

- **Rail.** The rail line requires extensive repairs which must be financed to re-establish rail service (see Table 6).
  - The total capitalization cost for repairing the rail line between Willits and Cloverdale is $56,561,000, which would be capitalized at 10.58% for a loan payment of $5,984,154 per year.[3]
  - Operating costs for this line would be $5,097,457/year.[4]
  - Total operating and capitalized rail repair costs would be $11,081,611 per year.
  - With a maximum annual demand of 303 rail cars (Table 6), the break-even cost would be $36,618/rail car or $458/ton.
- **Truck.** This area has 30+ low-cost competitive trucking companies that provide trucking transportation services in a price-competitive market with a fleet of more than 200 trucks.
  - Truckstop.com is a web-based truck freight channel that serves as a master broker for brokers, truckers and shippers throughout the US with extensive data on real time load and rate information. According to Truckstop.com the Cloverdale to Willits lane (highway 101 corridor) averages $786.67/load and $29.14/ton.

Fully capitalized rail freight rates for Cloverdale to Willits would be $458/ton, while the current (January 2024) truck freight rate from Cloverdale to Willits is $29.14/Ton.

Rail freight is not price competitive.

Conclusion

Overall, there is little market demand for rail freight between Cloverdale, Willits and Fort Bragg. Rail freight is not an economically viable business as transportation costs would be prohibitively high given rail rehabilitation costs and annual operating costs. Mendocino Railroad (d/b/a) Skunk Train benefits from the fiction that it is a freight railroad in the flow of interstate commerce and subject to STB jurisdiction as such on three accounts.

[3] Dave Anderson, Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5, American Rail Engineers, 2023, Page 33

[4] Dave Anderson, Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5, American Rail Engineers, 2023,

1. Pursuant to the pretense (legal fiction) that it is a freight railroad, the Skunk Train maintains that it is exempt from local land use controls (zoning and building regulation) over their 300-acre vacant coastal property in Fort Bragg. They are in court with the City of Fort Bragg and the California Coastal Commission over their claimed land use regulation exemption and maintain their exemption either as a "public utility" or pursuant to federal preemption under the ICC Termination Act.
2. The legal fiction is also presumably the basis on which Mendocino Railway has applied to the US Department of Transportation for Federal funds on three occasions to fix the collapsed tunnel on its Fort Bragg to Willits line and otherwise to repair the rail line for tourist excursion purposes.
3. Moreover, Mendocino Railway will likely contract with itself (or sister companies) to accomplish reconstruction work with a primary goal of making a profit from the federally funded construction effort. In the end, the chief freight that would be moved on Mendocino/Skunk Train's line would be material for the reconstruction of the line, and not for freight customers of the line, because trucks are much cheaper and more flexible than rail for this short-haul low demand route.
4. Mendocino Railway has used the threat of eminent domain to acquire the former Georgia-Pacific Mill Site (300 acres of coast property) from Georgia Pacific for significantly less than its fair market value. Likewise, it used the threat of eminent domain and a subsequent lawsuit to acquire 16 acres of property along the Willits line.

In conclusion, there is not sufficient demand for short haul rail freight to defray operating costs, the cost of the capital improvements, or to attract the capital investment required to make this rail line operational.

2. Methodology

The methodology for this feasibility analysis, includes the following steps: 1) a demand analysis of rail freight; 2) market analysis of competitive truck pricing, delivery scheduling and delivery locations; and 3) a feasibility of required railway freight pricing and volume given capitalization costs, operating costs, maintenance costs, and debt service. The methodology for each step is described further below.

Demand Analysis

This report analyzes the potential demand for rail freight throughout the transportation corridor using three methodologies.

1. First the report analyzes potential rail freight demand based on population. The report estimates the maximum likely rail freight demand given the area's total population by utilizing per-capita (nationwide) rail freight demand for short haul rail trips. This approach overestimates demand because the population in this corridor is low density, making rail delivery less competitive.
2. Next the report analyzes potential freight demand based on area GDP/capita. This methodology accounts for any potential rail freight demand if Mendocino County had a particularly high GDP/capita, which it does not have.
3. Finally, the Demand Analysis also included the collection of primary demand data. MJC directly contacted major manufacturers in Mendocino County to determine how much freight demand they might have if this rail line was refurbished and re-established. However, during these calls no information was provided about potential pricing or transport time. Potential shippers were simply asked if a rail connection between Fort Bragg and Cloverdale could potentially be useful to them. This analysis is included in the appendix.

Market Analysis

This report includes a market study to determine the freight rates, delivery time, and service reliability required for rail freight to be competitive with truck freight. The market analysis characterizes the existing freight market with which rail service must compete to attract customers.

1. The truck freight market was analyzed with market research by Truckstop.com, which is a truck freight consolidator that collects thousands of truck freight orders each day and allows individual trucks and companies to bid on those freight orders. The market analysis includes daily freight rates to and from Fort Bragg, Willits and Cloverdale, paid by real shippers to real truckers.
2. A list of the truck freight providers indicates that there are many trucking companies that serve this route which results in price competition to keep rates low.
3. The rail freight market was analyzed by looking at advertised freight rates on Mendocino Railway's website, although they do not provide any rail service at this time due to a tunnel collapse and rail lines that are not rated for freight service.
4. The market analysis also compares the competitive difference between rail and truck freight on the following metrics: point-to-point service, shipping times, scheduling frequency, and reliability.

Feasibility Analysis

The feasibility analysis identifies all costs (capitalization, operating, maintenance, interest), and based on likely demand, identifies the breakeven price/ton for rail freight. Rail's break-even freight cost is compared with existing truck shipping rates for each destination. The feasibility analysis includes the following steps:

1. **Calculate Capitalization Costs**. The Capitalization Cost is the return that an investor would need to receive per the STB (Surface Transportation Board) for a capital investment in rail. The annual capitalization cost for this project is determined by multiplying the required rehabilitation costs by the cost of capital (set by the STB) to determine the annual "profit" that an investor would need to earn for a rail investment, and therefore what a rail business must pay to access that capital.
2. **Calculate Operating Costs.** Project costs include annual operating costs, maintenance and repair costs, and interest costs. Operating costs and maintenance and repair costs were developed for both segments of this rail line by Dave Anderson of American Rail Engineers (see his report *Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5).* Interest costs for the loan were calculated based on a 35-year term at 4.29% interest, which are the currently advertised interest rate and terms on the RRIF loan webpage.
3. **Break Even Price Feasibility Analysis**. Given the capitalization amount and operating costs, and estimated demand for rail traffic, the analysis calculates the breakeven point for cost/railcar and cost/ton to determine if the rail line can offer competitive pricing compared with truck transportation. This analysis was also completed assuming that Mendocino Railway obtains a $31 million low interest government loan.
4. **Break Even Volume Feasibility Analysis.** Given the capitalization amount and operating costs, and existing trucking rates, this analysis calculates the breakeven demand required for the rail line to cover all of its costs and compete with existing truck rates.

3. Freight Demand of Cloverdale, Willits& Fort Bragg

Area Freight Demand – Based on Population

The US Department of Transportation provides detailed data regarding total freight moved per year by truck and rail. Table 2 analyzes maximum freight demand by both modes (rail and truck) in the market areas for the Highway 101/20 corridor between Cloverdale and Fort Bragg. The exact freight demand is not available from published data for this small market area. This table was created by determining the total tons of freight delivered on a per capita basis nationwide on short haul trips (less than 100 miles) and then using that ratio with the area population to determine proportional local short-haul freight tonnage.

All trips from Cloverdale to Fort Bragg are defined as short haul of less than 100 miles. Thirty-six percent of all freight in the United States is hauled for less than 100 miles. Of the freight that is hauled less than 100 miles, only 4.3% is hauled by rail (see Table 13 Appendix B). However, this is a maximum estimate because the market area does not have large manufacturing or distribution warehouses or ports which together account for most rail freight.[5] Even though the analysis below likely overestimates potential rail freight demand, these numbers form the basis of the feasibility analysis (section 4).

Table 2: Maximum Potential Freight Demand, Truck and Rail, Cloverdale to Fort Bragg

Maximum Potential Freight Demand as a Ratio of Population, 2023

		Maximum Truck Freight Per Year		Maximum Rail Freight Per Year	
	Population	Truck Loads	Tons (thousands)	Carloads	Tons (thousands)
Short Haul Freight (<100 miles), United States	331,900,000	209,333,333	5,652,000	3,275,000	262,000
Potential Market Area					
Cloverdale	8,912	5,621	152	88	7
Mendocino County	91,603	57,775	1,560	904	72
Ukiah	16,800	10,596	286	166	13
Willits	4,957	3,126	84	49	4
Fort Bragg	6966	4,394	119	69	5
Total Mendocino County & Cloverdale	**100,515**	**63,396**	**1,712**	**992**	**79**
Total - Cloverdale to Willits	**37,635**	**23,737**	**641**	**303**	**24**
Total - Fort Bragg to Willits	**11,923**	**7,520**	**203**	**118**	**9**

1) All trips from Cloverdale to Willits to Fort Bragg are defined as short haul less than 100 miles. Thirty-six percent of all freight is hauled for less than 100 miles. Of the freight that is hauled less than 100 miles, only 4.3% is hauled by rail. For more information, see the link below.

Source: MJC, 2023; https://data.bts.gov/stories/s/Moving-Goods-in-the-United-States/bcyt-rqmu/#:~:text=Total%20freight%20moved%20by%20distance,origin%20and%20destination%20in%202023.

[5] DOT, Bureau of Transportation Statistics, *Fact and Figures Moving Goods in the United States*, 2023 https://data.bts.gov/stories/s/Moving-Goods-in-the-United-States/bcyt-rqmu/#:~:text=Total%20freight%20moved%20by%20distance,origin%20and%20destination%20in%202023.

Based on this conservative analysis, the area could support an annual maximum demand for 303 rail carloads of rail freight per year. Actual real demand would be less than this maximum potential demand due to: 1) a lack of manufacturing companies and warehouse distributing facilities in the region; 2) no major concentration of raw materials (such as coal, copper or other deposits); 3) no large port for international freight shipments, which is the source of most rail freight (Appendix B).

Area Freight Demand – Based on GDP

Table 3 analyzes freight demand using relative Gross Domestic Product for the United States, Sonoma County and Mendocino County. The analysis (Table 3) found a comparable total maximum demand for rail freight throughout the entirety of Mendocino County (much of which would not be well served by the proposed rail line running along Highway 101) of 579 rail cars/year or 46,000 tons. As Cloverdale is on the very northern border of Sonoma County, it would not be accurate to include the potential rail demand from Sonoma County for this analysis, because this demand would travel south towards population centers not north into rural Mendocino County.

Table 3: Maximum Potential Freight Demand as a Ratio of GDP

Maximum Potential Freight Demand as a Ratio of GDP, 2023						
			Maximum Truck Freight Per Year		Maximum Rail Freight Per Year	
	GDP in (1,000$)	% GDP	Truck Loads	Tons (1000s)	Carloads	Tons (1000s)
Short Haul Freight (<100 miles), United States	23,315,081,000	100%	209,333,333	5,652,000	3,275,000	262,000
Potential Market Area						
Sonoma County	34,450,901	0.1478%	309,316	8,352	4,839	387
Mendocino County	4,123,820	0.0177%	37,026	1,000	579	46

Sources: MJC, 2023

US Department of Transportation, *Transportation as an Economic Indicator: Seasonally-adjusted transportation data, 2023* https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/

California REAP: GDP Analysis for Mendocino County, Sonoma County and United States https://california.reaproject.org/analysis/comparative-trends-analysis/gross_domestic_product/tools/0/60045/

Cloverdale Economic Overview & Potential Rail Demand

This section provides a brief overview of the economy and includes results from direct interviews with larger companies in the region that have been identified by Mendocino Railway as potential rail shippers. It shows that MR consistently overestimated interest in short haul rail shipments in their DOT Build Applications (See Appendix A), such that the over-estimates can fairly be characterized as deceptions.

Cloverdale is a small middle-class community with a significant Latino population and many commuters that work in Santa Rosa and Windsor. As a small community with a small economy, it is not a significant source of freight. Cloverdale has a population of 8,996 people, with a median annual household income and earnings of $96,894 per year, which is slightly lower than California as a whole. Its 4,357 residents have full or part-time work primarily in the education, manufacturing, agriculture, construction and retail trade sector.

Major Cloverdale Employers. Of the top 25 employers in Sonoma County, none are located in Cloverdale. However, according to Dun & Bradstreet, Cloverdale is home to the following large companies.[6]

- Bear Republic Brewing Company has $23 million in sales of specialty beer products. They are not interested in shipping their products by rail due to the cost, limited service, lack of predictability and potential damage to a vibration sensitive product.
- Nu Forest Products provides sawn lumber products and employes 80 people. They are not interested in using Rail to serve their customers due to cost, limited service, lack of flexibility and predictability of deliveries.
- MGM Brakes has $4.5 million in sales and manufactures electronic brake systems for trucks and buses. They are not interested in using rail to ship orders due to limited service.

Mendocino County Economic Overview & Potential Rail Demand

Appendix C of this analysis includes a brief overview of the Mendocino Economy to identify if current or future economic or population growth could support the re-establishment of rail freight along the Fort Bragg Willits corridor. Here are some of the top-level findings of this summary:

- Mendocino's population growth is constrained by its remote location, low housing production numbers and very slow job growth. In 2022 Mendocino's population was 91,603, which is just 0.2% of the State population. Mendocino County's population has remained relatively flat for the past 70 years.
- Mendocino's economy is very small and stagnant. Mendocino GDP ranks 38th from the top of California's 58 counties. Since 2010, Gross Domestic Product has grown only 0.78%/year in Mendocino (ranked 38 out of 58 counties). Ranked #46 out of 57 Counties, Mendocino County total employment shrank by -0.35% from 2010 to 2020.
- Of the 45,293 jobs in Mendocino County, only a very small portion might result in freight trips as follows.
    - Mining is a small component of the economy at 0.3% and experienced a significant job contraction from 121 jobs in 2010 to 71 jobs in 2020, a decline of 41.32%. Mining in Mendocino County is almost exclusively related to aggregate extraction, and as noted in Appendix A, rail freight is not price competitive with truck delivery prices for aggregate.
    - Forestry and Fishing experienced a slight increase of 170 jobs (+12.36%) in the ten-year timeframe. Fishing products are not a suitable product for rail transport due to perishability. Forestry is a difficult item to transport via rail because timber harvests are geographically dispersed and transport by rail would require a truck, rail and truck transfer scenario with very large logs for an average short-haul 40-mile transport distance.

[6] https://www.dnb.com/business-directory/company-information.manufacturing.us.california.cloverdale.html

- Manufacturing is a relatively small sector of the Mendocino Coast economy. It represents just 6% of all jobs and experienced a nominal growth or 1.86% during this timeframe, most of the manufacturing jobs are located along the Highway 101 corridor in and around Ukiah.
- Housing production averages 148 units/year or 0.36% annual growth rate, which represents a very slow increase in housing units and a small market for building materials freight.

Major Mendocino County Employers. Of the top 25 employers in Mendocino County, five are healthcare providers, eight are governmental agencies, two are schools, two are grocery stores, and only two qualify as manufacturing companies with significant freight needs.

- Fetzer Vineyards located in Hopland, is a large Winery that is not interested in shipping by rail as grapes must be transported by truck immediately from the vines to the processing facility and rail does not have the flexibility to do this. Further they expressed concern about damage to finished wines due to transport delays and bumpiness.
- Mendocino Redwood Co LLC, located in Calpella is a sawmill for which rail would not work because the forest of Mendocino County is distributed over a vast territory and rail cannot service that territory (see Appendix B).

Contrary to claims repeatedly made by the Mendocino Railway in various unsuccessful DOT Build grant applications, there is little to no actual demand for rail freight between Fort Bragg and Willits (Appendix A).

- North Coast Brewery has no interest in rail freight for either the delivery of hops or the transport of finished beer, due to high transportation costs, potential product damage, and the unreliability of and time for transport.
- If shipping rates were competitive, Flow Beds could ship three railcars of latex per year, but only if Mendocino Railway was connected to the interstate rail network. Due to an embargo imposed by the federal government as well as a tunnel collapse south of Willits, it is not.
- Timber is not a good customer for rail transport. It is easier, more efficient, and less expensive to continue transporting timber via truck from dispersed harvest areas to area lumber mills.
- All solid waste generated on the coast would fit in 1 railcar/day. However, rail freight is not a good fit because State law requires removal of all solid waste from a transfer station within 24 hours and the Waste Operator has a company fleet and a transfer station which is a half mile from the Railhead, making utilization of rail unfeasible.

MR consistently overestimates interest in short haul rail shipments in their TOT Build Applications (see Appendix A). These over-estimates are fabrications.

Truck Freight Rates & Supply

Trucking is the only existing transportation option between Willits and Cloverdale. Trucking is truly a commodity transportation service with very little difference in rates between operators in a given market area.

- Highway 101, the primary north to south highway through Mendocino County (see figure 3) is a two-lane highway which easily accommodates 53-ft trucks which can carry up to 54,000 lbs. (27 tons).
- Highway 20, which runs east to west from Sacramento to Fort Bragg, is a winding two-lane highway, which due to curves can only accommodate 48' tractor trailers. Forty-eight-foot tractor trailers are permitted to carry up to 44,000 lbs. (22 tons) on this route.

Table 4, below, illustrates transportation costs per ton for truck freight between Cloverdale, Willits and Fort Bragg. The average truck freight delivery cost is $29.14/ton between Cloverdale and Willits and $38.35/ton between Willits and Fort Bragg. The cost from Cloverdale to Fort Bragg is also $38.35/ton, because most trucking companies come from Santa Rosa and cover the same distance for both trips. Table 4 also shows that a railcar of 80 tons must charge less than $3,067/railcar to be price competitive with truck freight from Cloverdale to Fort Bragg.

Table 4: Trucking Costs/Ton, Cloverdale to Fort Bragg

Trucking Costs Ton Cloverdale to Willits to Fort Bragg

	Average Trucking Rate/Mile	One Way Haul Cost	Haul Weight (lbs.)	Haul Weight (Tons)/ Truck load	Truck Haul Price per Ton	Truck Haul Price per 80 Tons (1 Railcar Equivalent)
Cloverdale to Willits -51.2 miles						
Van Freight Rates	$ 14.57	$ 746.00	54,000	27	$ 27.63	$ 2,210.37
Refer Freight rates	$ 18.16	$ 930.00	54,000	27	$ 34.44	$ 2,755.56
Flat bed rates	$ 13.36	$ 684.00	54,000	27	$ 25.33	$ 2,026.67
Average	$ 15.36	$ 786.67			$ 29.14	$ 2,330.86
Willits to Fort Bragg -34.9 miles						
Van Freight Rates	$ 21.78	$ 760.00	44,000	22	$ 34.55	$ 2,763.64
Refer Freight rates	$ 27.22	$ 950.00	44,000	22	$ 43.18	$ 3,454.55
Flat bed rates	$ 23.52	$ 821.00	44,000	22	$ 37.32	$ 2,985.45
Average	$ 24.17	$ 843.67			$ 38.35	$ 3,067.88
Cloverdale to Fort Bragg - 86.1 miles						
Van Freight Rates	$ 8.83	$ 760.00	44,000	22	$ 34.55	$ 2,763.64
Refer Freight rates	$ 11.03	$ 950.00	44,000	22	$ 43.18	$ 3,454.55
Flat bed rates	$ 9.54	$ 821.00	44,000	22	$ 37.32	$ 2,985.45
Average	$ 9.80	$ 843.67			$ 38.35	$ 3,067.88

Source: MJC, 2024; Google, 2024; TruckStop.com Rate Insight Tool; 2024

Truck Freight Providers

Table 5 identifies 21 trucking companies located between Cloverdale and Fort Bragg with an estimated total fleet of 207 trucks.

Table 5: Area Trucking Companies, by Location & Size

Area Trucking Companies by Location & Size		
Name of Company	**Primary Products Hauled**	**Estimated Fleet Size**
Cloverdale		
All Coast Forest Products	Logs, Poles, Beams, Lumber Building Materials	5
Kinsey Trucking	Building Materials	1
Regie Construction Inc.	General Freight Building Materials Construction	4
Garibaldi & Sons LLC	General Freight	7
Denbest Trucking Company	General Freight	2
Willits, Ukiah & Fort Bragg Trucking Companies		
Shuster's Transportation Inc. Willits Ca	General Freight	5
Jim Maciel Trucking	General Freight	1
KVS Trucking Inc, Ukiah CA	General Freight	1
Sterling Transport, Albion Ca	General Freight	1
Mendocino Coast Express	General Freight	5
Santa Rosa		
Atech Logistics and Distribution	General Freight	50
Doss Flatbed Freight	General Freight	10
Strategic Integrated Transportation	General Freight Broker	10
Colton Transport	Flat Deck, LTL and FTL	5
R & S Transport	General Freight	5
Valdivia Trucking	Construction Freight	25
Moga Logistics	Construction Freight	5
Doss Logistics	Flat Deck, LTL and FTL	25
Hansen Transport	Agricultural, Vineyard	10
Butch Cameron Trucking	Bulk Wine and Case Goods	5
Marathon Express	Same Day Freight	25
Total		207

Sources: MJC, 2024; Google, 2024; Clutch.co, 2024

A railcar of 80 tons must charge less than $38.25/ton to be price competitive with truck freight from Cloverdale to Fort Bragg.

Rail Freight Rates & Supply

Currently there is no freight service in Mendocino County. Mendocino Railway (aka the Skunk Train) provides pricing for freight service on their website, but they do not provide rail freight service between Fort Bragg and Willits due to a tunnel collapse and tracks unrated for freight. This means that the advertised freight price is hypothetical. It is advertised as $1,440 per car for a one-way trip from Willits to Fort Bragg (see Figure 1). Additionally, Mendocino Railway charges $400/railcar/day and an $800 labor fee. Together this hypothetical rate structure amounts to $2,640/railcar which is less than existing trucking rates. However, it would have been about the same rate in 2022 when this rate sheet was published.

Figure 1: Mendocino Railway Freight Rates. Source: www.Skunktrain.com

MENDOCINO RAILWAY

CWR 9500

SECTION 2
Switching charges
(Charges in dollars and cents per car, except as otherwise noted

LINEHAUL CHARGES (Rule 11)

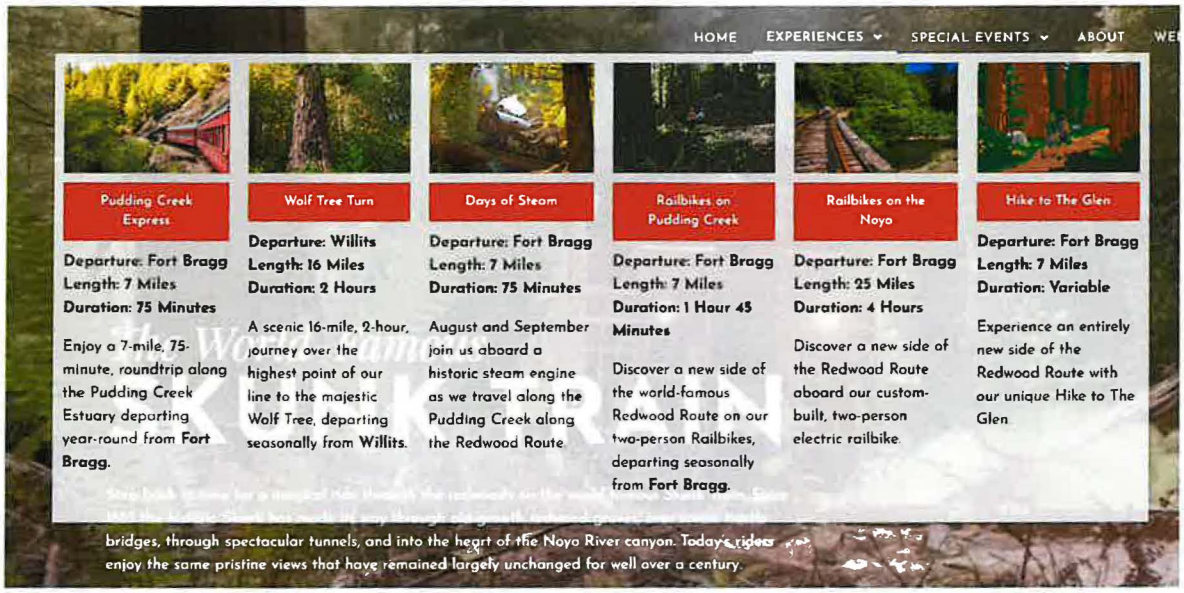
ITEM 2000			
BETWEEN	AND	COMMODITY	CHARGE
Willits CA.	Northspur, CA (Willits Subdivision)	All Other, FAK (Note 1)	$1080.00 per car
Willits CA.	Fort Bragg, CA (Fort Bragg Subdivision)	All Other, FAK (Note 1)	$1440.00 per car
ITEM 2010			
BETWEEN	AND	COMMODITY	CHARGE
Willits CA.	Northspur, CA (Willits Subdivision)	Empty rail cars for dismantling or furtherance to off rail points (Note 1)	$480.00 per car
Willits CA.	Fort Bragg, CA (Fort Bragg Subdivision)	Empty rail cars for dismantling or furtherance to off rail points (Note 1)	$720.00 per car
ITEM 2020			
BETWEEN	AND	COMMODITY	CHARGE
Willits CA.	Northspur, CA (Willits Subdivision)	Hazardous Materials, STCC 28,29,48,49	$1320.00 per car
Willits CA.	Fort Bragg, CA (Fort Bragg Subdivision)	Hazardous Materials, STCC 28,29,48,49	$1680.00 per car

One could speculate that Mendocino Railway either: 1) provides "rail" freight via a subcontract with a trucking company and/or 2) provides this website information to mislead regulators and State and Federal agencies that provide low interest loans and grants for freight rail reconstruction. Indeed, Mendocino Railways has submitted three unsuccessful Build grants to DOT for tens of millions in grant funding to reconstruct their collapsed tunnel and rail line, while there is no evidence that they actually ship freight for anything other than making repairs to its line.

The Skunk Train currently only provides tourist excursion services (no commuter service or freight). The tourist excursion from Fort Bragg extends roughly 3 miles up the tracks where it is stopped by a tunnel collapse. The tourist excursion from Willits extends 7 miles up the tracks to "wolf tree" (Crowley) before it returns to Willits. Crowley is no longer a town, and there are no other towns along either excursion route. See website ad below illustrating current tourism excursions for the Skunk train. The tourism train (Pudding Creek Express) is a slow

ride, traveling roughly 7 miles round trip in 75 minutes. They also provide rail bikes for longer excursions past the collapsed tunnel.

Figure 2: Skunk Train Tourism Services



Source: https://www.Skunktrain.com/

The graph below illustrates Skunk Train recreational ridership, which Mendocino Railway used in unsuccessful applications for government grants for freight rail improvements.

Figure 3: Skunk Train Ridership 2002-2020

Source: Skunk Train 2020 Build Grant

Point to Point Service

Trucks currently provide point to point freight service. The railroad would not. This is a significant competitive disadvantage for rail service as it adds transport time, logistics and transfers to any trip, which are especially burdensome for short haul trips in this market area.

Truck Freight. Figure 4, below, illustrates the state highway system that is currently available for use by freight trucks, along with a myriad number of secondary roads (not shown) which connect the entire County for point-to-point freight delivery by truck. This allows for easy and fast service without transfers and associated wait time and logistics.

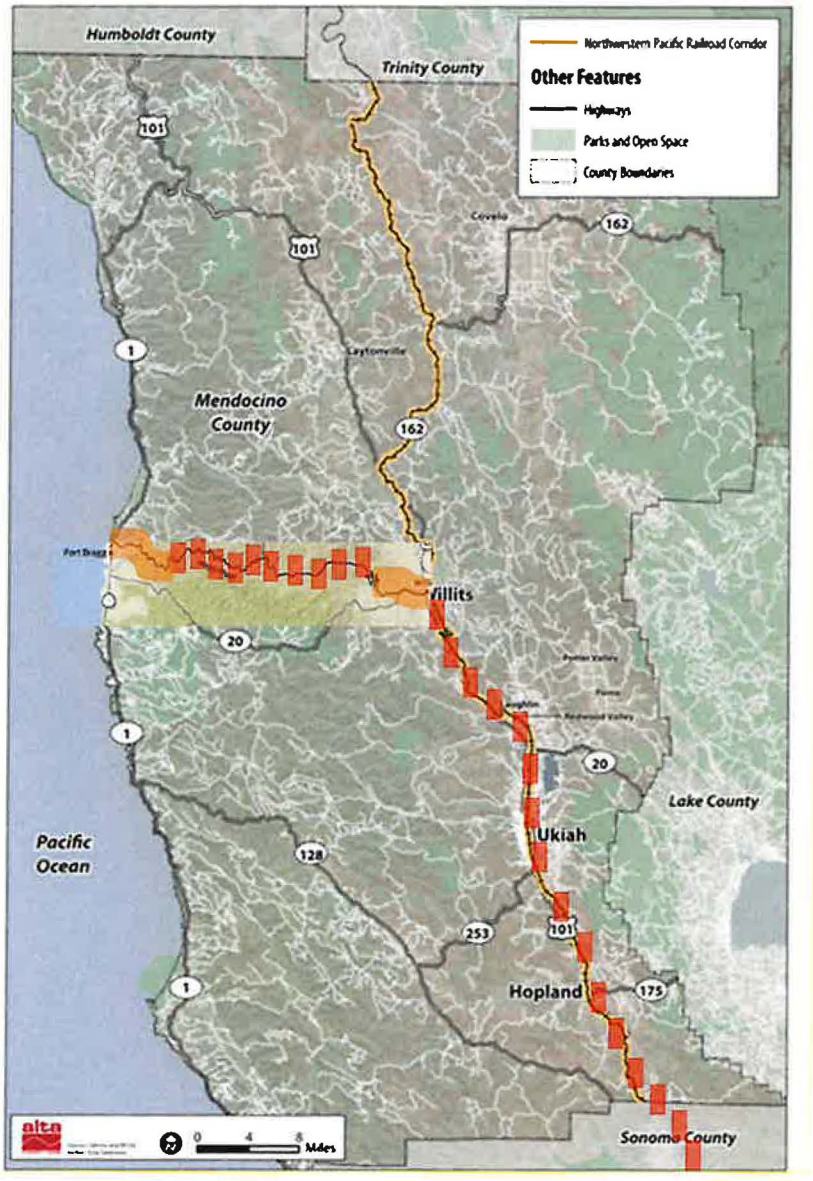
Figure 3: Primary Highways in Mendocino County

Rail Freight. By contrast Figure 2 illustrates the proposed rail freight line connection between Cloverdale in Northern Sonoma County and Willits and then out to the coast. Most of this rail line would need to be significantly rehabilitated in order to provide service. This rail line route does not provide direct connectivity to most of Mendocino County and any rail customers would have to transport their goods to the rail terminal by truck.

Figure 4: Rail Lines in Mendocino County

Rail line requires substantial rehabilitation, currently non-operational.

Rail Line used for recreational excursions must be upgraded for freight.



5. Feasibility Analysis

METHODOLOGY

Cost of Capital

To understand any railroad capital project feasibility analysis, first one must understand what the STB's cost of capital figure is and how it is used to determine feasibility.

> "The STB's cost-of-capital figure (10.58%) represents the Board's estimate of the average rate of return needed to persuade investors to provide capital to the freight rail industry. The Board uses this figure in a variety of regulatory proceedings, including railroad revenue adequacy determinations, rate reasonableness cases, feeder-line applications, rail line abandonments, trackage rights cases, and rail merger reviews. The annual cost of capital figure is also used as an input in the Uniform Railroad Costing System. The cost-of-capital finding may also be used in other regulatory proceedings, including (but not limited to) those involving the prescription of maximum reasonable rate levels, the proposed abandonment of rail lines, and the setting of compensation for use of another carrier's lines."[7]

In other words, the Cost of Capital is used to define the anticipated rate of return for a private sector investor who might invest in a railroad enterprise/capital improvement. It does not include operating costs, maintenance cost or interest costs for a loan, which also must be considered to determine feasibility.

The feasibility analysis includes the following:

1. **Calculation of all Costs**
   - The annual dollar amount return that an investor would expect to receive from a capital investment, which is calculated by multiplying the investment amount by the cost of capital to determine the annual "profit" that an investor would anticipate earning from such an investment.
   - Annual operating costs;
   - Annual maintenance and repair costs; and
   - Annual interest costs.
2. **Calculation of Break-Even Pricing given Costs and Demand**
   - Given all project costs, and estimate demand for rail traffic, the breakeven point for cost/railcar and cost/ton is calculated to determine if the rail line can offer competitive pricing compared with truck transportation.
3. **Calculation of Required Demand Given Costs and Competitive Truck Pricing**
   - Given all project costs and competitive truck pricing, the analysis also looks at how much demand would be required to break even if the rail freight service was priced at the same rate/ton as truck fright.

[7] See the Surface Transportation Board's Economic Data Website under Data Issued in Regulatory Proceedings: cost of Capital Tab. https://www.stb.gov/reports-data/economic-data/

The following feasibility analysis includes these three steps for two different capitalization scenarios:

- **Scenario 1: Private investor financing funds all improvements.**
- **Scenario 2: A mix of private investor financing and a $31 million RRIF loan at 4.29% for a 35-year term. Mendocino Railway has applied for a $31 million loan, which has been processed but not finalized pending completion of environmental review. But this analysis is utilized to determine the potential feasibility, if the loan is awarded.**

SCENARIO 1 FEASIBILITY ANALYSIS – PRIVATE INVESTORS ONLY

This feasibility analysis (Table 6) calculates the minimum cost/ton that Mendocino Railway would need to charge to cover all annual cost given likely demand (Table 2), which include:

- The rehabilitation cost for the Willits to Cloverdale line annualized at the 2022 Surface Transportation Board capitalization 10.58% (e.g. $56 million in rehabilitation costs times 10.58% is $5.98 million in annual capitalization costs).
- The rehabilitation cost for the Willits to Fort Bragg Skunk Train line, which is $31 million in rehabilitation costs times 10.58% is $3.27 million in annual capitalization costs.
- Annual operating costs for both legs of the railroad which are estimated at a little over $5 million for the Cloverdale to Willits rail line and $2.4 million for the for the Fort Bragg to Willits rail line.

The annual capitalization for each rail line is then divided by the maximum annual rail car demand (Table 2) to calculate the minimum breakeven price/railcar and price/ton. Which as illustrated in the table is:

- $36,618 per railcar or $458/ton from Cloverdale to Willits:
- $48,626 per rail car or $608/ton from Willits to Fort Bragg; and
- $85,244 per rail car or $1,066/ton from Cloverdale to Fort Bragg.

Table 6: Rail Freight Cost/Ton and Cost/Railcar - Cloverdale to Fort Bragg

Rail Transport Cost Per Ton including Capitalization and Operating Costs (Cloverdale to Willits to Fort Bragg)	Rehabilitation Cost (1 & 2)	Capitalization Rate	Annual Capitalization	Annual Rail Car Demand (3)	Annual Cost/ Rail Car	Cost Per Ton
Total Acquisition and Rehabilitation Costs						
Cloverdale to Willits Acquisition	unknown	10.58%	unknown	303	unknown	Unknown
Cloverdale to Willits Rail Line Rehabilitation Cost (1)	$ 56,561,000	10.58%	$ 5,984,154	303	$ 19,774	$ 247
Willits to Fort Bragg Rail Line Rehabilitation Costs (2)	$ 30,982,000	10.58%	$ 3,277,896	118	$ 27,862	$ 348
Total Rehabilitation Costs	**$ 87,543,000**		**$ 9,262,049**		**$ 47,636**	**$ 595**
Annual Operating & Maintenance Costs						
Cloverdale to Willits (1 & 2)			$ 5,097,457	303	$ 16,844	$ 211
Willits to Fort Bragg (2)			$ 2,442,934	118	$ 20,765	$ 260
Total Annual Operating Costs			$ 7,540,391		**$ 37,609**	
Total Annual Operating Costs and Annual Capitalization Cloverdale to Willits			$ 11,081,611	303	$ 36,618	$ 458
Total Annual Operating Costs and Annual Capitalization Willits to Fort Bragg			$ 5,720,830	118	**$ 48,626**	**$ 608**
Total Annual Operating Costs and Annual Capitalization			$ 16,802,440		**$ 85,244**	**$ 1,066**

Source: 1) Dave Anderson, *Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5*, American Rail Engineers, 2023, Page 33

2) D&A Enterprises LLC, *Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale*, Dec 27, 2023, Page 5

3) MJC, 2023; US Census; US DOT; https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/

To be competitive with trucking prices, a railcar from Cloverdale to Willits would need to cost less than $2,220 for an 80-ton railcar excluding material loading and unloading costs (see table 4). Clearly, rail freight is not competitive at a price of $85,244/railcar, which is 2,700% more expensive than trucking.

The rail line extension is infeasible based on cost alone once capitalization and operating costs are included. This is the standard methodology to evaluate all private sector development projects.

Rail freight is 2,700% more expensive than trucking.

Additionally, this analysis does not include the cost of property acquisition for the line from Willits to Cloverdale which would require an additional $10-$25 million.

Scenario 1 - Breakeven Demand Analysis

Table 7 below calculates the number of railcars Mendocino Railway would need to haul per year at the current trucking rate to break even. Mendocino Railway would need to move more than 4,700 freight cars of demand per year on the Cloverdale to Willits line to capitalize the railway sufficiently at a trucking price competitive rate of $2,331/railcar (annual capitalization/competitive trucking railcar rate = number of required railcars per

year, e.g. $11,081,611/$2,331=4,754 railcars). Likewise, they would need to run 1,865 railcars on the Fort Bragg to Willits line to break even. Clearly, there is insufficient demand for this volume of freight, given that the best-case scenario results in an estimate of 303 railcars per year (see Table 2). There is insufficient demand, even under Mendocino Railway's unprovable claim of 1,028 Railcars/year (Build 2018 Grant Application) or 1,528 railcars/year (2020 Build Grant Application) to make this project economically feasible.

Table 7: Required Annual Railcar Volume to Compete with Truck Freight Costs

Required Annual Railcar Volume for Competitive Freight Cost			
Cloverdale to Willits	**Amount**	**Willits to Fort Bragg**	**Amount**
Annualized Capitalization of Cloverdale to Willits Rail Line Rehabilitation (1)	$ 5,984,154	Annualized Capitalization of Willits to Fort Bragg Rail line Rehabilitation (2)	$ 3,277,896
Annual Operating Costs (1)	$ 5,097,457	Annual Operating Costs (2)	$2,442,934
Total	$ 11,081,611	Total	$5,720,830
Competitive Trucking Rate/Rail Car from Cloverdale to Willits (see Table 4 of this report)	$ 2,331	Competitive Trucking Rate/Rail Car from Willits to Fort Bragg (see Table 4 of this report)	$ 3,068
Annual Rail Cars to Break Even	**4,754**	Annual Rail Cars to Break Even	**1,865**

Source: 1) Dave Anderson, *Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5*, American Rail Engineers, 2023, Page 33

2) D&A Enterprises LLC, *Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale*, Dec 27, 2023, Page 5

3) MJC, 2023; US Census; US DOT; https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/

SCENARIO 2 FEASIBILITY ANALYSIS – INVESTORS PLUS RRIF LOAN

This analysis (Table 8) calculates the minimum cost/ton that Mendocino Railway would need to charge to cover all annual cost given likely demand (Table 2) and the award of a $31 million low interest federal loan.

The annual cost for each rail segment is divided by the maximum annual rail car demand (Table 2) to calculate the minimum breakeven price/railcar and price/ton. Which as illustrated in the table is:

- $36,618 per railcar or $458/ton from Cloverdale to Willits,
- $35,345 per railcar or $441/ton from Willits to Fort Bragg, and
- $57,450 per rai car or $899/ton from Cloverdale to Fort Bragg.

Table 8 Rail Freight Cost/Ton and Cost/Railcar with $31 Million Loan - Cloverdale to Fort Bragg

Rail Transport Cost Per Ton including Capitalization, Operating and Loan Costs (Cloverdale to Willits to Fort Bragg)	Rehabilitation Cost (1 & 2)	Capitalization Rate	Annual Capitalization	Annual Rail Car Demand (3)	Annual Cost/ Rail Car	Cost Per Ton
Total Acquisition and Rehabilitation Costs						
Cloverdale to Willits Acquisition	unknown	10.58%	unknown	303	unknown	Unknown
Cloverdale to Willits Rail Line Rehabilitation Cost (1)	$ 56,561,000	10.58%	$ 5,984,154	303	$ 19,774	$ 247
Willits to Fort Bragg Rail Line Rehabilitation Costs (2)	$ 30,982,000	0.00%	$ -	118	$ -	$ -
Total Rehabilitation Costs	**$ 87,543,000**		**$ 5,984,154**		**$ 19,774**	**$ 247**
Annual Operating & Maintenance Costs			**Annual Cost**			
Cloverdale to Willits (1 & 2)			$ 5,097,457	303	$ 16,844	$ 211
Willits to Fort Bragg (2)			$ 2,442,934	118	$ 20,765	$ 260
RRIF Loan $31,000,000 @4.29% for 35 years to Finance Willits to Fort Bragg Rail Line Rehabilitation Costs	$ 31,000,000		$ 1,712,450	118	$ 14,512	$ 181
Total Annual Operating Costs			$ 7,540,391		**$ 37,609**	**$ 652**
Total Annual Operating Costs and Annual Capitalization Cloverdale to Willits (rows 2 & 5)			$ 11,081,611	303	$ 36,618	$ 458
Total Annual Operating Costs Willits to Fort Bragg (Rows 6,& 7)			$ 4,155,384	118	**$ 35,277**	**$ 441**
Total Annual Operating Costs and Annual Capitalization			$ 13,524,545		**$ 57,383**	**$ 899**

Source: 1) Dave Anderson, *Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5*, American Rail Engineers, 2023, Page 33

2) D&A Enterprises LLC, *Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale*, Dec 27, 2023, Page 5

3) MJC, 2023; US Census; US DOT; https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/

To be competitive with trucking prices, a railcar from Cloverdale to Willits would need to cost less than $2,220 for an 80-ton railcar excluding material loading and unloading costs (see table 4). Even with the award of a $31 million low interest federal loan, rail freight is still not competitive at a price of $57,450/railcar or $900/ton, which is 2,346% more expensive than trucking.

The rail line extension is again infeasible, even if a significant portion of the rail line is financed with a $31 million low interest federal loan. Even with the loan, rail freight is 2,346% more expensive than trucking.

Again, this analysis does not include the cost of property acquisition for the line from Willits to Cloverdale, which would be a significant additional expense.

Scenario 2 - Breakeven Demand Analysis

Table 9 provides an equivalent Breakeven Damen Analysis as Table 7, but it assumes that Mendocino Railway does receive a $31 million low interest loan and does not use private capital to finance the rehabilitation of the Fort Bragg to Willits line. Mendocino Railway would still need to move more than 4,700 freight cars/year on the Cloverdale to Willits line to capitalize the railway sufficiently at a trucking price competitive rate of $2,331/railcar. Even with the low interest loan they would need to run 1,354 railcars on the Fort Bragg to Willits line to break even. Clearly there is insufficient demand for this volume of freight, given that the best case scenario results in an estimate of 303 railcars per year (see Table 2).

Table 9: Required Annual Railcar Volume to Compete with Truck Freight Costs, with possible $31 million loan.

Required Annual Railcar Volume for Competitive Freight Cost			
Cloverdale to Willits	**Amount**	**Willits to Fort Bragg**	**Amount**
Annualized Capitalization of Cloverdale to Willits Rail Line Rehabilitation (1)	$ 5,984,154	RRIF Loan $31,000,000 @4.29% for 35 years to Finance Willits to Fort Bragg Rail Line Rehabilitation Costs	$ 1,712,450
Annual Operating Costs (1)	$ 5,097,457	Annual Operating Costs (2)	$2,442,934
Total	$ 11,081,611	Total	$4,155,384
Competitive Trucking Rate/Rail Car from Cloverdale to Willits (see Table 4 of this report)	$ 2,331	Competitive Trucking Rate/Rail Car from Willits to Fort Bragg (see Table 4 of this report)	$ 3,067.88
Annual Rail Cars to Break Even	**4,754**	Annual Rail Cars to Break Even	**1,354**

Source: 1) Dave Anderson, *Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5*, American Rail Engineers, 2023, Page 33

2) D&A Enterprises LLC, *Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale*, Dec 27, 2023, Page 5

3) MJC, 2023; US Census; US DOT; https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/

6. National Truck vs Train Trends

Appendix B of this report, which examines general transportation trends Nationwide, finds that the results of this feasibility analysis also hold true throughout the country, as follows:

- Nationwide truck shipments accounts for $12,578 billion dollars of shipment value while rail ships $837 billion worth of goods per year. Indeed 69% of the value of all freight shipments is by truck, while 5% of the value of all shipments is by rail nationwide.
- Trucks also ship more by weight. In 2016 the total weight of truck shipments was 11,619 million tons, while all goods shipped by rail weighed in at 1,835 million tons. By weight, trucks ship 66% of all goods, while railroads ship 10% of all goods.
- Rail is not even competitive with truck freight in "ton miles traveled." Trucks move 40% of all freight by ton miles traveled (2,023 billion) while rail moves 28% (1,527 billion) of all freight by ton miles traveled.
- Rail as a freight mode is in decline. Overall rail carloads declined from 1.5 million in 2000 to less than a million in 2022. Truck freight on the other hand increased by 50% from 2002 through 2022.

- Finally, there is no rail freight activity on the Northern California coast or 101 corridor and very little rail freight activity through the Central Valley. Most rail freight activity is from major shipping ports on the west coast to population centers in the Midwest and east coast.
- Nationwide trends indicate that rail service is not competitive with truck transport, it is prohibitive for short haul distances such as Cloverdale to Willits (51 miles) and Willits to Fort Bragg (40 miles).

7. Mendocino Railway: Why ask for an OFA if Freight is not Viable?

Mendocino Railway faces unresolvable hurdles in their efforts to re-establish freight service between Cloverdale, Ukiah, Willits and Fort Bragg, including:

1. **Much Higher Cost.** Truck freight is **three orders of magnitude (2700%) less expensive** than the lowest rates that Mendocino Railway can possibly charge to break even.
2. **Discontinuity.** The railroad tracks are currently discontinuous (due to tunnel failures) and therefore it cannot provide any freight services. Even if collapsed tunnels and the railroad tracks are upgraded to handle freight, the rail line end is discontinuous with the rest of the intercontinental rail system. Even if these hurdles are overcome, there are significant upgrades necessary to reach American Canyon (actual interconnection with the national rail network). The line north of Windsor is embargoed. The line from Cloverdale to American Canyon is owned by a commuter rail service (SMART). There is no evidence of sufficient rail traffic to justify the substantial rehabilitation costs necessary to restore the line south of Willits. And even if the line could be physically restored, the number of operators with whom interchange must be made to reach the national rail system is non-trivial and would make for even higher operating costs and freight delivery costs.
3. **Longer Transport Time.** If the rail line is renovated to a condition that supports freight transport, transport time across the 40-mile distance from Fort Bragg to Willits would be approximately six hours as the train speed would be limited to eight miles/hour. Trucks take 45 minutes to an hour to traverse this same distance, making rail freight haul time inconvenient for all potential customers and uncompetitive. Train speed from Willits to Cloverdale would result in a 4-hour trip for that leg of the journey. The result is a ten-hour trip by rail from Cloverdale to Fort Bragg versus a 1 hour and fifty-minute trip by truck.
4. **More Transfers & Material Handling.** Commodities shipped via rail will have to be shipped via truck to the rail line, transferred to the rail line and upon arrival, transferred again to a truck for transportation to the final destination. While this is typical for most rail transport, the very short distance of this line (86 miles) makes the extra material handling especially prohibitive.
5. **Long-Term Reliability Concerns.**
    a. The Skunk Train is a very old railroad, built between 1885 and 1911, with a track that is technically challenging. The track extends up the Noyo River headwall with a 3.3 percent grade and has five 33-degree horseshoe curves and climbs 932 feet (284 m) in its initial railway distance of 6.5 miles (which is only 1.5 miles as the crow flies). The very steep mountains coupled with significant track curves, means that the train must travel very slowly.

b. The tracks cross 30 single bridges and trestles and pass through two deep tunnels (one of which is closed due to tunnel collapses in 2013 and 2016). Mendocino Railway has attempted to fix the tunnel with no success. Mendocino Railway has repeatedly sought and been denied government subsidies to fix the tunnel and the tracks.

6. **Scheduling Conflict.** The Skunk Train business model is currently entirely focused on short tourist excursions. Tourist excursions run daily from both Fort Bragg and Willits through the summer months and on the weekends in the off season. It is likely that the Skunk Train would need to run freight trips at night to avoid track conflicts with the tourist trains. However, night train trips are more likely to face difficulties and would further delay transport and result in night-time loading and unloading. All of these issues add to unreliability over the short term.
7. **Historic Freight Operations and Current Legal Limitations.** From 1921 into the late 1980s, the railroad's freight consisted almost entirely of raw and finished redwood lumber. By the 1980s Georgia-Pacific started to shift lumber shipments to the more flexible highway truck system. By the 1990s, Skunk Train lumber shipments numbered fewer than 500 railcars/year and tourist entertainment became the line's main source of revenue. All freight service was discontinued in 2001, and the Federal Railroad Administration's emergency order in 1998 effectively cut the rail line off from the national rail network.
8. **Charm.** The railroad offers historic charm; however, this historic charm is mostly a selling point for tourism operations and would not be important to freight operations.

8. Conclusion

Due to the short haul distances and competition from trucks, there is insufficient actual demand for rail freight transport to fund the significant capital investment required to improve the rail line segments necessary for the rail freight, let alone maintain and operate them. The rail lines, if rehabilitated for freight, would not be able to recover their capitalization costs with earned income. They would presumably go bankrupt, as California Western did before its assets were acquired by Mendocino Railway in bankruptcy, and as Eureka Southern did before its assets were acquired by NCRA in bankruptcy. Mendocino Railway has three more likely economic rationales for filing trying to pass as a viable freight railway.

1. **Unregulated Land Development.** The Skunk Train (Mendocino Railway) is currently engaged in a lawsuit with the City of Fort Bragg to determine if the Skunk Train is exempt from local land use regulations due to the Interstate Commerce Act. The Skunk Train has recently acquired 300 acres of coastal property, located within the City of Fort Bragg, from the Georgia-Pacific corporation. This site is vacant and awaiting rezoning and redevelopment. The Skunk Train owners have asserted their exemption from local and State regulatory control based on federal preemption of local regulation of railroads. However, local and State authorities (California Coastal Commission) regard Mendocino Railway as a tourist excursion operation whose plans for residential and mixed-use development are regulated by local government. The Skunk Train may be making its freight claims to buttress its claim of exemption from local and State land use regulations. The eventual redevelopment of these 300 acres of prime coastal real estate has significant potential economic value, especially if the developer can evade the local regulatory process, the State regulatory process (the entire parcel is in the Coastal

Zone) and the significant environmental cleanup mandated for the Mill Site by the Department of Toxics and Substance Control (DTSC).

2. **Access to Federal Funding.** The Skunk Train has been seeking funds to repair its tourist train tunnel and tracks for many years. Mendocino Railway has repeatedly submitted grant and loan applications with highly inflated potential freight business to get funding to fix a line which is currently used only for tourist excursions and will continue to be used only for tourist excursions given the feasibility analysis in this report. There is no Federal funding source for rail line improvements for tourist trains. By inflating its potential freight business, the Skunk Train makes an economic argument for Federal funding to repair a tourist excursion line. Claims of the freight operations may bolster Mendocino Railways efforts to portray itself as a bona fide freight carrier rather than a rail bike and excursion train operation. Mendocino and an affiliated company **are currently under consideration** for a $31.3 million low-interest loan from the U.S. Department of Transportation.
3. **Self-Dealing.** In past applications for government assistance, Skunk Train proposed using its own or affiliated equipment and work force to do work. This may allow Mendocino Railway to profit from managing and undertaking the construction itself.
4. **Eminent Domain Powers to Acquire Land.** The Skunk Train has used the threat of eminent domain to purchase, at a below market price of $1 million, a 300+ acre ocean front property in the City of Fort Bragg and a 16 acre site in Willits.

In conclusion, the Skunk Train benefits from the fiction that they are a freight railroad on many fronts:

1) It may be viewed as support for their federal preemption of state and local regulation for their real estate development activities in Fort Bragg and Willits;
2) It may support their efforts to access Federal funding which would otherwise not be available to fix the collapsed tunnel and repair the old rail line for their tourism excursion train; and
3) It may provide opportunities to profit from the rail repair project itself.

Appendix A: Demand For Rail Freight Between Fort Bragg and Willits

This section provides an overview of potential freight demand for the transport of raw materials and products which are currently produced or consumed on the Coast. It explores the following specific commodities: aggregates, hops, beer, latex, solid waste, and timber. All these commodities have been suggested by Mendocino Railway as viable freight customers in past grant applications to the Federal Government or in conversation with Fort Bragg City Staff. In a 2018 Build Application, Mendocino Railway identified demand for 514 rail car service/year for a $16,893,231 project that included a BUILD grant request for $8,510,222 (Table 8). This grant application was denied. Mendocino Railway prepared another grant application to BUILD in 2019 for a $24,849,950 project which was also denied (Table 9). And Mendocino Railway prepared another grant application to Build in 2020 for $18,779,790, which was also denied. In each of these applications Mendocino Railway makes various claims about the amount of potential freight business that would open up if the railroad could operate a freight line, for example: "Various industries are eagerly awaiting the reopening of MR's rail line for freight services, including Flowbeds, North Coast Brewing Company ("NCBC"), Willits Redwood Company, Geo Aggregates, Mendocino Land Trust, Lyme Redwood Forest Company, ER Energy (propane), the City for transportation of water and municipal solid waste ("MSW")." The specific tons of freight claimed in these BUILD applications is noted in Tables 8 and 9 below.

Table 10: Mendocino Railway 2018 Build Application: Claimed Freight Amount

Commodity	Truck Loads	Railcars	Tons
Hops	450	225	22,500
Beer	550	275	27,500
Latex	28	14	1,400
Total	**1,028**	**514**	**51,400**

Source: Mendocino Railway Build Grant 2018

Table 11: Mendocino Railway 2020 Build Application: Claimed Freight Amount

Commodity	Truck Loads	Railcars	Tons
Hops	450	225	22,500
Beer	550	275	27,500
Latex	28	14	1,400
Solid Waste	5,000	2,500	250,000
Total	**6,028**	**3,014**	**301,400**

Source: Mendocino Railway Build Grant 2020

The author of this feasibility study also submitted these grant applications by the City of Fort Bragg on behalf of Mendocino Railway in 2018 and 2019. At that time, as Community Development Director for the City of Fort Bragg, she also completed an economic impact analysis for the proposed project. However, the estimated freight demand, which formed the basis for that economic analysis was provided by the Harts (Skunk Train owners) and was not independently verified. In the sections that follow, MJC has tried to independently verify these numbers by speaking directly with the business owners and candidly have found the Harts' numbers to

be fabrications and certainly no longer valid. Actual potential rail demand, based on recent interviews with potential shippers is only 300 tons, or 3 railcars, per year as illustrated in Table 10 below.

Table 12: Mendocino Railway Actual Annual Potential Freight Demand

Commodity	Truck Loads	Railcars	Tons
Hops	-	-	-
Beer	-	-	-
Latex	12	3	300
Solid Waste	-	-	-
Total	**12**	**3**	**300**

Source: MJC, 2022: interviews with business owners

There is little market support for freight rail service from Willits to Fort Bragg, amounting to less than 300 tons or 3 railcars per year in Latex products.

Beer & Hops

This study finds no demand for rail freight for beer or hops. Fort Bragg is home to the North Coast Brewing Company, which is located immediately adjacent to the Skunk Train's parking lot.

- In 2018/19 the Mendocino Railway submitted Federal BUILD grant applications which indicated market support for rail transportation of 22,500 tons of hops (225 train cars) and 27,500 tons of beer (275 train cars). However, the North Coast Brewing Company has a maximum brewing capacity of 90,000 barrels of beer per year due to a use permit limitation. Ninety thousand barrels of beer weighs 5,895 tons (58 railcars), significantly less than the railcars submitted in the 2018/19 BUILD grant applications.
- MJC spoke with Brewery CEO, Jennifer Owen, who indicated that train freight is not a viable freight solution for the Brewery. The Brewery requires immediate and highly reliable service for delivery of hops to the brewery and the transportation of finished product to customers. Train freight service is not feasible because it is too expensive, unreliable, unavailable, takes too long and does not provide immediate service for the highly perishable products. The brewery CEO indicated that the Skunk Train would never be a viable option for freight services for these reasons.

Latex

There is very limited demand for Rail Freight for latex and no compatibility at this time. Fort Bragg is home to a relatively small latex bed manufacturer called Flowbeds.

- In 2018/19/20 the Mendocino Railway submitted Federal BUILD grant applications which indicated market support for rail transportation of 1,400 tons of latex (14 train cars) per year. However, the owner of Flow Beds, Dave Turner, told MJC that they use only 6 truckloads of latex per year (3 railcars), again significantly less than the tonnage submitted in the 2018/19 BUILD grant applications.
- The owner is interested in a competitively priced railroad-based shipping for his latex raw materials, only if the Skunk Train becomes connected to the interstate system, as latex is a delicate product and

suffers from multiple handling. Currently he ships one truck load of latex to his manufacturing facility in Fort Bragg from Texas for $4,000 per load every two months. Rail service would have to be comparably priced to be considered. Additionally, they order one truck load every two months, and would have to be able to similarly ship the equivalent amount (a half railcar) via rail every two months for rail service to be a viable solution.

Solid Waste

- As the Mendocino community has a relatively small population it also produces a relatively small amount of Solid Waste. According to C&S Waste Solution, the franchise operator for all solid waste collection in Fort Bragg and the unincorporated areas of Mendocino County, the coast produces two to three truckloads of solid waste a day (about 1 railcar/day or 300 railcars/year). C & S Waste solution is prohibited by its State License from hauling more than 99 tons of solid waste and recyclables per day. This is much less than the amount identified in the Mendocino Railway's 2022 build application, which claimed 2,500 rail cars/year.[8]
- By State law, solid waste must be transferred to a solid waste processing facility within 24 hours of collection. The solid waste processing facility for C&S waste solution is in Ukiah, CA.
- Rail transportation is unrealistic for solid waste because it would require extra handling (two truck trips for each train trip), would take too long (8 hours by train plus handling time for transfers to truck in Ukiah), would not likely provide the State mandated required daily service (insufficient other freight business to justify a daily train trip for one railcar of solid waste) and would be too expensive at over $809/ton.
- Finally, C&S Waste has an existing company fleet which provides this freight transportation.

Timber

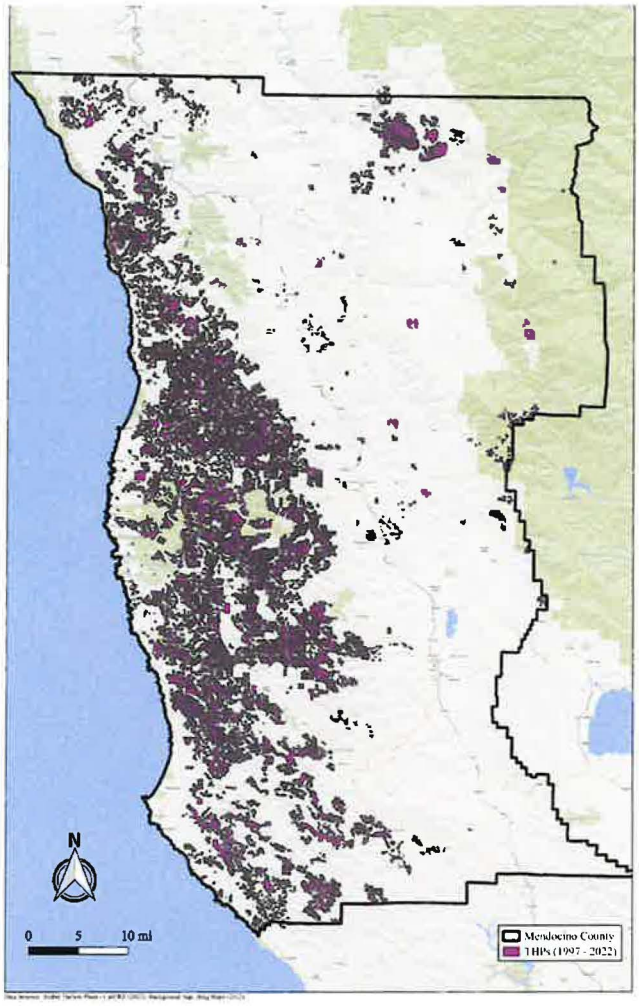
In the 2020 Build Application, Mendocino Railway made the claim that 3,000 annual truckloads of timber commodities could be diverted from freight trucking to rail freight. However, they provide no evidence for this assertion. More importantly, it is operationally infeasible to ship timber by rail. As noted in Figure 9, which maps all approved timber harvests between 1997 and 2022, the timber harvests covered 422,915 acres and are distributed over a wide geographical range throughout the County, many are very remote to the rail line.

- Felled timber is currently loaded into short haul trucks at the timber harvest site and then brought to a mill where it is offloaded and sawn into trim, beams, decking and fencing. There are no active lumber mills on the Mendocino Coast. Lumber mills are located in Willits (east), Calpella (east), Ukiah (east), and Philo (southeast).
- The current process includes loading timber onto trucks and driving from 1 to 1.5 hours to one of the mills located in the inland part of the County.

[8] 2020 Build Application, footnote 7 on page 2; Michael Rodriguez, City of Fort Bragg California's BUILD 2020 Grant Application to Rebuild Mendocino Railway's ("MR") Tunnel, Rehabilitate and Improve Safety Over Its Rural Rail Line, and Reinvigorate the Economy. Benefit Cost Analysis, Page 6.

- To ship by rail the process would include: 1) load timber into trucks and drive to the rail line; 2) unload the timber from the trucks onto the train; 3) transit on the train for 6-8 hours to a mill; 4) unload timber from the train onto trucks; 5) transit on trucks to a mill.
- Rail freight is impractical for the transport of timber on such short hauls to local mills. Mill Operators will continue to utilize trucks because the travel distance, time and cost are less than by rail.

Figure 5: Timber Harvests, Mendocino County 1997-2022



Aggregates

Aggregates are not a good freight component for Mendocino Railway, due to a variety of issues including: the high cost of rail transport, competitive pricing of truck delivery, and the diverse locations for more than sufficient aggregate supply. It should be noted that as recently as 2020, Mendocino Railway did not consider aggregates a likely freight customer as it was not listed in any BUILD grant applications. Transportation is a major part of the cost of aggregate to the consumer. Aggregate is a low-unit-value, high-bulk-weight commodity, and it must be obtained from nearby sources to minimize both the dollar cost to the aggregate consumer and other environmental and economic costs associated with transportation. This makes the mining of aggregate much more competitive than most other mined commodities. The location, distance to market, and access to major transportation routes greatly influence the economic feasibility of an aggregate mine. Most aggregate in California moves to its final point of use by truck. Trucking is typically charged at an hourly rate and rates vary in different regions of the state. Transportation cost is the principal constraint defining the market area for an aggregate mining operation and the cost of transporting aggregate over long distances can equal or exceed the base cost of the aggregate. The cost of construction aggregate – a low-unit-value, high-bulk-weight commodity – is heavily dependent on the distance it must be hauled from its source.[9]

Cost of Transport Truck Versus Train.

Truck. In Mendocino County the cost to transport aggregate via truck varies from $145 to $175/hour and averages $154/hour (Table 11). Delivery costs include the time to load the truck, drive to the delivery location,

[9] John P. Clinkenbeard and Fred W. Gius, Aggregate Sustainability In California: Fifty-Year Aggregate Demand Compared to Permitted Aggregate Reserves, 2018

unload the truck and return the truck to the gravel supplier's yard. Table 11 illustrates delivery costs to the Coastal market in 2022.

Table 13: Aggregate Price & Delivery Cost, Fort Bragg CA 2022

Mendocino County: Aggregate Suppliers, Price and Delivery Costs To Fort Bragg (2022)										
Company	Products	Service Area	Price/ Ton Drain Rock	Price/ Ton Road Base	Truck Size (tons)	Delivery Cost/ Hour	Delivery Time (minutes)	Delivery Cost to Fort Bragg	Delivery Cost/Ton	Cost/Ton Delivered to Fort Bragg
GeoAggregates	Sand & Gravel, Concrete	Mendocino County	$ 51.00	$ 20.50	24	$ 145.00	30	$ 72.50	$ 3.02	$ 54.02
Kibesillah Rock Co	Sand & Gravel	Coast	$ 25.00	$ 19.50	24	$ 145.00	64	$ 154.67	$ 6.44	$ 31.44
Greenwood Aggregates Inc	Sand & Gravel, Concrete	Mendocino County	$ 26.99	$ 17.99	24	$ 155.00	129	$ 333.25	$ 13.89	$ 40.88
Nor-Cal Recycled Rock & Aggregates	Sand & Gravel, Ready Mixed Concrete	Inland	$ 34.50	$ 20.00	no delivery					
Grist Creek Wylotti	Sand & Gravel	Inland	$ 30.00	$ 20.00	24	$ 155.00	164	$ 423.67	$ 17.65	$ 47.65
Northern Aggregates Inc	Sand & Gravel Concrete Contractors General	Mendocino County	$ 21.50	$ 19.50	24	$ 155.00	128	$ 330.67	$ 13.78	$ 35.28
Granite Construction Co	Sand & Gravel Concrete	Mendocino County	$ 30.00	$ 15.00	24	$ 170.00	180	$ 510.00	$ 21.25	$ 51.25
Average Cost all Sources to Fort Bragg			**$ 31.28**	**$ 18.93**		**$ 154.17**		**$ 304.13**	**$ 12.67**	**$ 43.42**
Average Cost from Inland Sources to Fort Bragg			$ 29.00	$ 18.63	24	$ 160.00	125	$ 333.33	**$ 13.89**	$ 42.89
Average cost from Fort Bragg Sources to Fort Bragg			$ 38.00	$ 20.00	24	$ 145.00	47	$ 113.58	**$ 4.73**	$ 42.73

Source: MJC, 2022: data collected via phone interview with company sales people

- On average, truck transport costs are based on a 125-minute delivery from Willits to Fort Bragg including loading, delivery, unloading and return time. By comparison a local delivery is just 47 minutes from a Fort Bragg supplier, when it includes loading, delivery, unloading and return time.
- Total truck delivery costs for 24 tons of aggregate to Fort Bragg range from a low of $72.50 for GeoAggregates (which is owned by Grist Creek/Wylotti) to a high of $510 for Granite Construction, which is located the furthest from Fort Bragg. However, Northern Aggregates and Kibasilah Rock are the cheapest overall sources of gravel in Fort Bragg at $34.73/ton and $31.44/ton respectively, when the total cost of the gravel and delivery is considered together.
- All six aggregate suppliers provide competitive pricing for gravel delivery to Fort Bragg. The average cost amongst all suppliers for a delivered ton of drain rock is $43.42.
- The average cost of delivery is $12.67/ton although the cost of delivery for local suppliers is much lower at $4.73/ton.
- Rock from Kibesilah Rock Co is quarried less than 15 miles from Fort Bragg, for an average delivery cost of $6.44/ton to Fort Bragg, which is 6% of the cost of delivery via train at $110/ton ($8,090/railcar @ 80 tons/ railcar).

This is a very competitive market for aggregate pricing. There is no space in this market to support the extra handling and delivery costs that would be required for rail freight as detailed in the section below.

Train. Aggregate delivery by train would be significantly more expensive than delivery by truck to Fort Bragg as previously analyzed in table 6.

Conclusion

There is a no market for rail-based freight transportation services between Fort Bragg and Willits. There is not sufficient market demand to support the operation cost or the capitalization costs of repairing the existing rail line. Through actual contact with potential rail freight customers, MJC identified exactly one potential customer with an annual demand for 3 rail cars and with the caveat that service would only be workable if the line was connected to the interstate railroad system. Mendocino Railway has no connection to the interstate rail system.

Appendix B: Rail Vs Truck Freight Market Share and Trends in the US

This Appendix examines general transportation trends Nationwide, which indicate that rail service is generally not competitive with truck transport. This is especially true for short haul distances such as Longvale to Willits (15 miles) and Willits to Fort Bragg (40 miles).

Freight Modes Overview

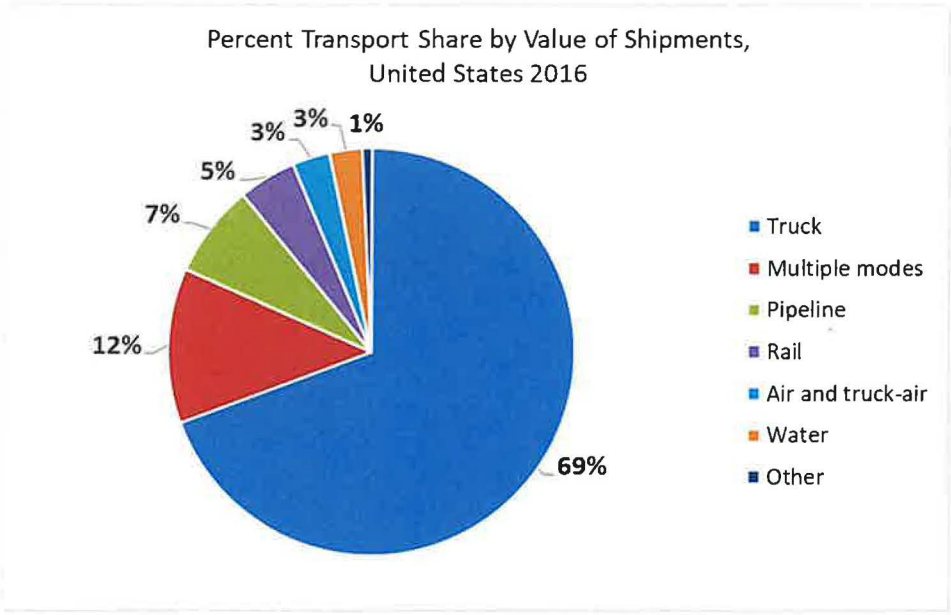
Freight is moved by rail, waterways, pipeline, truck, and air throughout the United States.

According to the US Department of Transportation, more freight is shipped by Truck within the United States than any other mode. As noted in Table 1, truck shipments accounted for $12,578 billion dollars of shipment value while rail shipped $837 billion worth of goods in 2016.[10]

Value of Shipments by Freight Mode ($billions)

Value of shipments (billions of constant 2012 dollars)

Mode	2012	2016	2045
Truck	12,216	12,579	24,001
Rail	721	837	1,629
Water	431	477	872
Air and truck-air	674	539	3,208
Pipeline	1,325	1,339	1,901
Multiple modes[a]	2,122	2,230	4,970
Other[b]	241	141	484
Total	**17,729**	**18,142**	**37,064**



Another way to think about these numbers is illustrated in Chart 1, which indicates that 69% of the value of all freight shipments is by truck, while 5% of the value of all shipments is by rail.

[10] *U.S. Department of Transportation, 2019 Pocket Guide to Transportation, Page 19*

Trucks also ship more by weight. In 2016 the total weight of truck shipments was 11,619 million tons, while all goods shipped by rail weighed in at 1,835 million tons. By weight Trucks ship 66% of all goods, while railroads ship 10% of all goods. Rail is twice as likely to ship heavy commodities than other items within the US. However, by weight trucks still ship significantly more than rail overall.

Weight of Shipments by Freight Mode (million tons)

Mode	2012	2016	2045
Truck	10,711	11,619	16,435
Rail	1,828	1,835	2,277
Water	658	740	945
Air and truck-air	7	5	26
Pipeline	3,031	2,904	4,766
Multiple modes[a]	418	486	800
Other[b]	342	97	273
Total	**16,996**	**17,686**	**25,521**

Rail is competitive with truck freight only in "ton miles traveled." Trucks ship 40% of all ton miles traveled (2,023 billion) while trains ship 28% (1,527 Billion) of all ton miles. This illustrates that rail is slightly more competitive for long haul interstate travel of heavy bulk items. Heavy freight such as coal, lumber, ore that are going long distances are slightly more likely to travel by rail, or some combination of truck, rail, and water. Trucks with more flexible routes and scheduling are much more competitive for shorter-haul and medium-haul goods, although many interstate trucks also ship significant goods around the county.

Ton-miles of Shipments by Freight Mode

Mode	2012	2016	2045
Truck	1,891	2,023	3,282
Rail	1,481	1,427	1,776
Water	323	354	419
Air and truck-air	6	6	21
Pipeline	857	896	1,414
Multiple modes[a]	339	398	765
Other[b]	7	3	16
Total	**4,903**	**5,108**	**7,692**

[a]Includes mail. [b]Includes other, unknown, and imported crude oil with no domestic mode.

Notes: Details may not add to totals due to rounding. Includes domestic trade and the domestic portion of imports and exports.

Source: U.S. Department of Transportation, Bureau of Transportation Statistics and Federal Highway Administration, Freight Analysis Framework, Version 4.4.1, available at www.bts.gov as of November 2018.

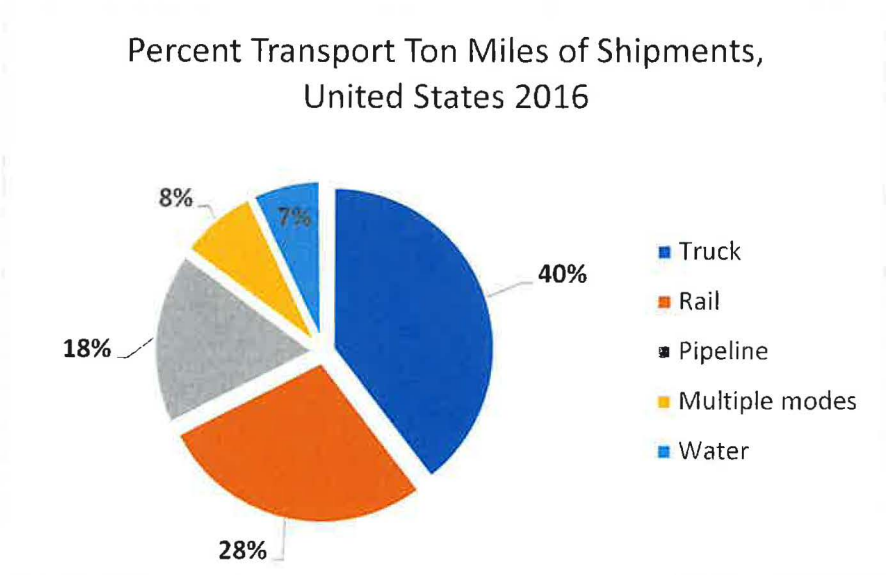


Table 14: Freight Tons Moved by Mode and Distance, United States, 2023

Weight of freight by mode and distance

Chart Data

Weight of freight by mode and distance

Year: 2023

Tons (millions)

Mode

Year	Distance band (miles)	Pipeline	Rail	Truck	Water	Air (includes truck-air)	Multiple Dms Modes and Mail
2023	1,000 - 1,499	137	267	221	83	0.1%	14.6%
	1,500 - 2,000	4	104	92	19	0.2%	16.3%
	100 - 240	1,555	305	5,395	174	0.0%	1.3%
	250 - 499	842	222	1,178	195	0.1%	5.7%
	500 - 749	162	146	302	61	0.1%	11.9%
	750 - 999	166	133	201	44	0.1%	14.2%
	Below 100	942	262	5,652	298	0.0%	0.9%
	Over 2,000	0	51	96	39	0.6%	24.7%

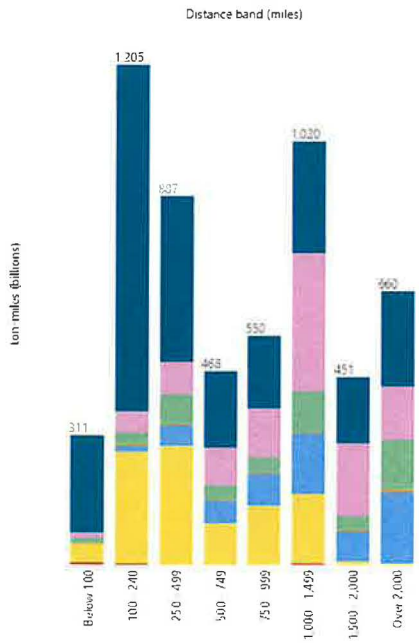
Notes: Multiple modes and mail includes freight that is transferred between two or more modes on the journey between an origin and destination.
Source: U.S. Department of Transportation, Bureau of Transportation Statistics and Federal Highway Administration, Freight Analysis Framework, version 5.5, 2023.
https://www.bts.gov/faf

Ton-miles of freight by mode and distance

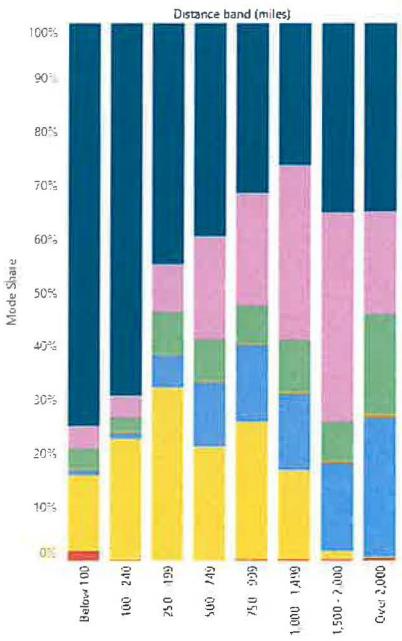
Chart Data

Year: 2023

Total ton-miles



Mode share of ton-miles



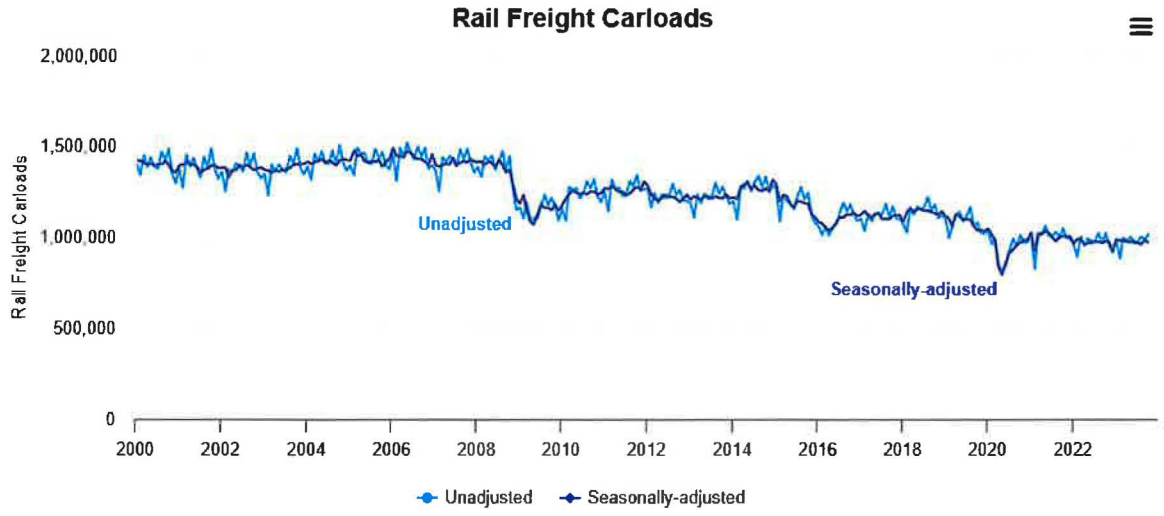
Mode

- Truck
- Rail
- Water
- Air (includes truck-air)
- Multiple Dms Modes and Mail
- Pipeline
- Other and Unknown
- No Domestic Dms Mode

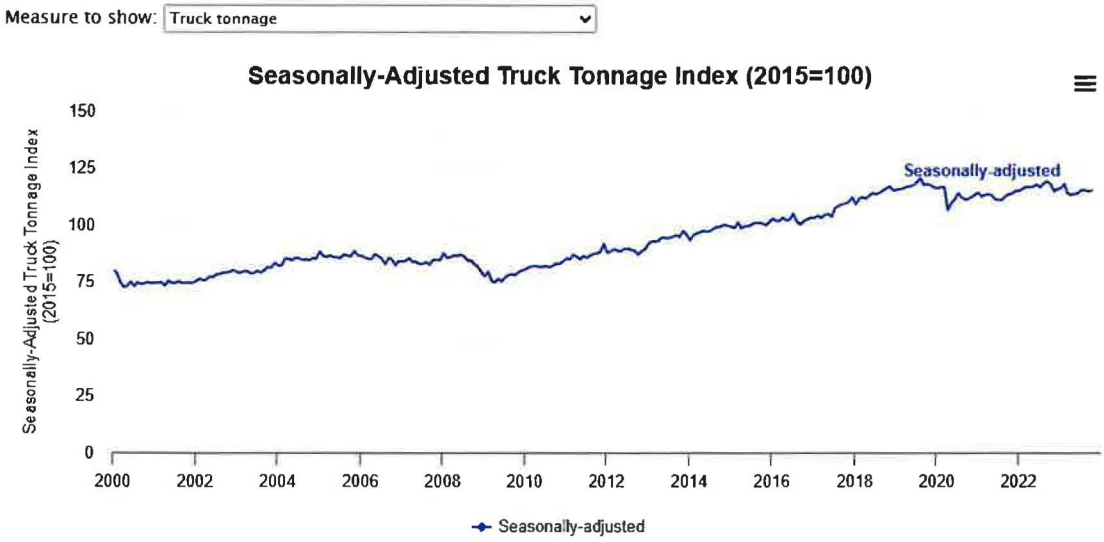
Notes: Multiple modes and mail includes freight that is transferred between two or more modes on the journey between an origin and destination.
Source: U.S. Department of Transportation, Bureau of Transportation Statistics and Federal Highway Administration, Freight Analysis Framework, version 5.5, 2023.

Freight Trends

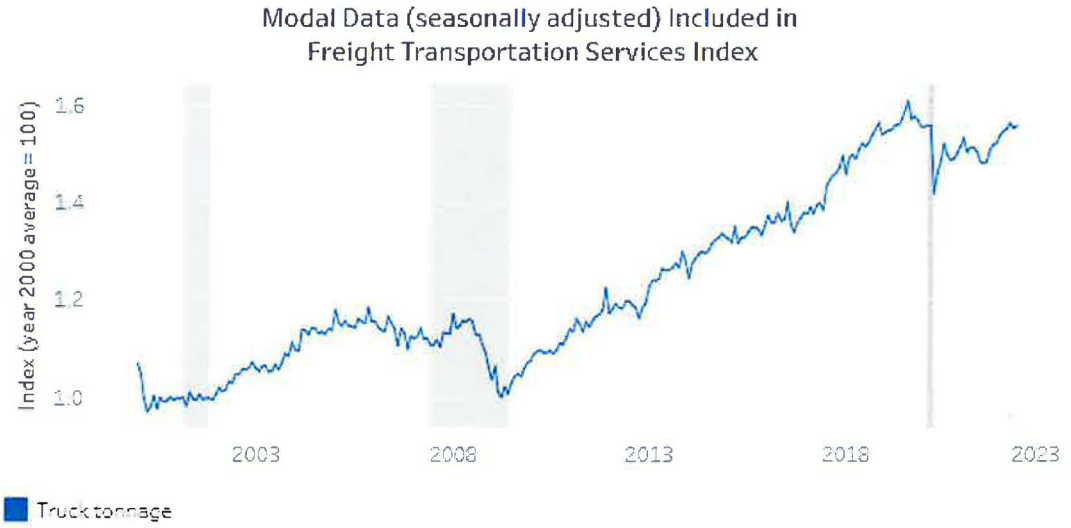
The charts below, excerpted from the U.S. Department of Transportation report *Transportation-as-an-Economic-Indicator*, illustrate a steady decline in the use of rail carloads for freight: overall carloads declined from 1.4 million in 2000 to 970,000 in 2022.



Conversely, there was a significant increase in the tonnage index for freight delivered by trucks: from 80 to 115 million during this same period for a total of 50% growth over the past 20 years.[11]



11 https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator/9czv-tjte



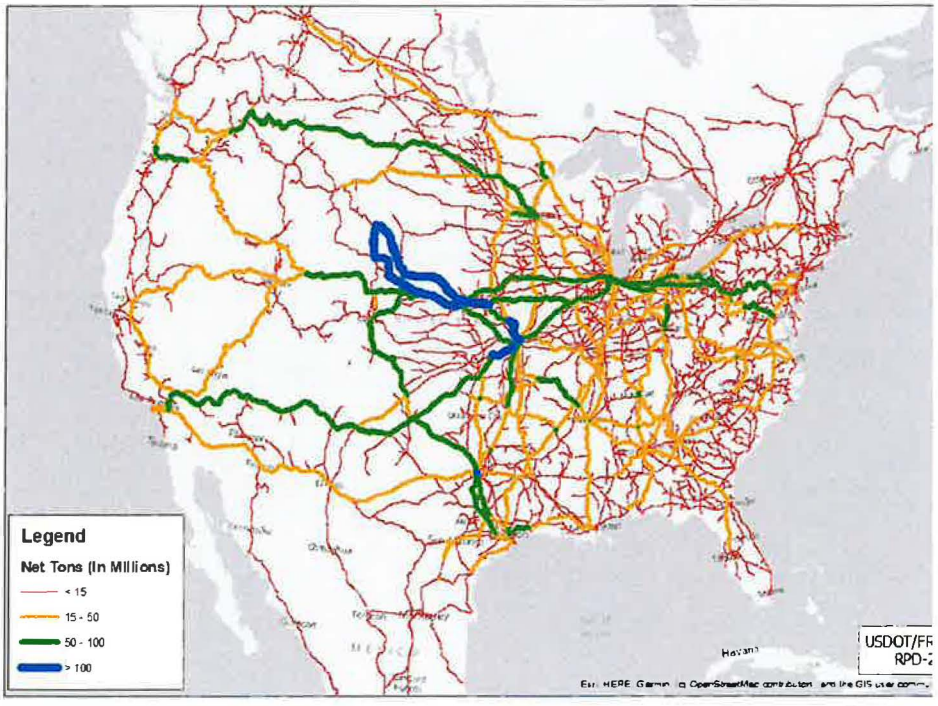
To conclude, overall rail transport continues to decline as a freight delivery method, while truck transport continues to increase.

Rail Freight Activity by Area

This Waybill Sample map shows U.S. rail routes by tonnage of the commodities they carry. As illustrated in the map, rail coverage and use are more common on the East coast and Midwest than it is in the Western United States. Rail coverage in California is relatively sparce, with most rail transport from the western United States, occurring between the major Ports of LA, Oakland and Seattle to the Midwest and east coast.

Other than some limited rail freight on SMART's passenger rail system in southern Sonoma and Marin Counties, there is currently no rail freight service through the Highway 101 corridor of northern California.

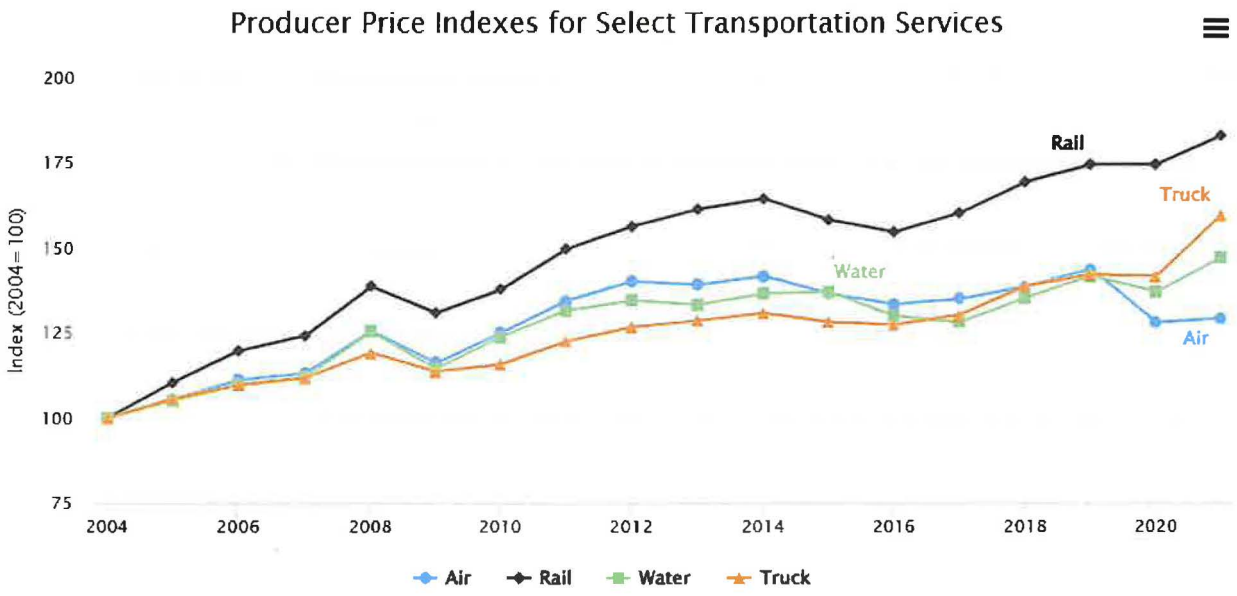
STB Waybill Sample 2018 – All Commodities



The Waybill is a stratified sample of carload waybills for all U.S. rail traffic submitted by those rail carriers terminating 4,500 or more revenue carloads annually. Image created by Federal Railroad Administration, Office of Railroad Policy and Development (Office of Policy), based on Surface Transportation Board's 2018 Carload Waybill Sample.

Truck Vs Rail Pricing

The chart illustrates price trends relative to the 2001 index for each mode of transport. The overall price of all transport options has increased between 2004 and 2020; however, it has increased fastest for rail.[12]



Click on item in legend to remove/add to graph.
Mouse over to view value and percent change from preceeding year.

Show notes and source

[12] Bureau of Transportation Statistics. *Cost of Transportation: Costs Faced by Businesses Purchasing Transportation Services; https://data.bts.gov/stories/s/2yqq-baqd/*

Appendix C: Mendocino County Demographic, Economic & Housing Trends

Purpose & Findings

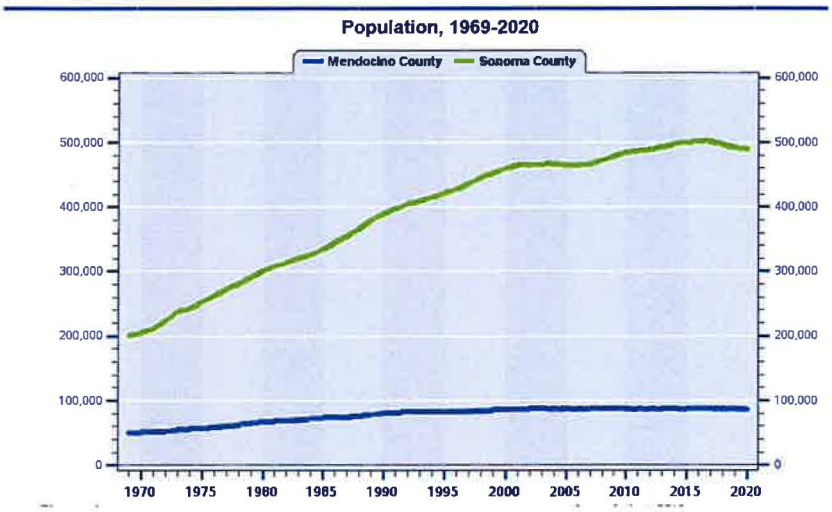
This appendix provides an overview of the Mendocino economy. It includes an overview of demographic, economic and housing trends which have the potential to shape freight business to and from the Mendocino coast.

Demographic Trends

Population

- Overall, Mendocino's population growth is constrained by its remote location, low housing production numbers, and very slow job growth. In 2020, Mendocino's population was 86,061, which is just 0.2% of the State population. Mendocino County's population has remained relatively flat for the past 70 years (Figure 3, blue line).
- By contrast, Sonoma County, which has the closest economic ties to Mendocino County has a total population of 489,819, or 1.2% of the State's population. Sonoma County's population has doubled from 200,920 residents in 1969 to 489,819 in 2020.

Figure 6 Population Growth 1969-2020



- Both counties have large, low-density, unincorporated areas.
- The Mendocino Coast is relatively isolated from inland Mendocino due to the Coast Mountain Range. The Mendocino Coast has a population of around 18,000 residents.

Economy Overview

Gross Regional Product for the two-county region was $35 billion, with Sonoma contributing 87% and Mendocino County contributing just 12% of GDP.

- ✓ Overall Mendocino GDP ranks 38th from the top of California's 58 counties, while Sonoma County's Gross Domestic Product (GDP) ranks 17th.
- ✓ Since 2010, Gross Domestic Product has grown only 0.78%/year in Mendocino (ranked 38 out of 58 counties) while it has grown by 2.59%/year in Sonoma (ranked 17). See Figure 4.

Local Government, Education and Hospitals are the biggest economic sectors of the region in terms of GDP, which is not atypical, as these sectors serve the needs of existing communities. Other large regional economic sectors include Wineries, Crop Production, Instrument Manufacturing, Breweries, Tourism, Insurance, and Electric Power Distribution, while the state as a whole specializes in the tech sector, commercial banking, agriculture and tourism.

Figure 7 Gross Domestic Product, Sonoma & Mendocino County

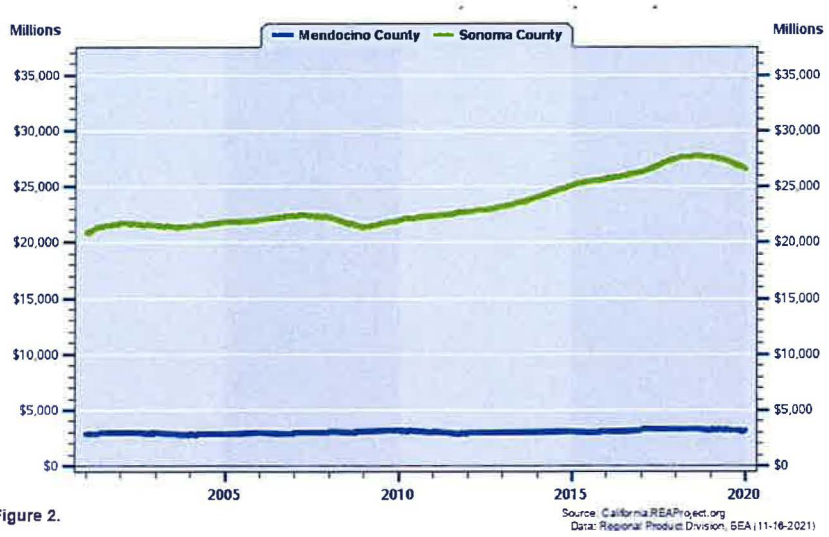


Figure 2.

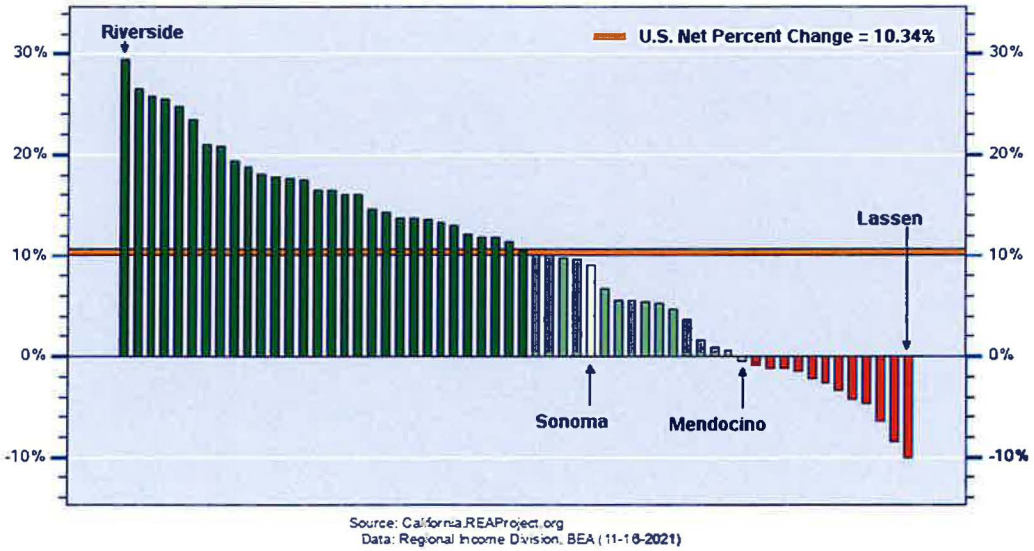
Conclusion: Mendocino's economy is very small and has experienced minor growth in the past 20 years. It provides a small, localized, and somewhat stagnant market for freight services. Currently, all freight services are provided by trucks.

Jobs Analysis

This section explores Mendocino County's job growth in a relative context. The bar chart below portrays all 57 California Counties' job growth over the interval 2010-2020. Some of the most salient highlights include:

- Ranked #46, Mendocino's employment growth (-0.35%) surpassed that of 12 counties and trailed 45.
- Ranked #35, Sonoma's employment growth (9.00%) surpassed that of 23 counties and trailed 34.

Figure 5: Employment Growth by County, 2010 vs 2020, Net Percent Change



Mendocino County's employment change over 2010-2020 of **-0.35**% trailed the **10.34%** growth of employment nationally by **-10.68%**. Accounting for this difference was a local industry mix that included more industries that experienced slower growth (-1.8% or -814 jobs) nationwide, coupled with a large share (-8.89% or -4,026 jobs) of local industries that underperformed their counterparts nationally.

Actual Growth		National Growth		Industry Mix		Regional Shift
-0.35%*	=	10.34%	+	-1.80%	+	-8.89%
(-157)		(4,683)		(-814)		(-4,026)

*Percent growth figures may not add due to rounding by a factor of ± 0.01%.

Table 5 contains the details of shift-share analysis for Mendocino County. It illustrates that Mendocino County underperformed the nation in almost all economic sectors, except for Forestry and Fishing, Utilities, Health Care and Social Assistance, and state government (blue). Declines in Mendocino County employment were particularly stark in Mining, Construction, Finance and Insurance, Professional Scientific and Technical services, Accommodations and Local Government **(red).** These data illustrate that Mendocino's economy is in a period of stagnation with small economic shifts up and down. **The following sectors are particularly of interest for rail freight as they are likely the only sectors that would participate in rail freight from or to the Coast via the Skunk Train (Table 5).**

- **Mining is a very small component of the economy at 0.3% and experienced a significant contraction from 121 jobs in 2010 to 71 jobs in 2020, a decline of 41.32%. Mining in Mendocino County is almost exclusively related to aggregate extraction.**
- Forestry and Fishing experienced a slight increase of 170 jobs (+12.36%) in the ten-year timeframe. Fishing products are not a suitable product for rail transport due to perishability. Forestry is a difficult item to transport via rail because timber harvests are geographically dispersed and transport by rail would require a truck, rail and truck transfer scenario with very large logs. The average transport distance for logs is approximately 40 miles. It is more efficient and less expensive to truck the logs directly to a lumber mill, rather than to truck them to a railhead (Skunk), then load them on a freight car, and then unload them at the other end.
- Manufacturing is a relatively small sector of the Mendocino Coast economy. It represents just 6% of all jobs and experienced a nominal growth of 1.86% during this timeframe.

Table 5: Mendocino County Employment Growth, 2010-2020

Major Industry	Employment 2010 Level	Share[1]	2020 Level	Share[1]	Actual Growth Percent	Net	Standardized Growth[2] Percent	Net	Employment[3] 2020
Farm Employment	**1,967**	**4.3**	**1,581**	**3.5**	**-19.62**	**-386**	**-1.71**	**-34**	**1,933**
Forestry, Fishing, and Related Activities	**1,375**	**3.0**	**1,545**	**3.4**	**12.36**	**170**	**8.46**	**116**	**1,491**
Mining	**121**	**0.3**	**71**	**0.2**	**-41.32**	**-50**	**-25.76**	**-31**	**90**
Utilities	161	0.4	189	0.4	17.39	28	0.67	1	162
Construction	**2,948**	**6.5**	**2,894**	**6.4**	**-1.83**	**-54**	**23.71**	**699**	**3,647**
Manufacturing	2,736	6.0	2,787	6.2	1.86	51	5.91	162	2,898
Wholesale Trade	906	2.0	910	2.0	0.44	4	2.81	25	931
Retail Trade	5,641	12.5	5,429	12.0	-3.76	-212	2.15	121	5,762
Transportation and Warehousing	690	1.5	1,025	2.3	48.55	335	65.85	454	1,144
Information	488	1.1	280	0.6	-42.62	-208	0.68	3	491
Finance and Insurance	**1,369**	**3.0**	**989**	**2.2**	**-27.76**	**-380**	**14.39**	**197**	**1,566**
Real Estate and Rental and Leasing	1,872	4.1	1,842	4.1	-1.60	-30	16.01	300	2,172
Professional, Scientific, and Technical Services	**2,711**	**6.0**	**2,263**	**5.0**	**-16.53**	**-448**	**21.89**	**593**	**3,304**
Management of Companies and Enterprises	224	0.5	242	0.5	8.04	18	31.99	72	296
Administrative and Waste Services	**1,987**	**4.4**	**2,408**	**5.3**	**21.19**	**421**	**12.89**	**256**	**2,243**
Educational Services	490	1.1	447	1.0	-8.78	-43	12.45	61	551
Health Care and Social Assistance	**4,629**	**10.2**	**6,298**	**14.0**	**36.06**	**1,669**	**17.68**	**818**	**5,447**
Arts, Entertainment, and Recreation	1,108	2.4	967	2.1	-12.73	-141	-5.39	-60	1,048
Accommodation and Food Services	**4,009**	**8.9**	**3,665**	**8.1**	**-8.58**	**-344**	**1.62**	**65**	**4,074**
Other Services (except Public Administration)	2,714	6.0	2,769	6.1	2.03	55	7.85	213	2,927
Federal Civilian	333	0.7	290	0.6	-12.91	-43	-1.75	-6	327
Military	173	0.4	156	0.3	-9.83	-17	-9.00	-16	157
State Government	406	0.9	480	1.1	18.23	74	0.56	2	408
Local Government	**6,235**	**13.8**	**5,609**	**12.4**	**-10.04**	**-626**	**-2.33**	**-145**	**6,090**
Total Employment	**45,293**	**100.0**	**45,136**	**100.0**	**-0.35**	**-157**	**8.54**	**3,869**	**49,162**

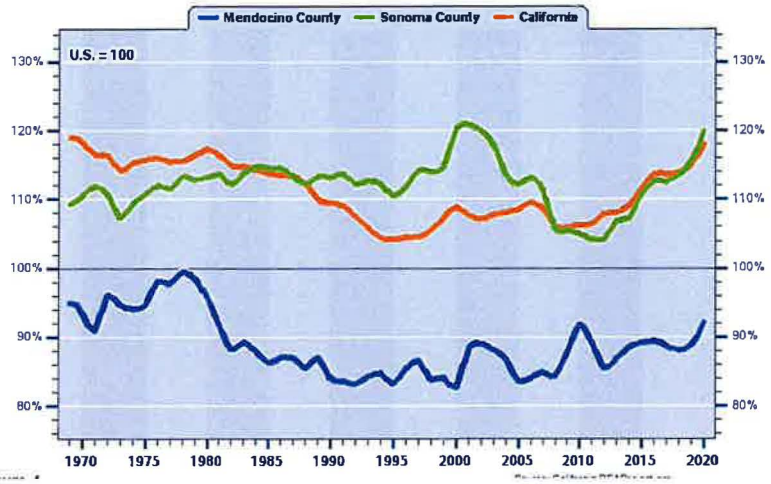
1Share: The percentage share of total employment by industry.
2Standardized Growth: at the same rate as its counterpart at the national level had each industry grown.
3Standardized Employment, 2020: The 2020 level of employment in each industry had it grown at the same rate as its counterparts at the national level since 2010. Note: Percent growth figures may not add due to rounding by a factor of ± 0.01%

Employment, Income & Poverty

Employment growth in Sonoma County averaged 1.52% per year between 2010 and 2020, ranking 28th in California, while employment growth in Mendocino was just 0.51% per year earning Mendocino County a rank of 47th among 57 counties in California. Mendocino County also consistently has higher unemployment rates (6.3% in 2022) than Sonoma (3.5%).

- Mendocino County per capita income has ranged between 85 and 100% of the US average per capita income from 1970-2020, illustrating that the area has struggled economically for decades (blue Lines). By comparison Sonoma per capita income is consistently 110 to 120% of the US average per capita income (Figure 6).
- Median Household Income for Mendocino ($46, 528) ranks 13th from the bottom among California counties, while Sonoma Household Income ($71,386) ranks 13th from the top, again illustrating the divergent nature of these two economies.
- In 2020, the Mendocino County poverty rate was 19.1% (or 1 of every 5 households), while Sonoma's poverty rate was 7.8%.

Figure 6: Per Capita Personal Income as a Percent of the US Average



Housing

Overall, housing production has not kept pace with demand. As illustrated in Table 6, Mendocino housing production averages 148 units/year or a 0.36% annual growth rate. Sonoma County by contrast averages 1,702 new units/year, or 0.83% annual growth.

Implications: New housing production is unlikely to be a significant source of demand for rail freight of products such as aggregates and finished lumber. The population of the Mendocino Coast offers a very small market for such products and grows at a slow pace.

Table 6: Housing Permits and Production, Mendocino & Sonoma County 2014-2023

	Mendocino County	Sonoma County
Timeframe	**6/30/2014 - 6/30/2019**	**1/31/2015 - 1/31/2023**
	Permits	**Permits**
Very Low Income	123	476
Low Income	49	628
Moderate Income	192	765
Above Moderate Income	377	4941
Total Building Permits	**741**	**6810**
Building Permits /year	148.2	1702.5
Total Housing Units	41,055	206,362
% growth Units/year	**0.36%**	**0.83%**

Source: California Housing and Community Development (HCD).

EXHIBIT I

NOTICE OF INTENT TO FILE ADVERSE ABANDONMENT

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

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

The Great Redwood Trail Agency ("the Applicant") gives notice that on or about April 5, 2024, it intends to file with the Surface Transportation Board ("STB" or "Board"), Washington, D.C. 20423, an Application for Adverse Abandonment of a line of railroad that extends between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California ("MR Line"), which traverses through United States Postal Service ZIP Codes 95437 and 95490. There are no stations on the MR Line.

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

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

The application will include the Applicant's entire case for abandonment. The application, when filed, can be viewed on the Board's webpage, www.stb.gov, or a copy can be secured from Applicant's counsel, whose name and address appear below. Any interested person, after the application is filed on April 5, 2024, may file with the STB written comments concerning the proposed abandonment or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the MR Line, the MR Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. § 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. § 1247(d) (§1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application.

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

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

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

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

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

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, should indicate the proceeding designation STB No. AB-1305 (Sub-No. 1). Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the Applicant, Daniel Elliott, GKG Law, 1055 Thomas Jefferson Street, NW, Suite 620, Washington, DC 20007, delliott@gkglaw.com. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Comments or protests need to be notarized or verified, and are required to be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, at 395 E Street, S.W., Washington, DC 20423, together with a certificate of service attesting that copies of the comments or protests have been served on Applicants' counsel in this matter, no later than May 20, 2024.

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

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Comments and protests will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

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

Respectfully submitted,

/s/ Daniel R. Elliott

Daniel R. Elliott
GKG Law, P.C.
1055 Thomas Jefferson St., NW
Suite 620
Washington, DC 20007
(202) 342-5248
delliott@gkglaw.com

Attorney for Great Redwood Trail Agency

March 14, 2024

Certificate of Service

I hereby certify that on this 14th day of March 2024, I caused the foregoing Notice of Intent to be served by First Class Mail or more expedient method on the following:

Governor Gavin Newsom
State of California
1021 O Street, Suite 9000
Sacramento, CA 95814
(By certified mail)

California Public Utilities Commission
300 Capitol Mall, Suite 500
Sacramento, CA 95814

California Department of Transportation
P.O Box 942873
Sacramento, CA 94273-0001
maya.wallace@dot.ca.gov

UCCE-Mendocino County
890 N. Bush Street
Ukiah, CA 95482
cemendocino@ucanr.edu

U.S. Department of Transportation - Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

US Dept. of Defense (SDDCTEA)
Attn: Railroads for National Defense
1 Soldier Way, Bldg. 1900W
Scott AFB, IL 62225

U.S. Department of Agriculture
Chief of the Forest Service
1400 Independence Ave., SW
Washington, DC 20250

U.S. Railroad Retirement Board
844 North Rush Street
Chicago, IL 60611

U.S. Department of Interior
Recreation Resources Assistance Division

1849 C Street, N.W.
Washington, DC 20240

UCCE-Mendocino County
890 N. Bush Street
Ukiah, CA 95482
cemendocino@ucanr.edu

California Department of Transportation
P.O. Box 942873
Sacramento, CA 94273-0001

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

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Humboldt Trails Council
PO Box 7164
Eureka, CA 95502
brucesilvey@humtrails.org

David Schonbrunn
Transportation Solutions Defense and Education Fund
P.O. Box 151439
San Rafael, CA 94915
David@Schonbrunn.org

Danelle Storm Rosati
87 Selby Lane
Atherton, CA 94062
storm@storm1.com

Michael Pechner
North Coast Rails With Trails Coalition
914 Marietta Court
Fairfield, CA 94534
weather@sonic.net

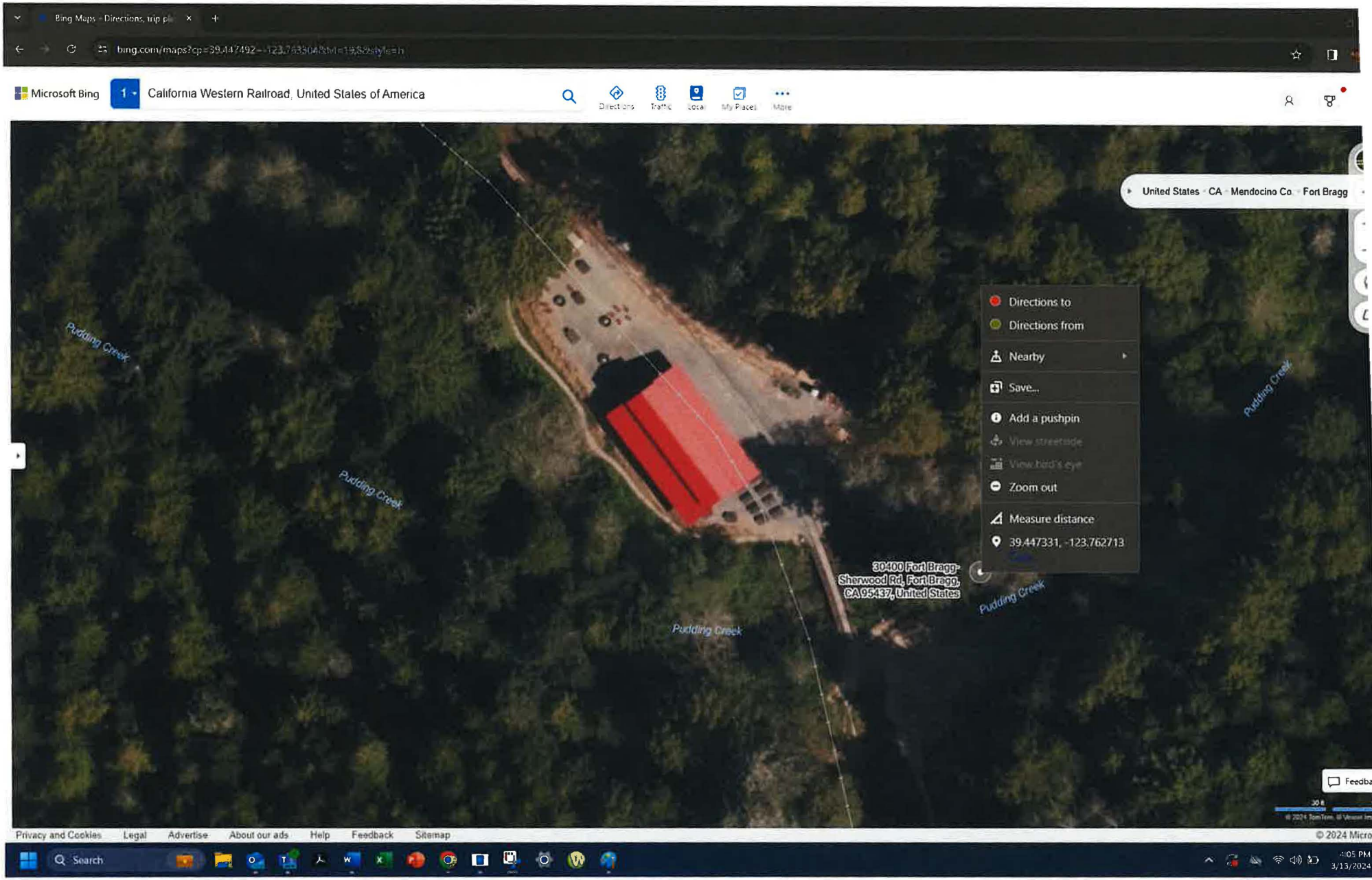
Catherine Julie Golden
P.O. Box 340
Hopland, CA 95449

julie@goldenvineyards.com

Significant Users of MR Line
(Names not revealed in accordance with protective order)

/s/ Daniel R Elliott
Daniel R. Elliott

EXHIBIT J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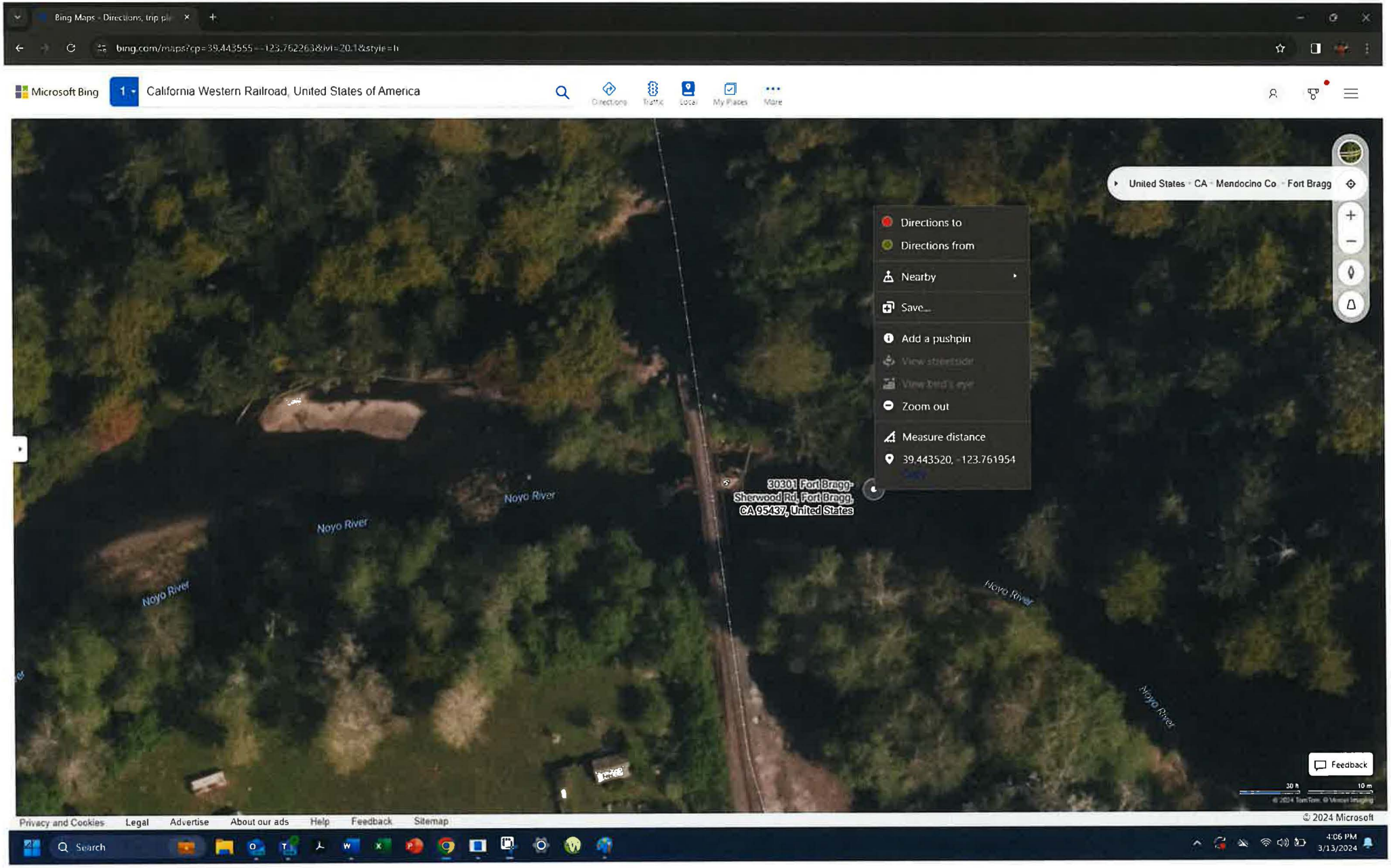
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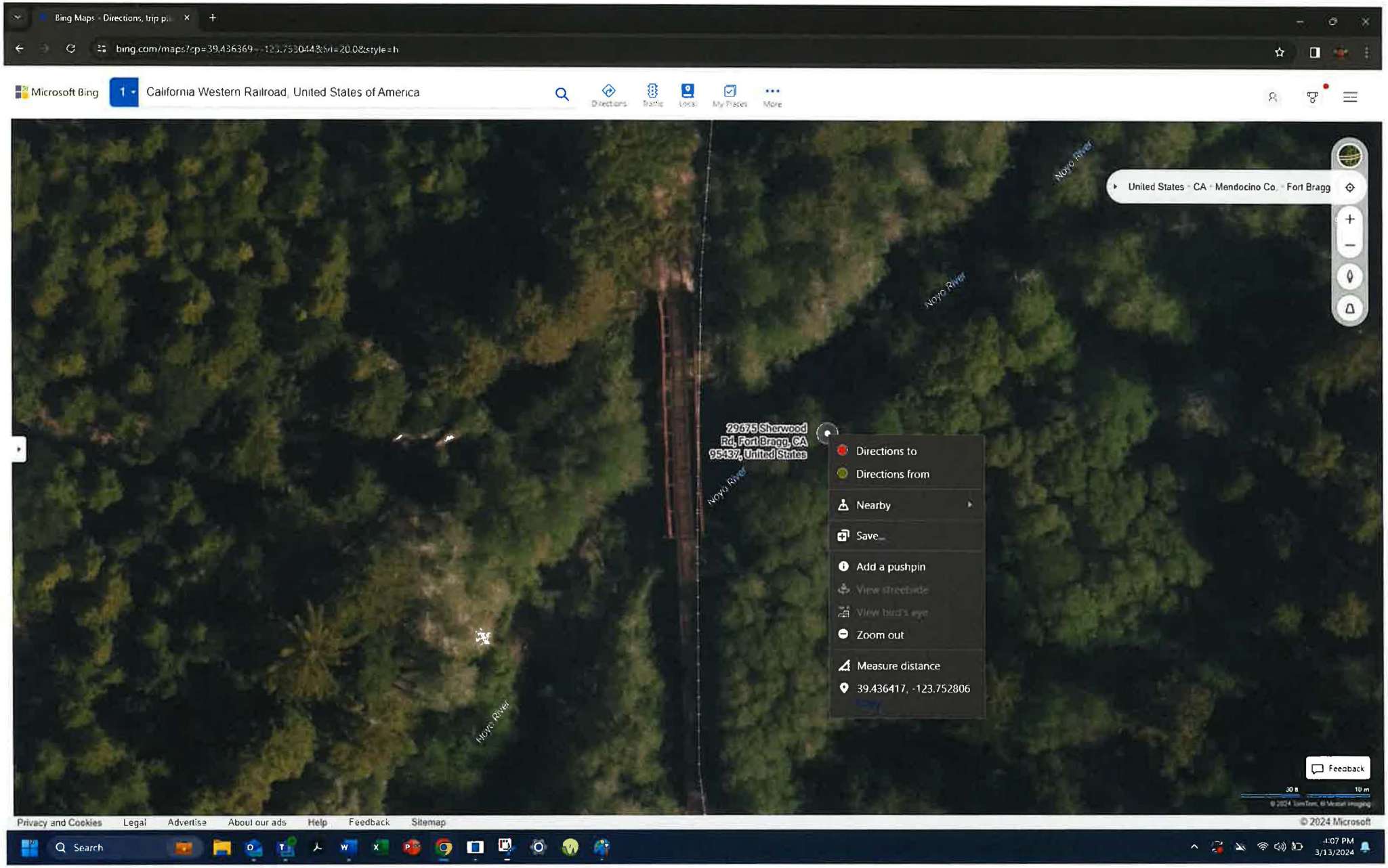
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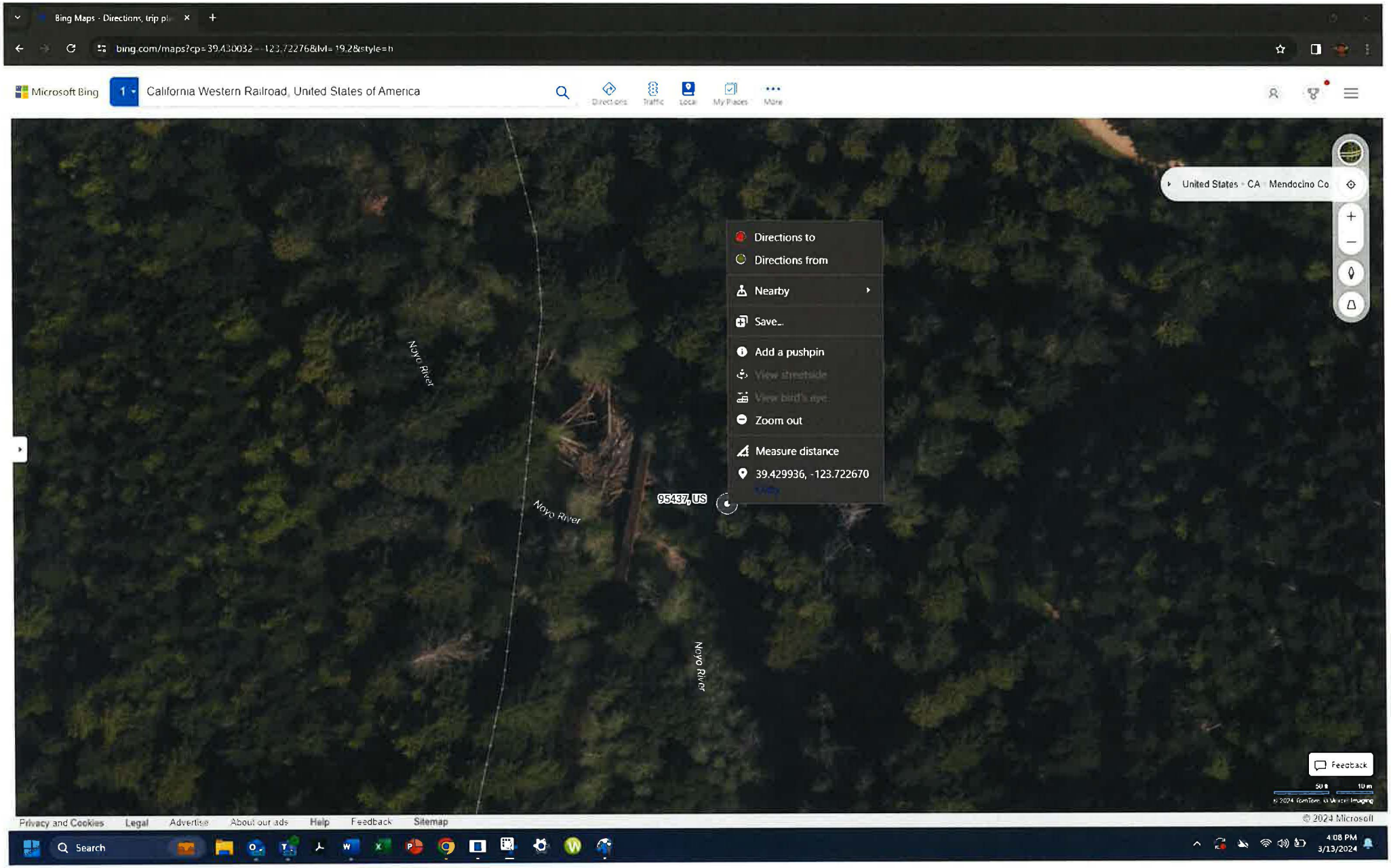
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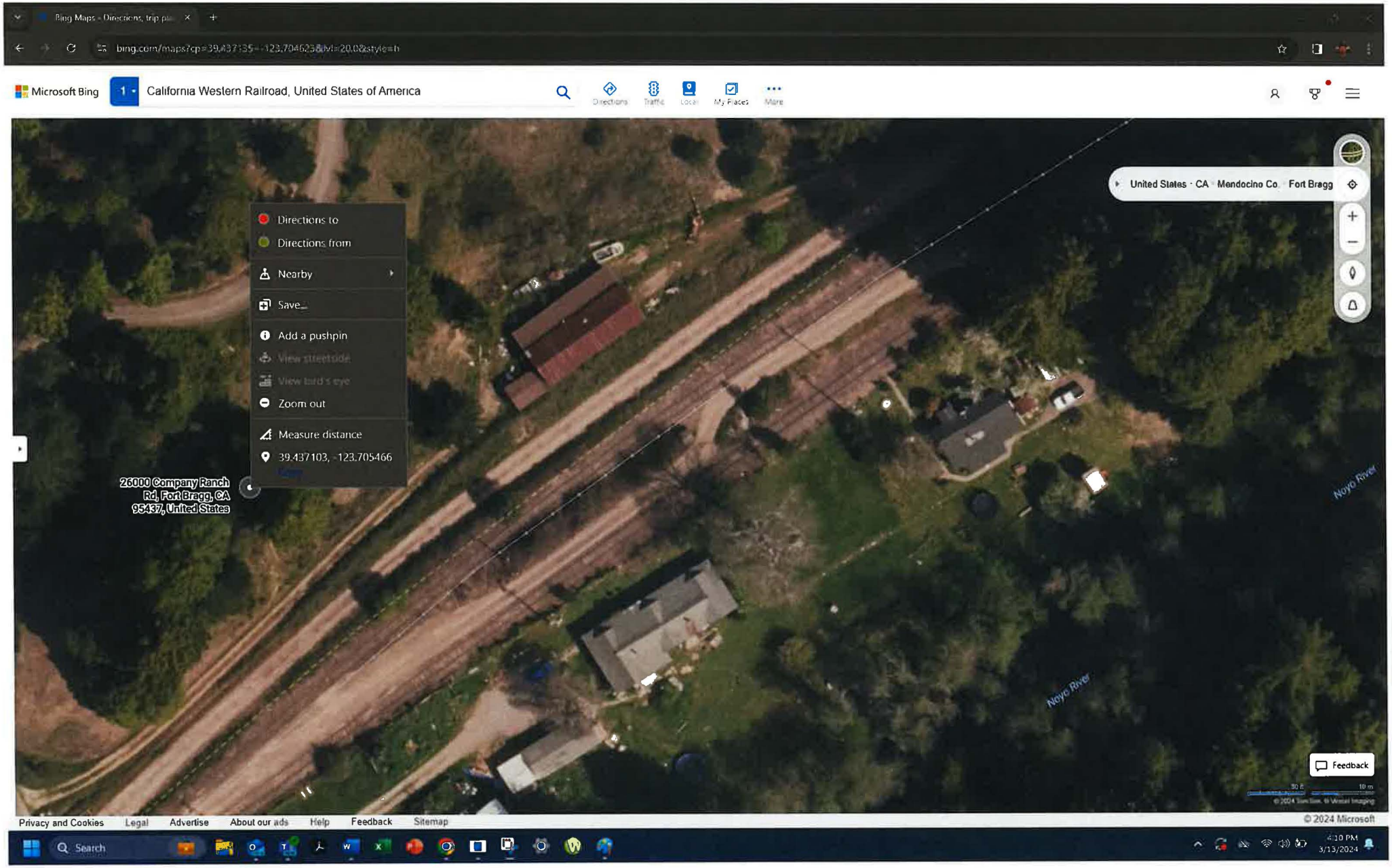
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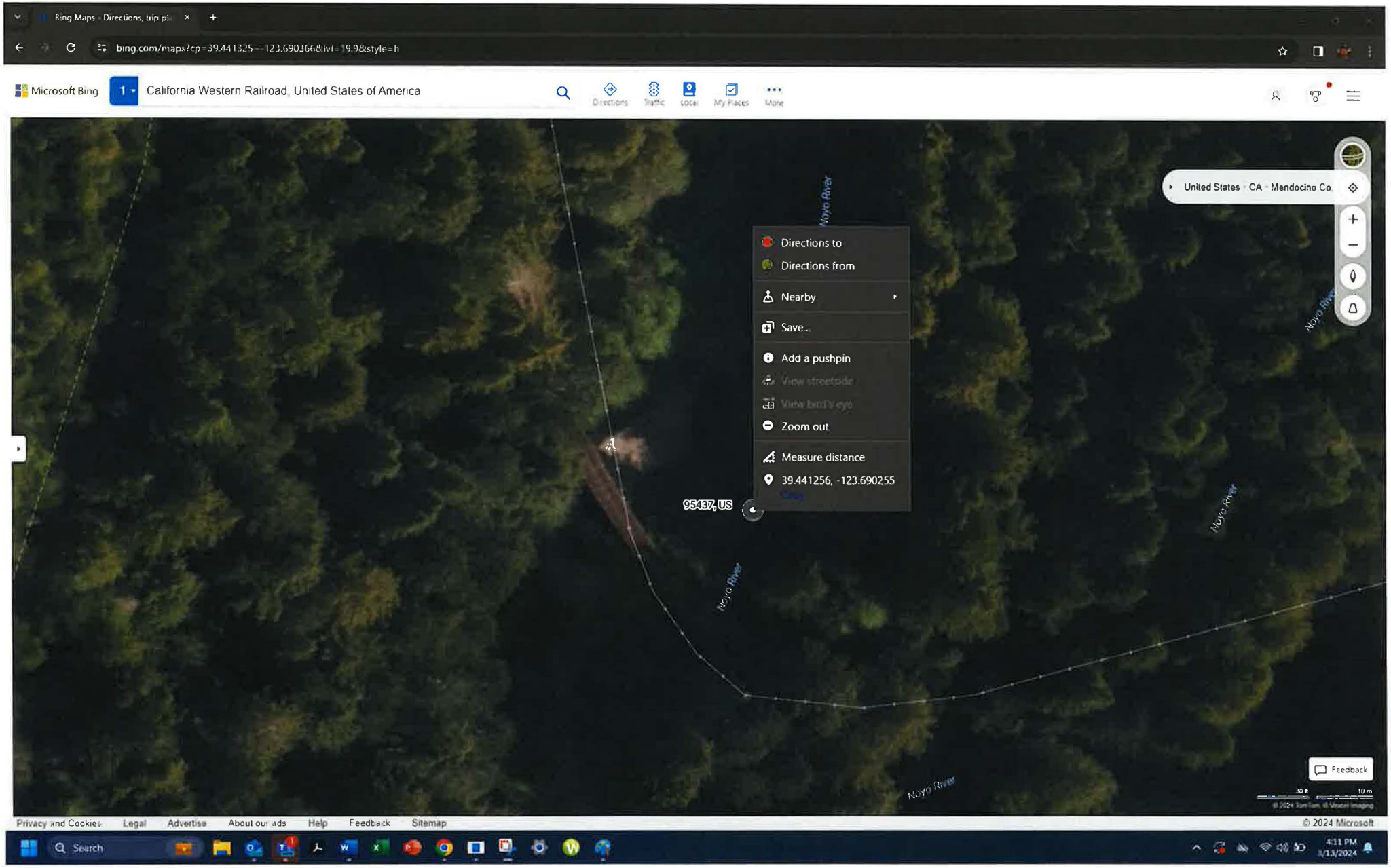
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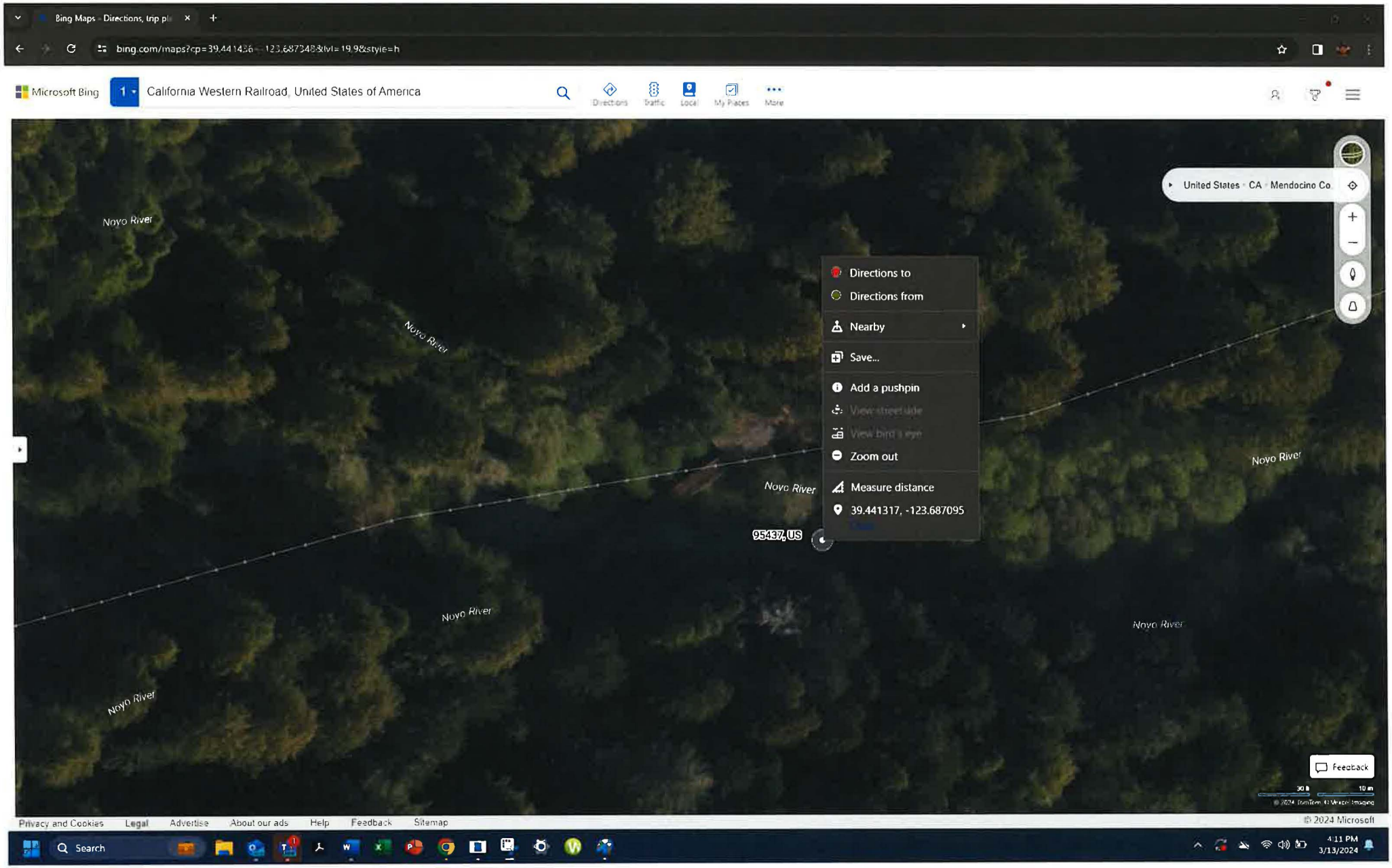
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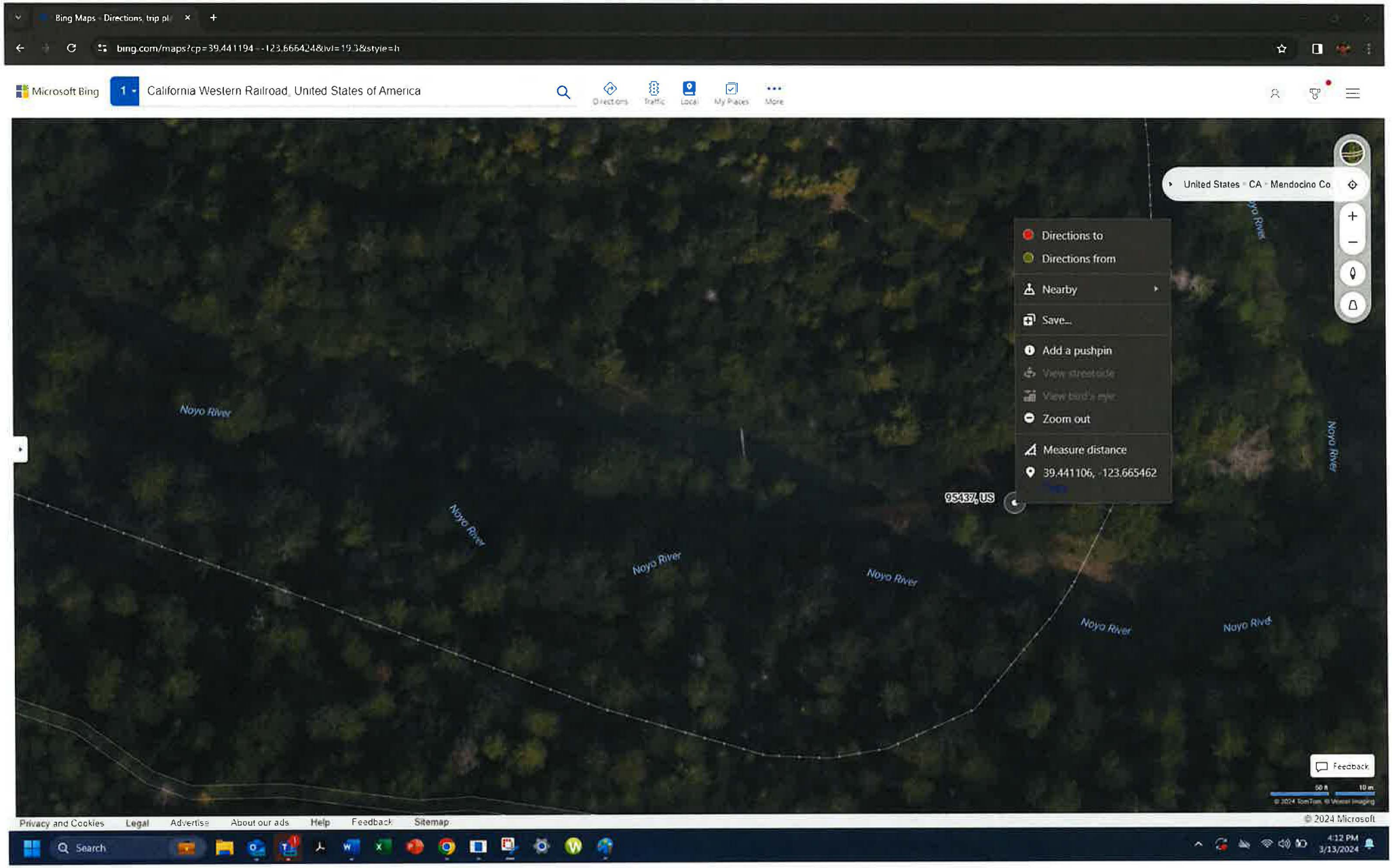
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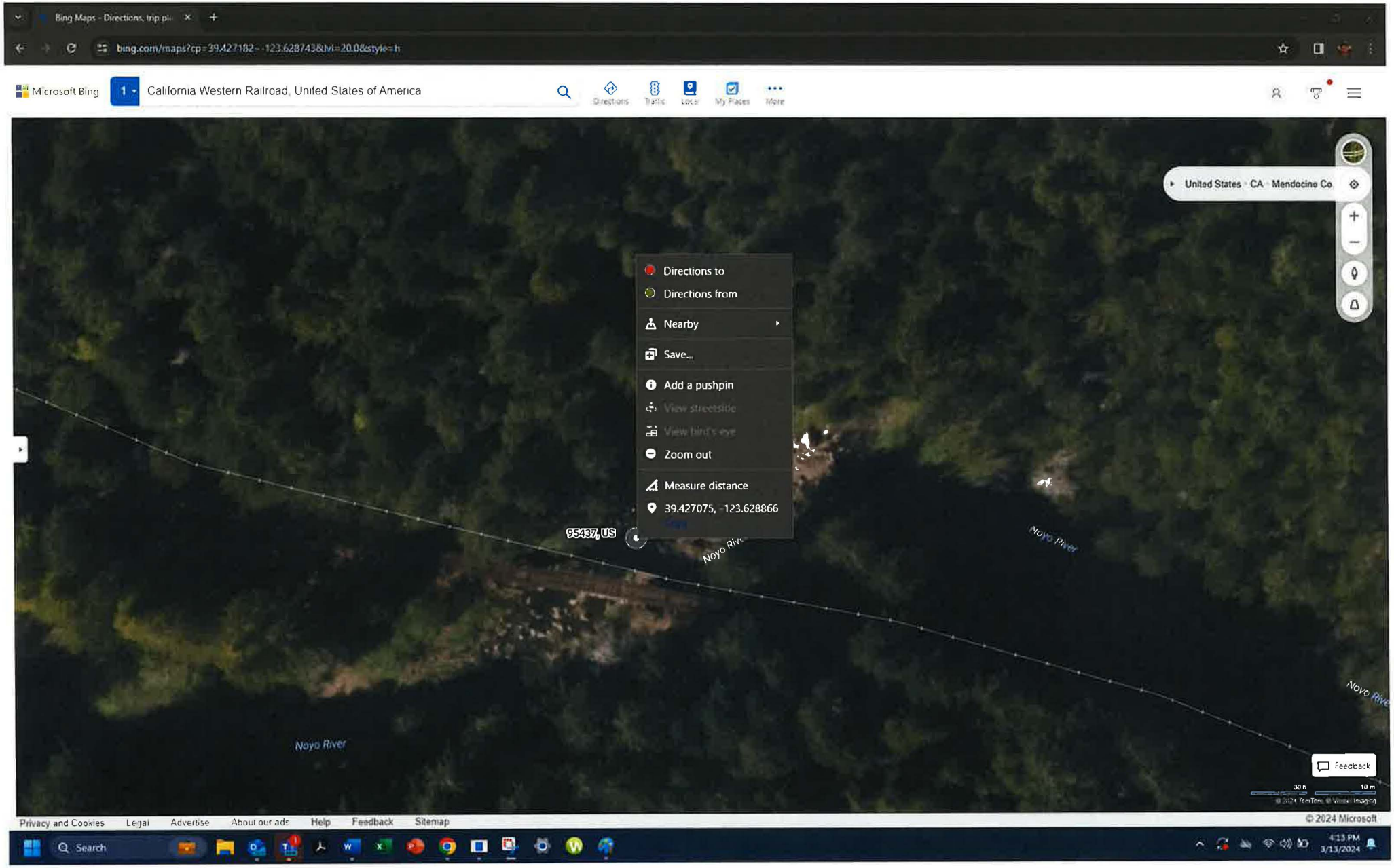
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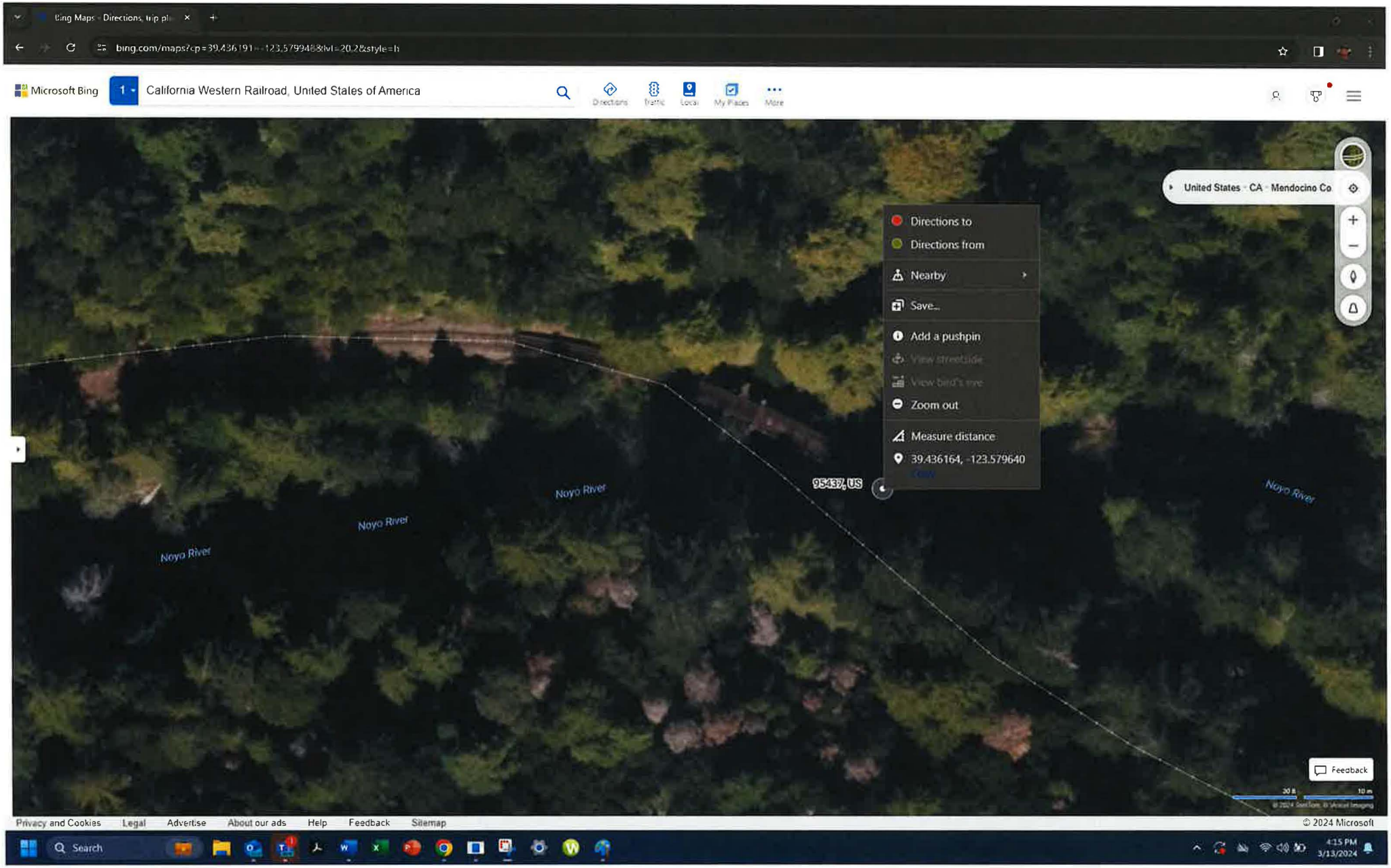
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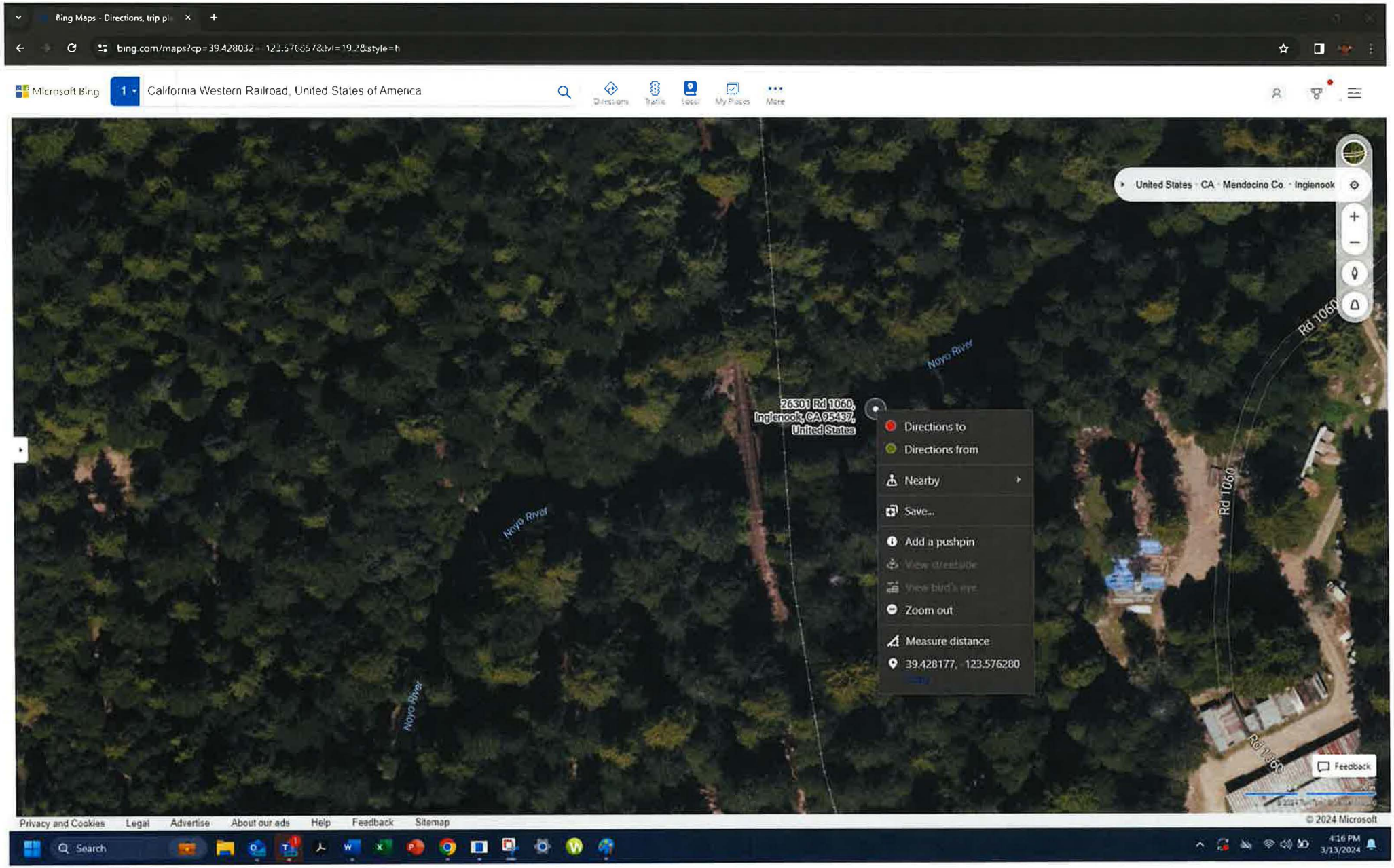
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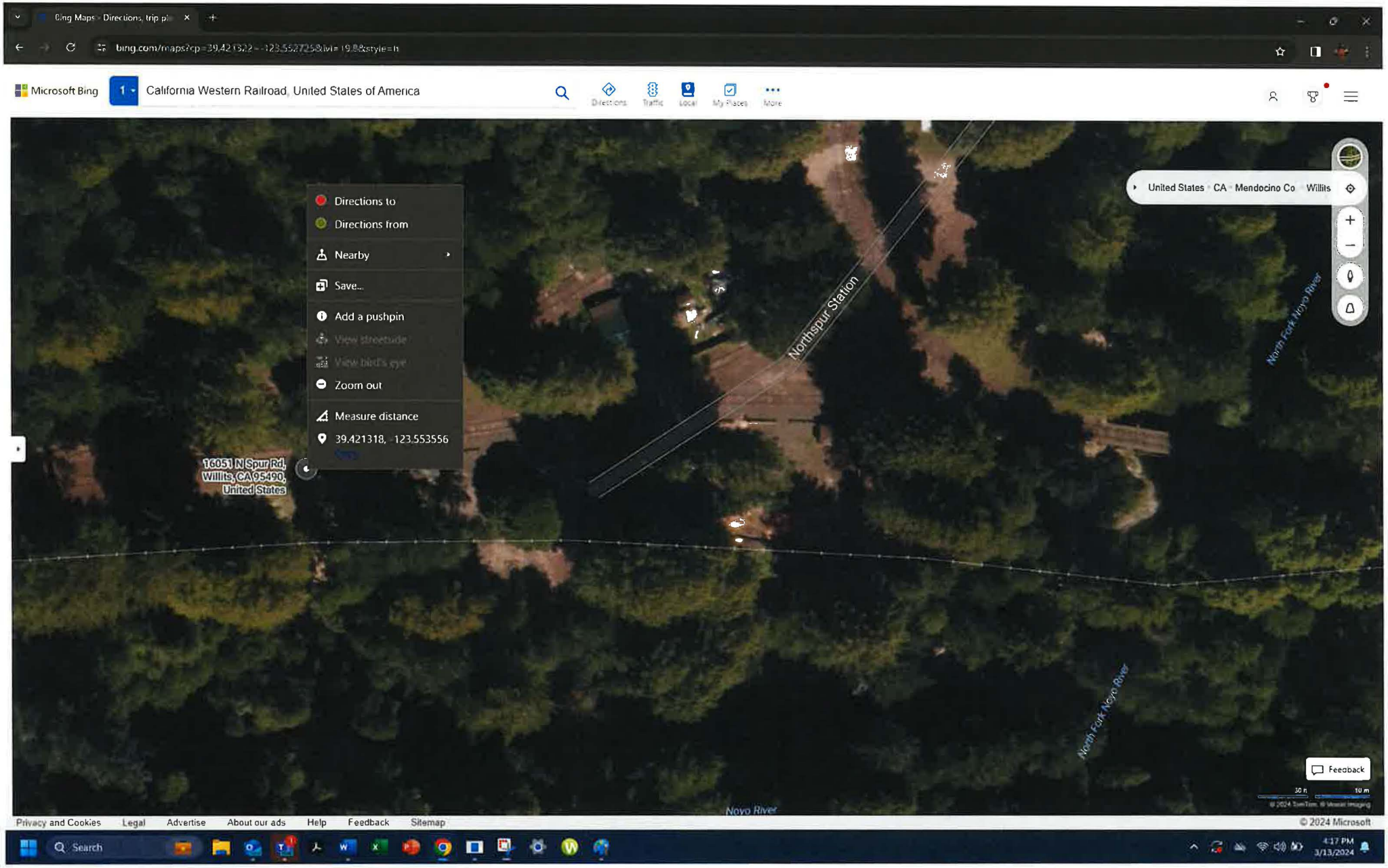
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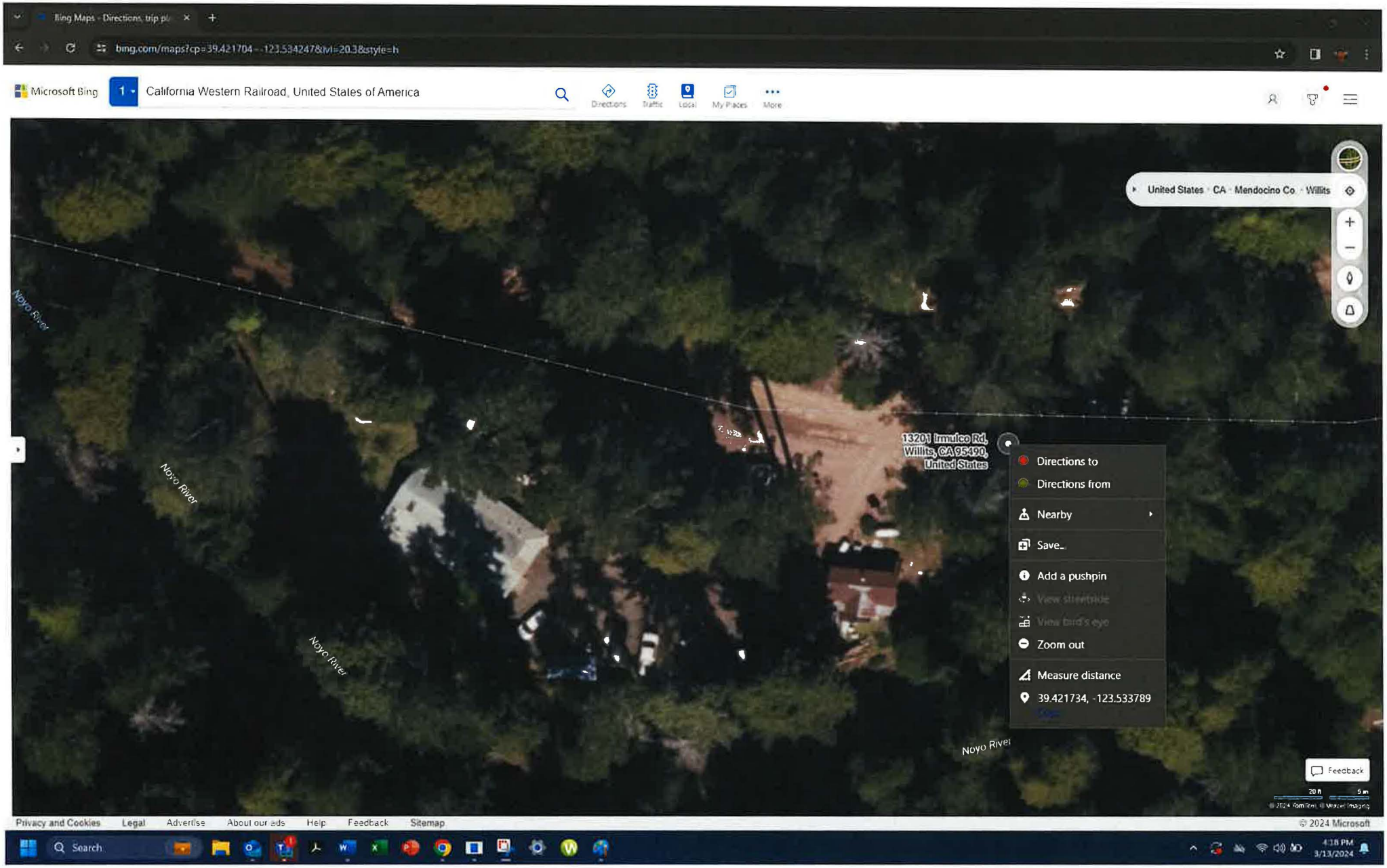
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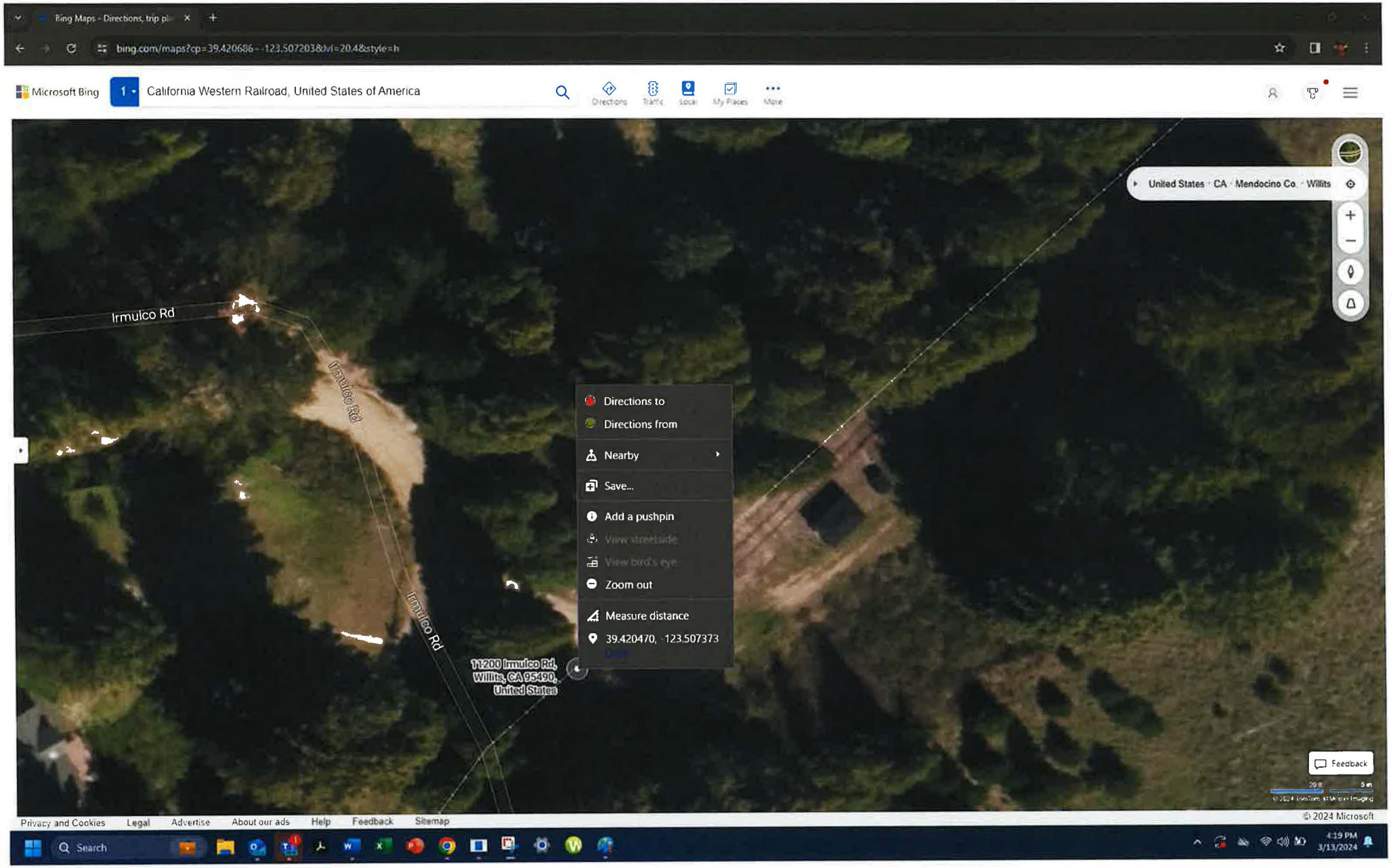
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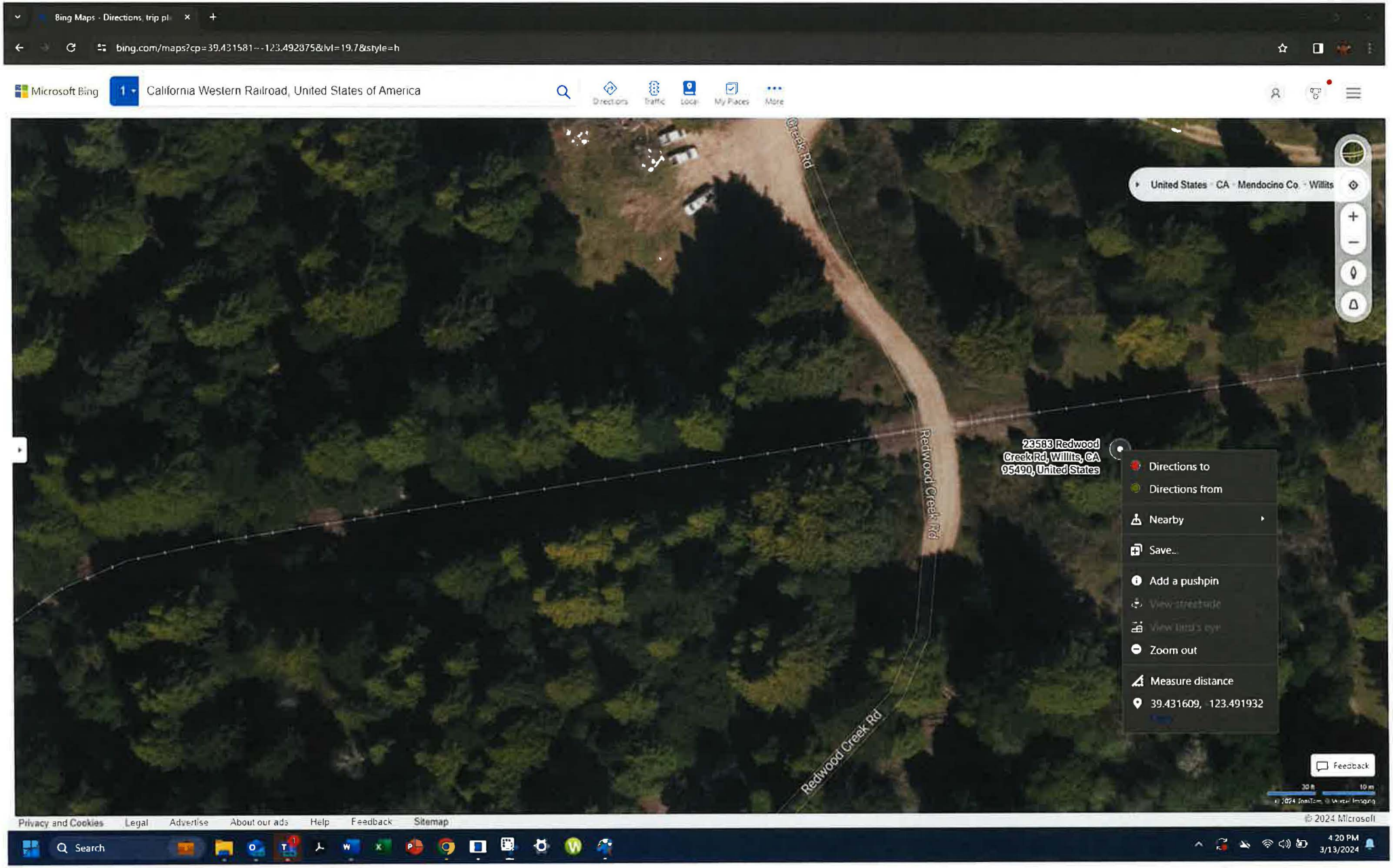
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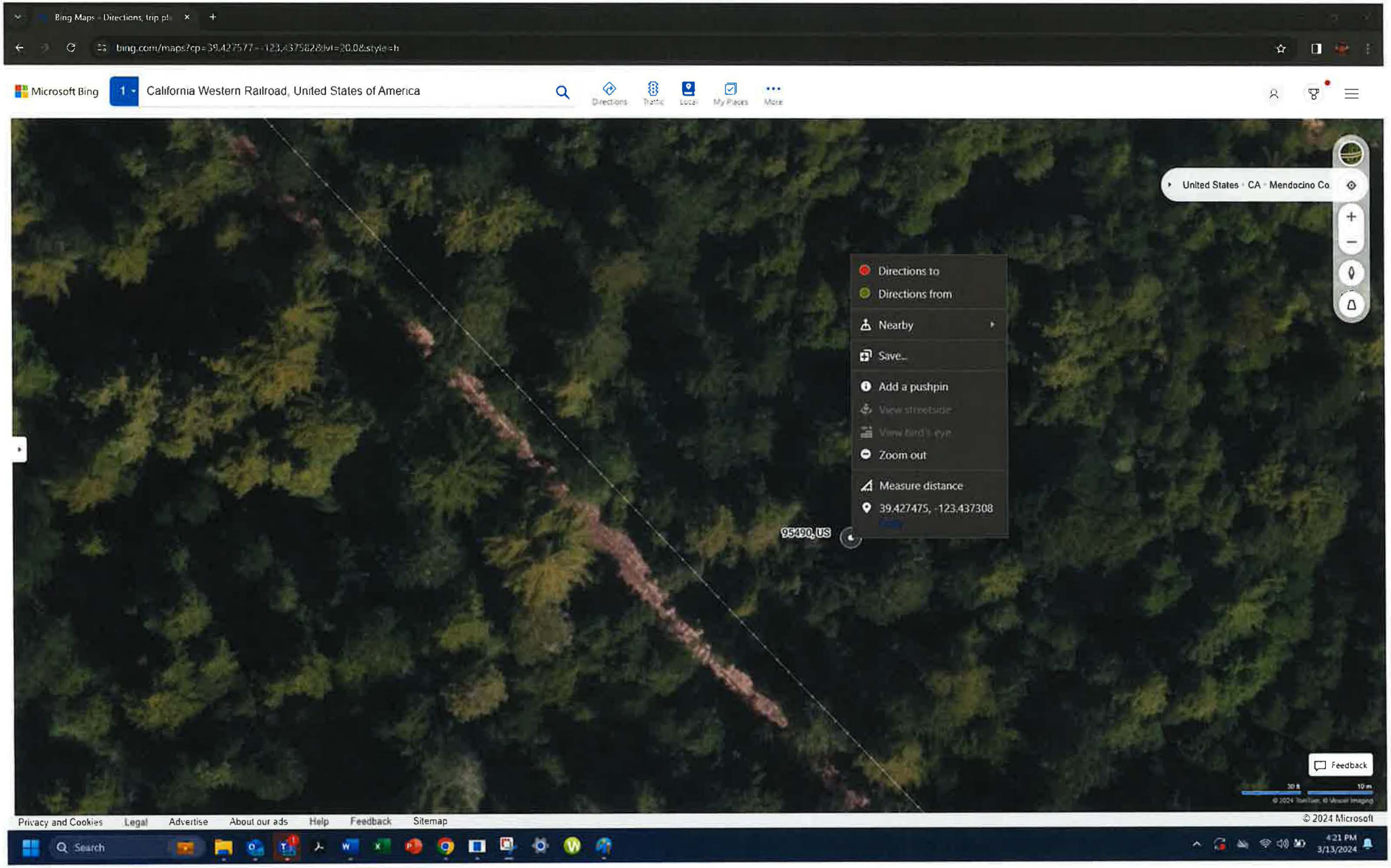
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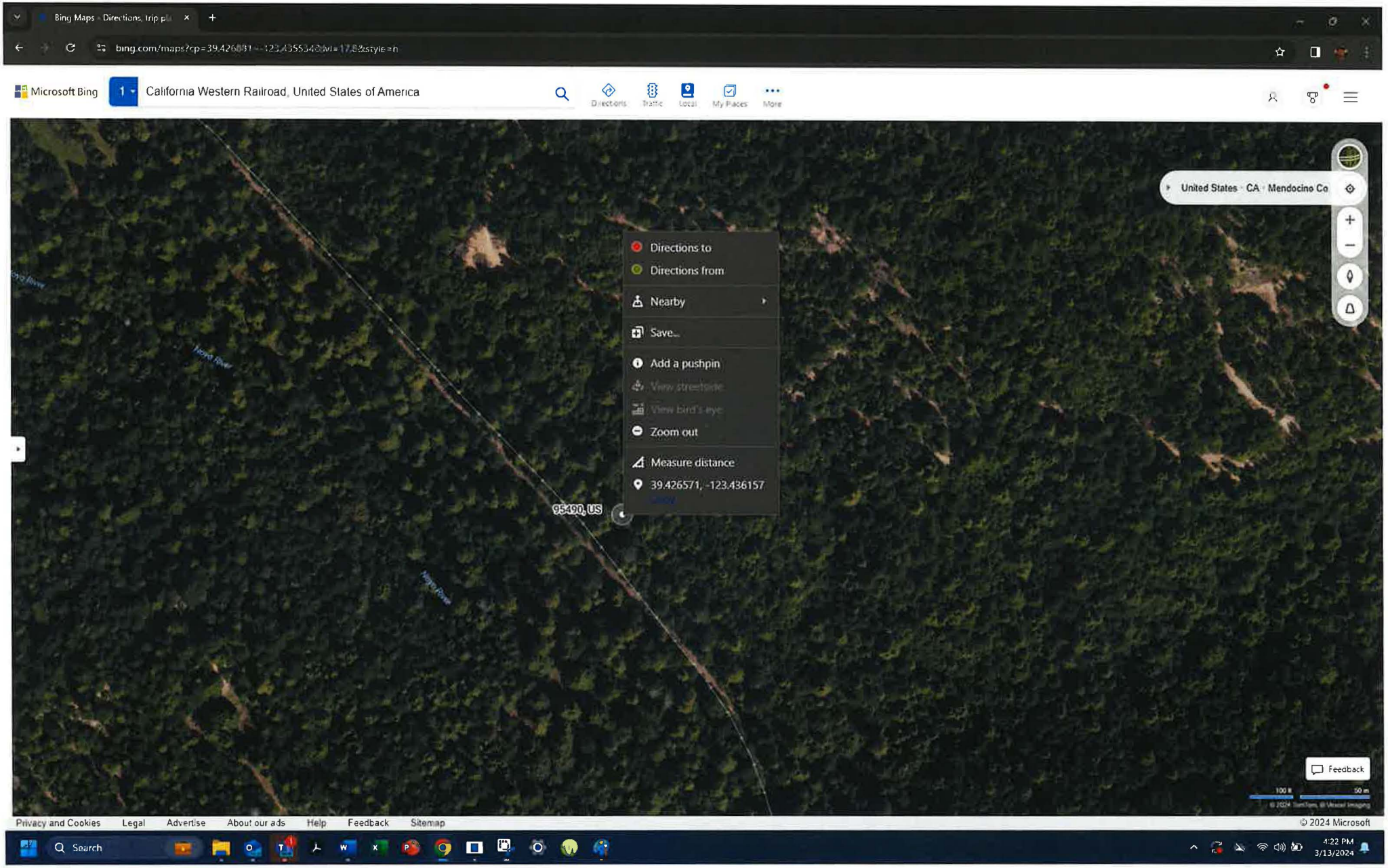
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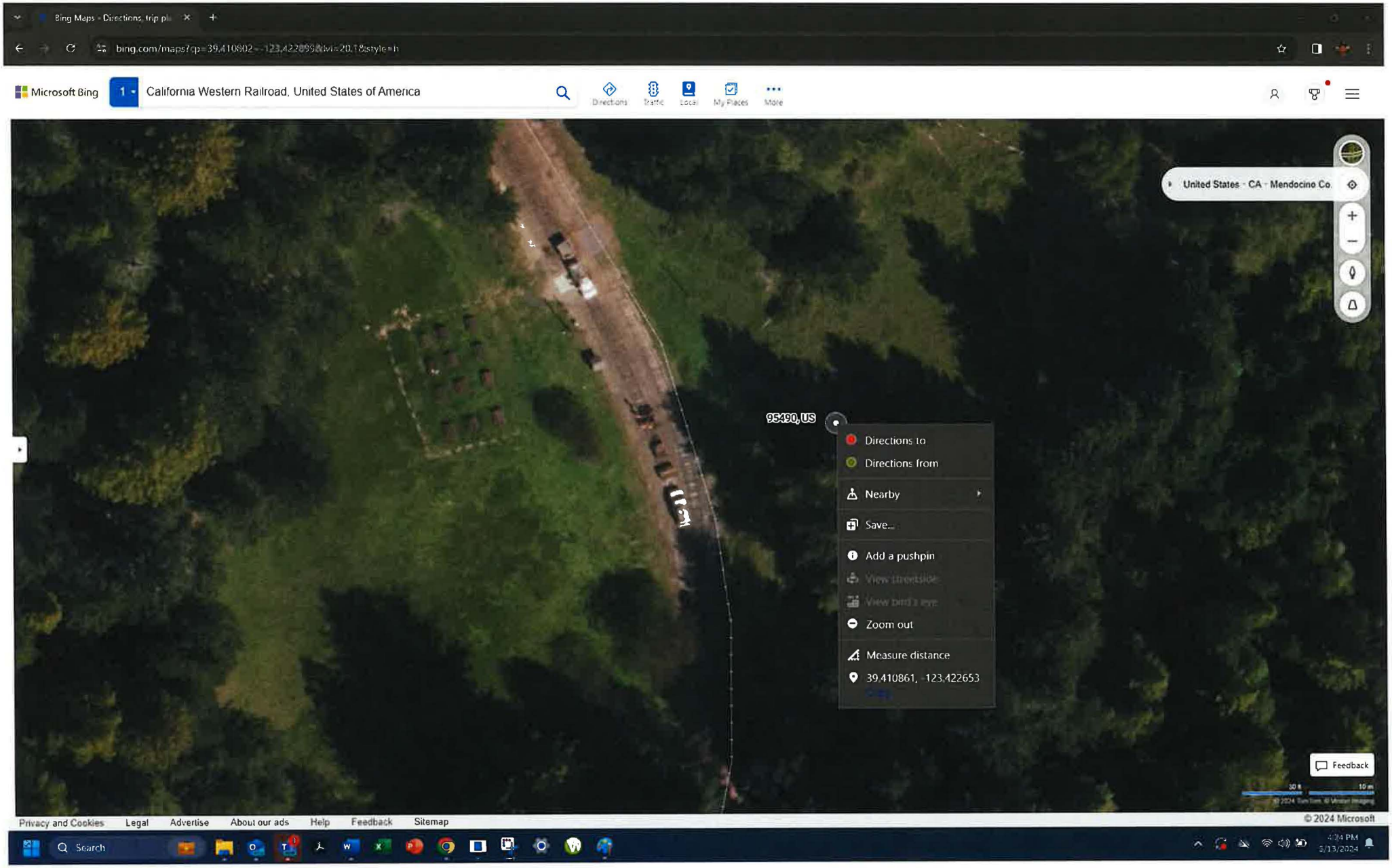
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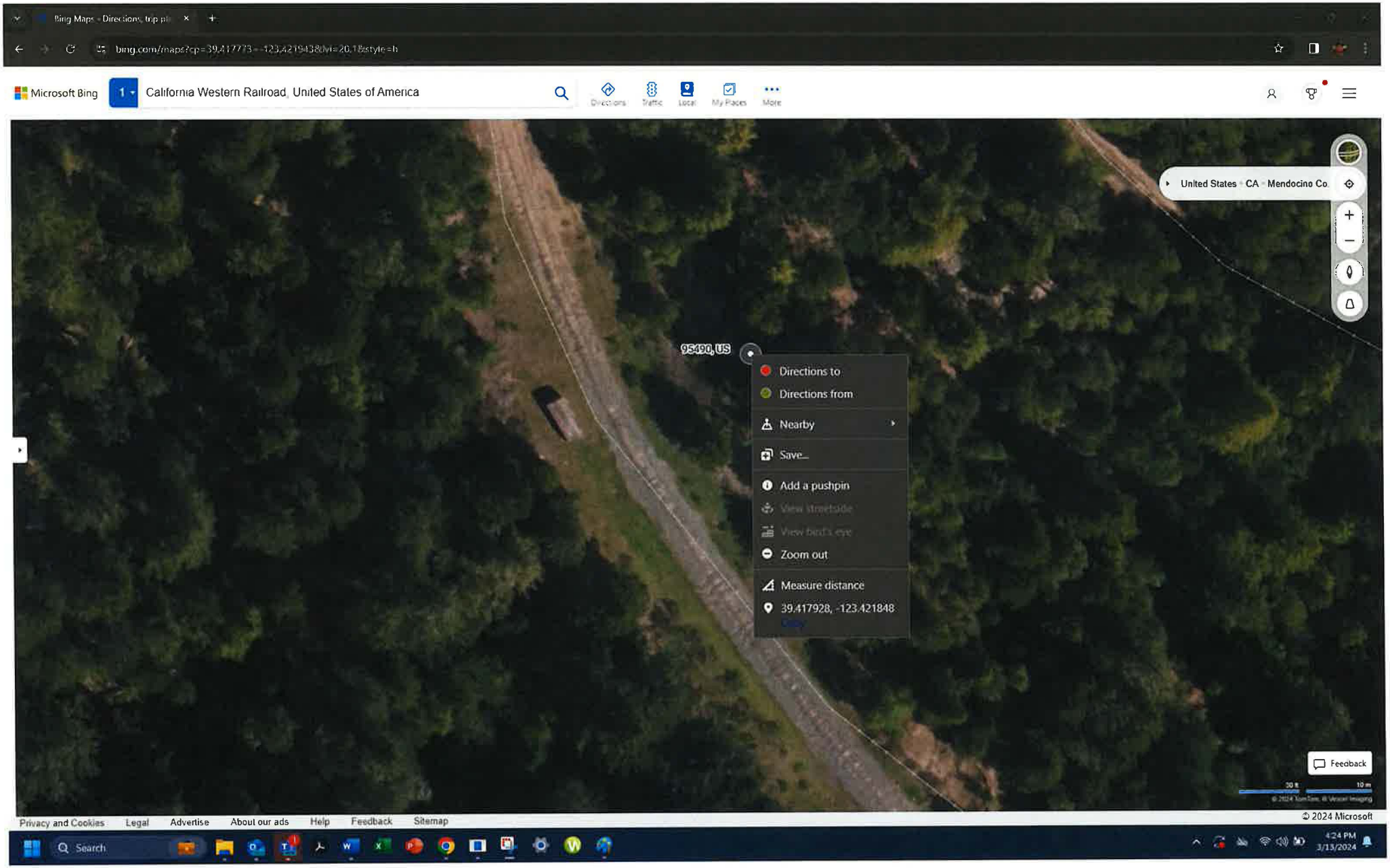
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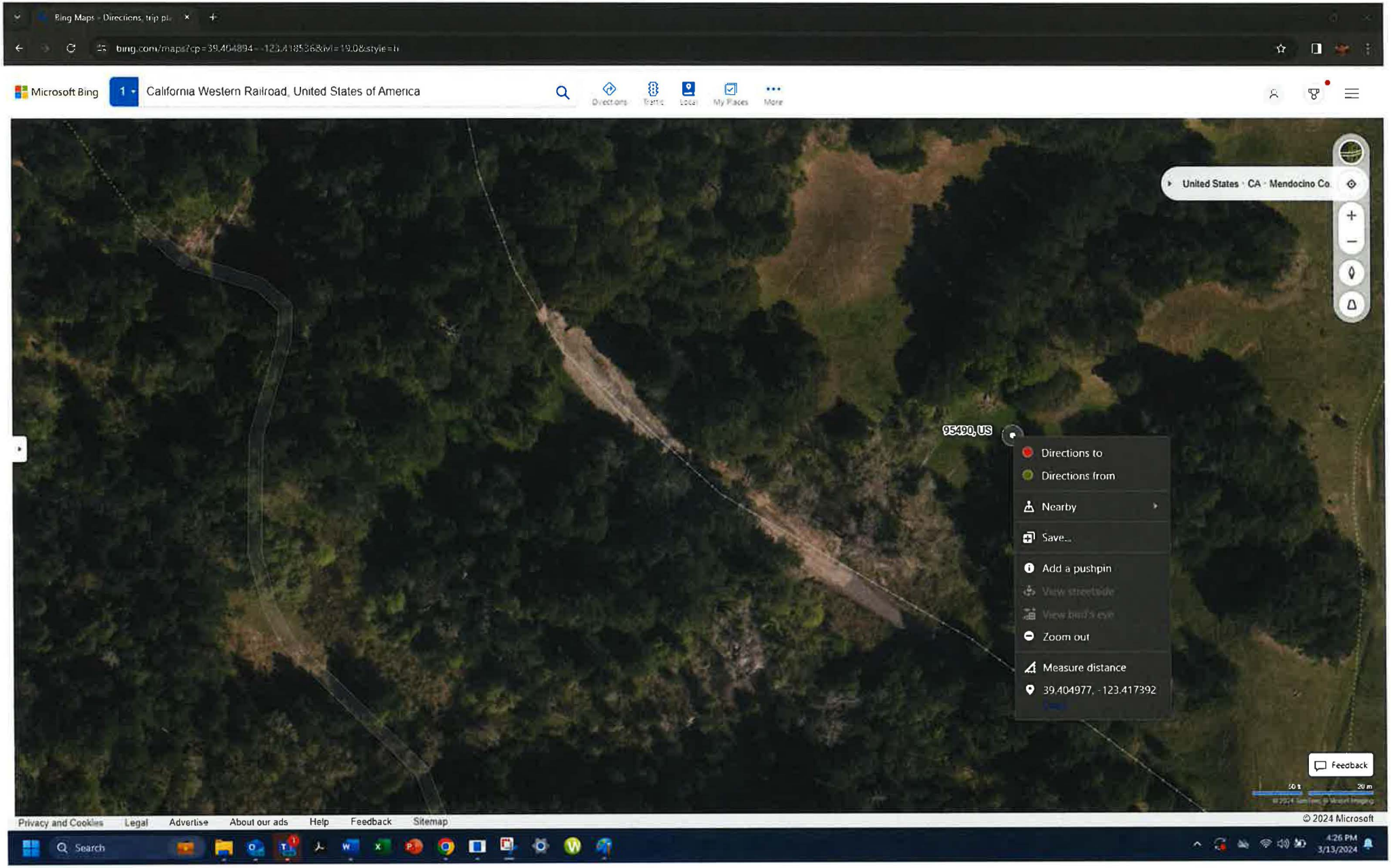
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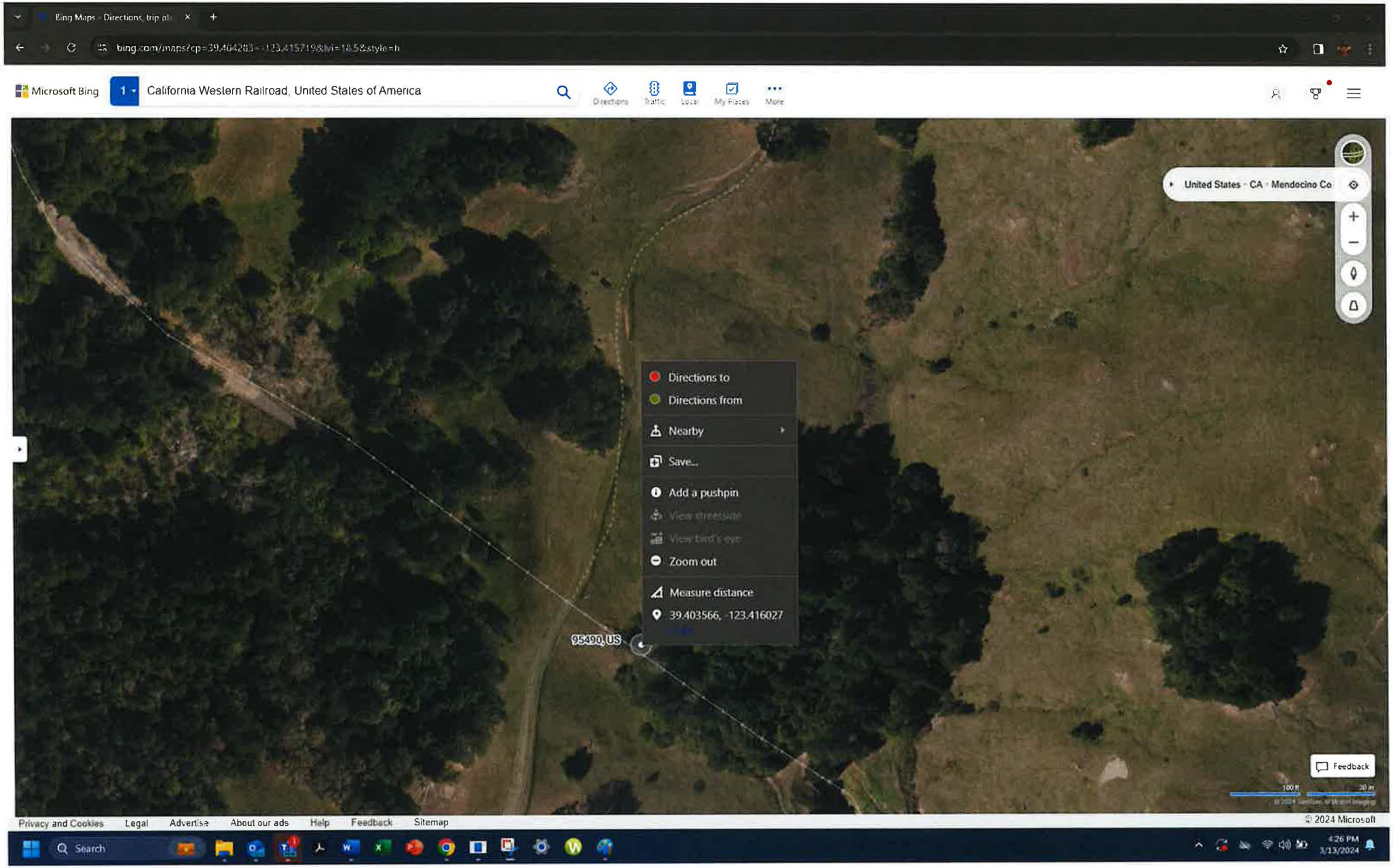
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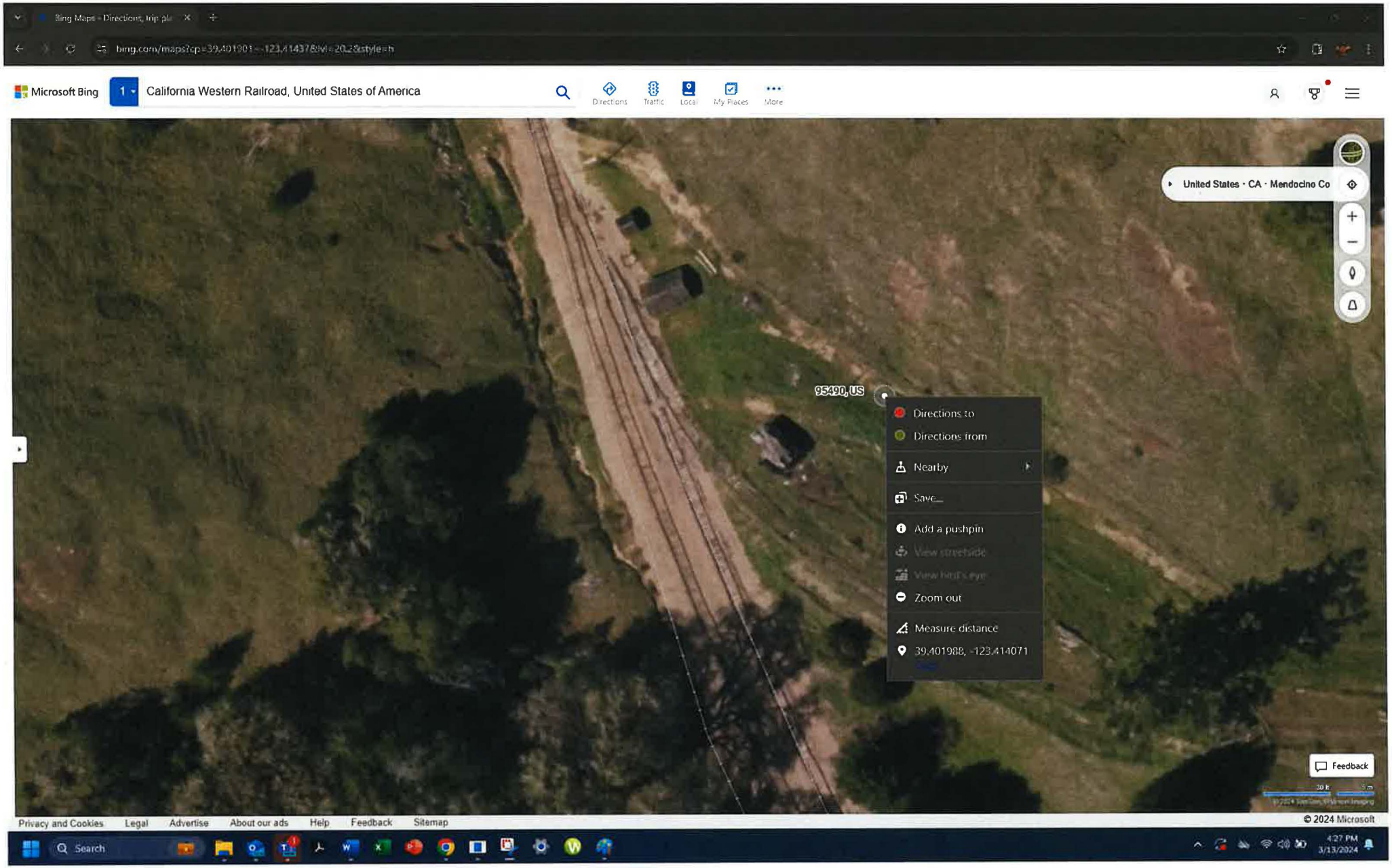
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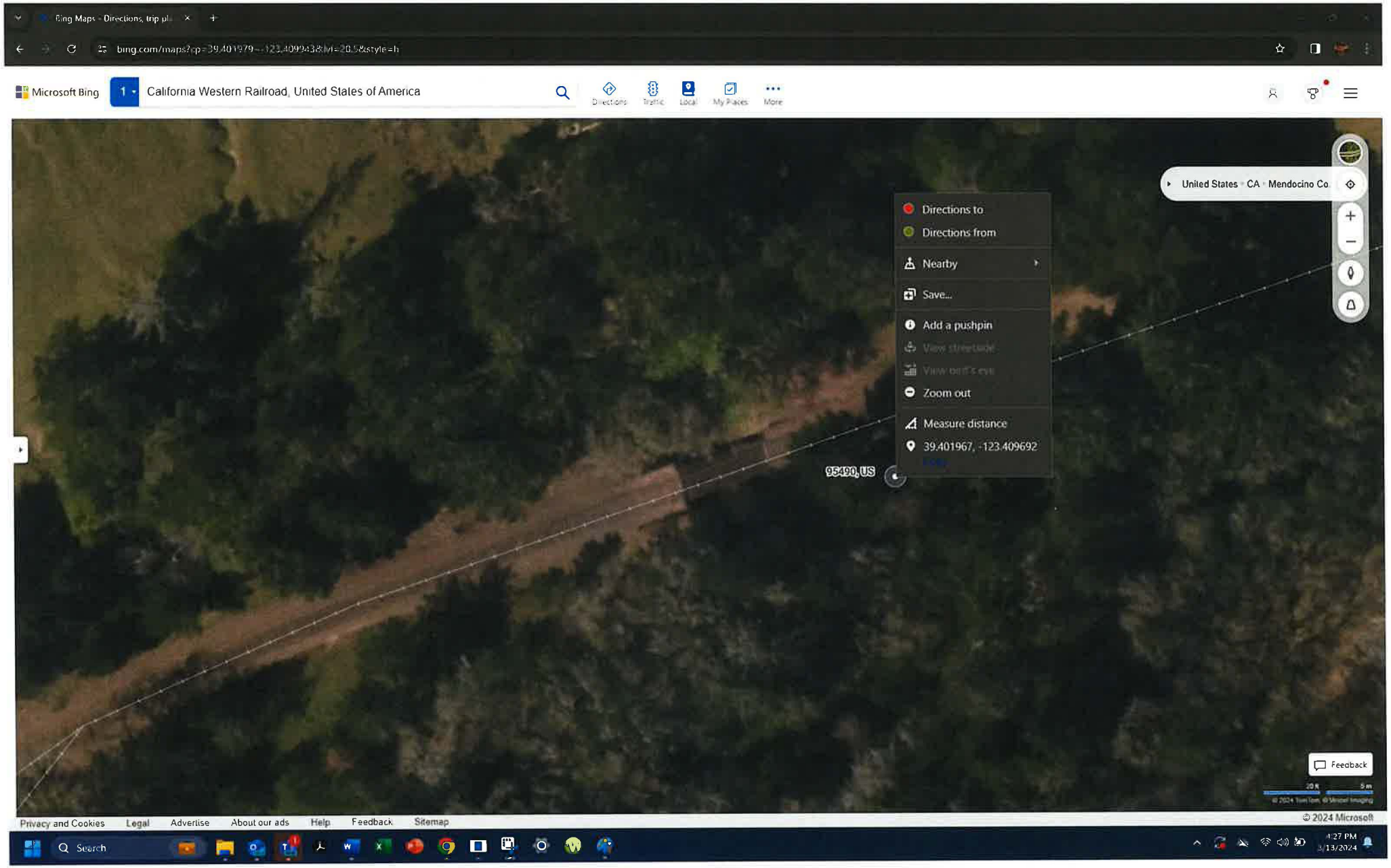
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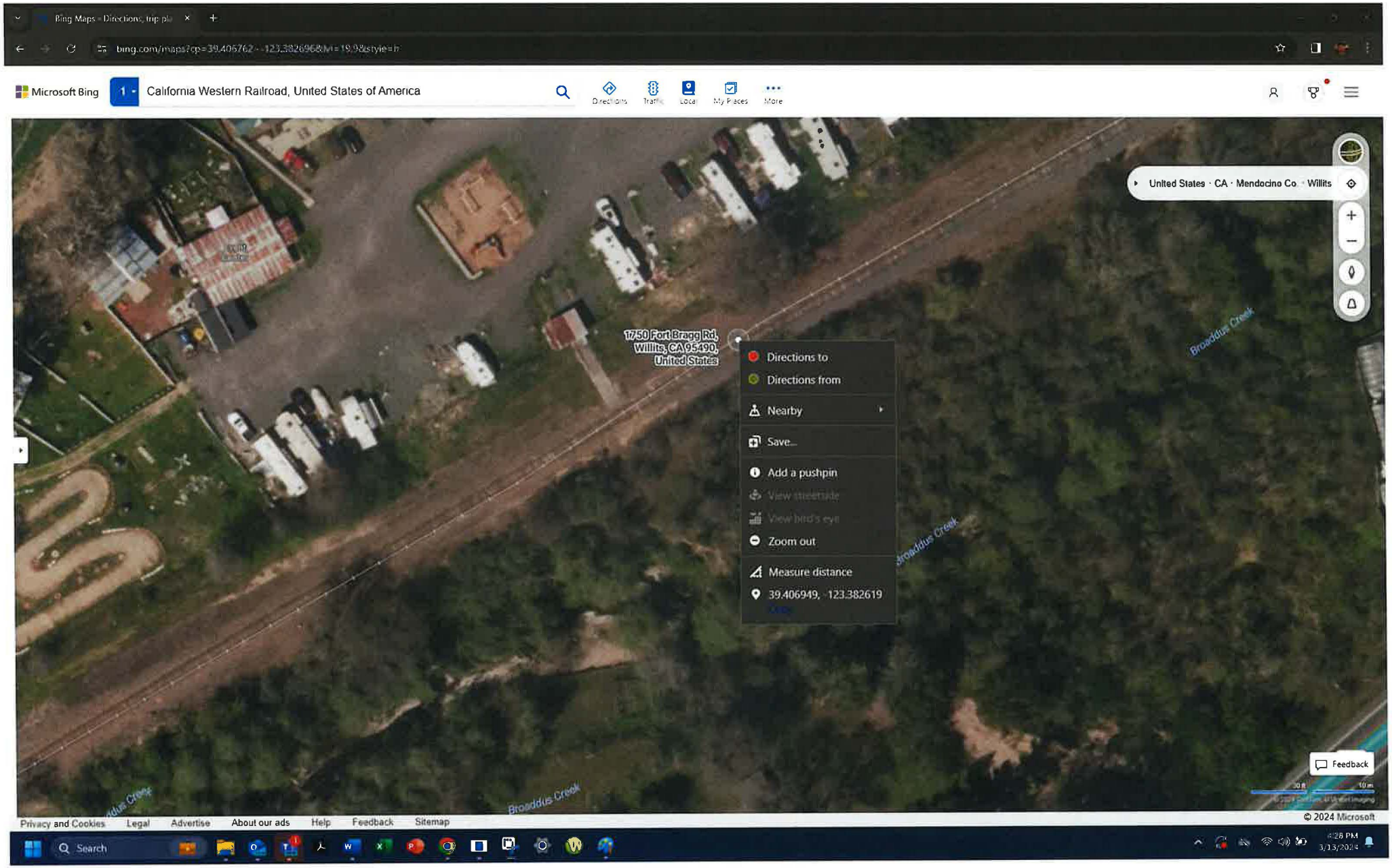
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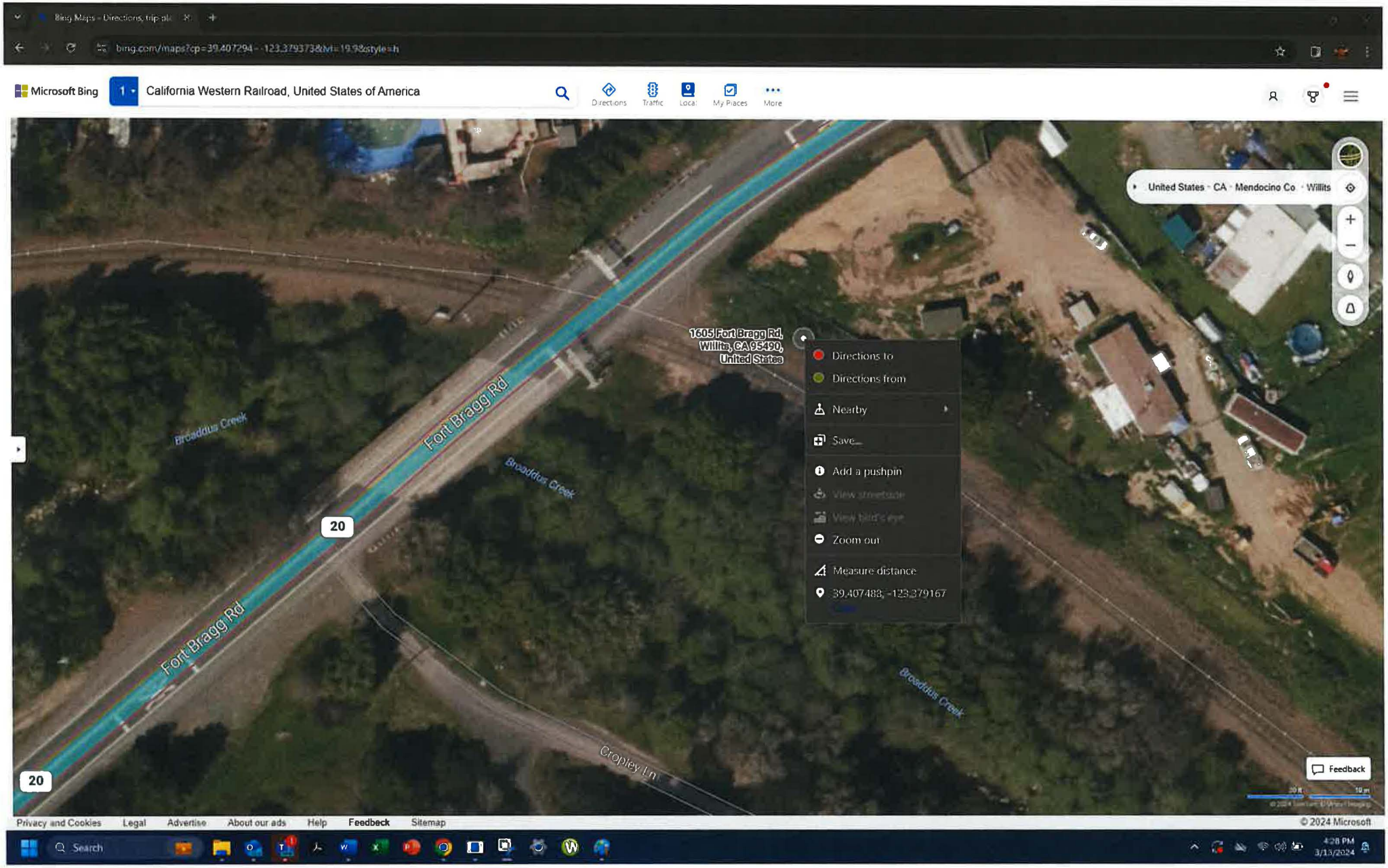
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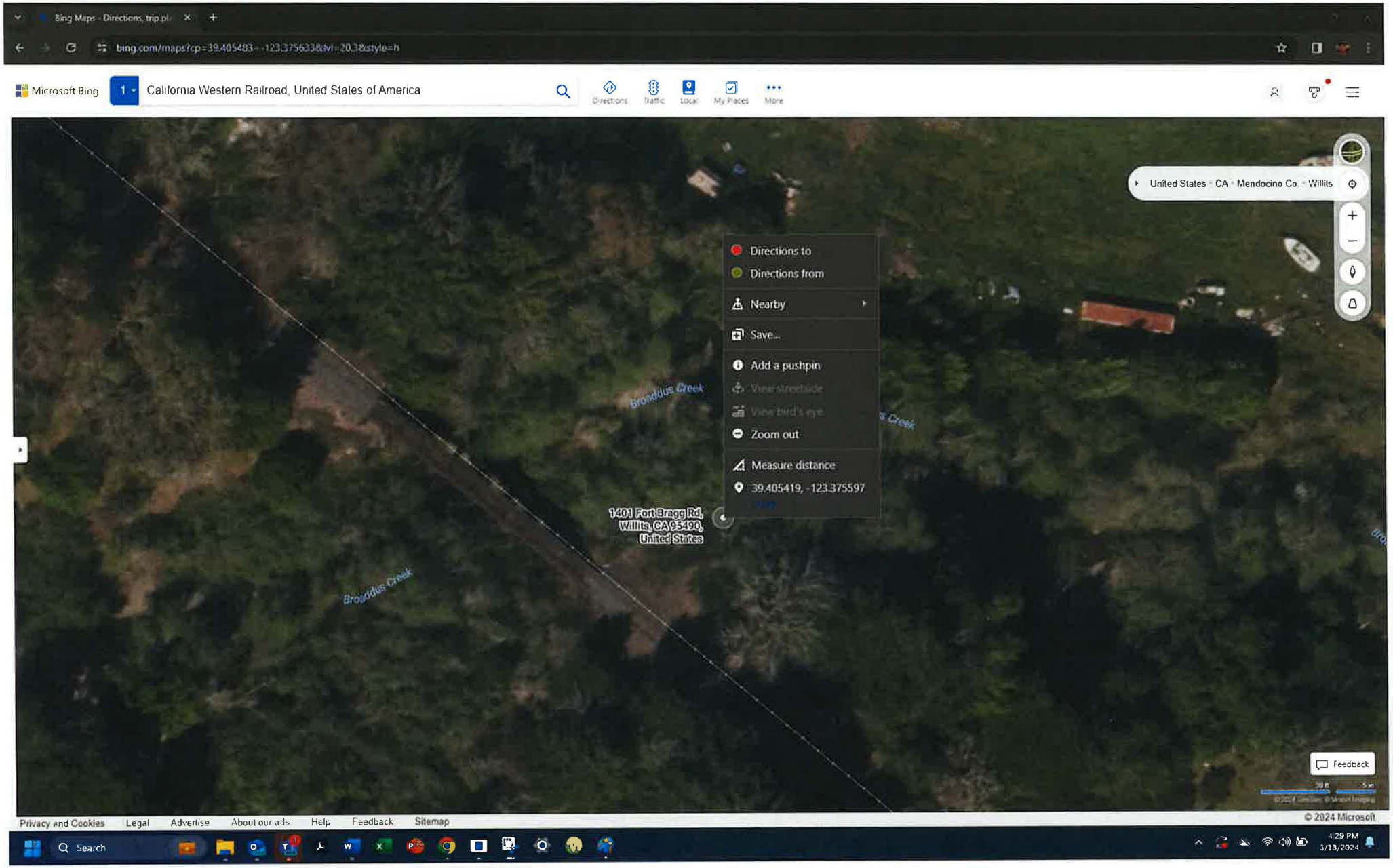
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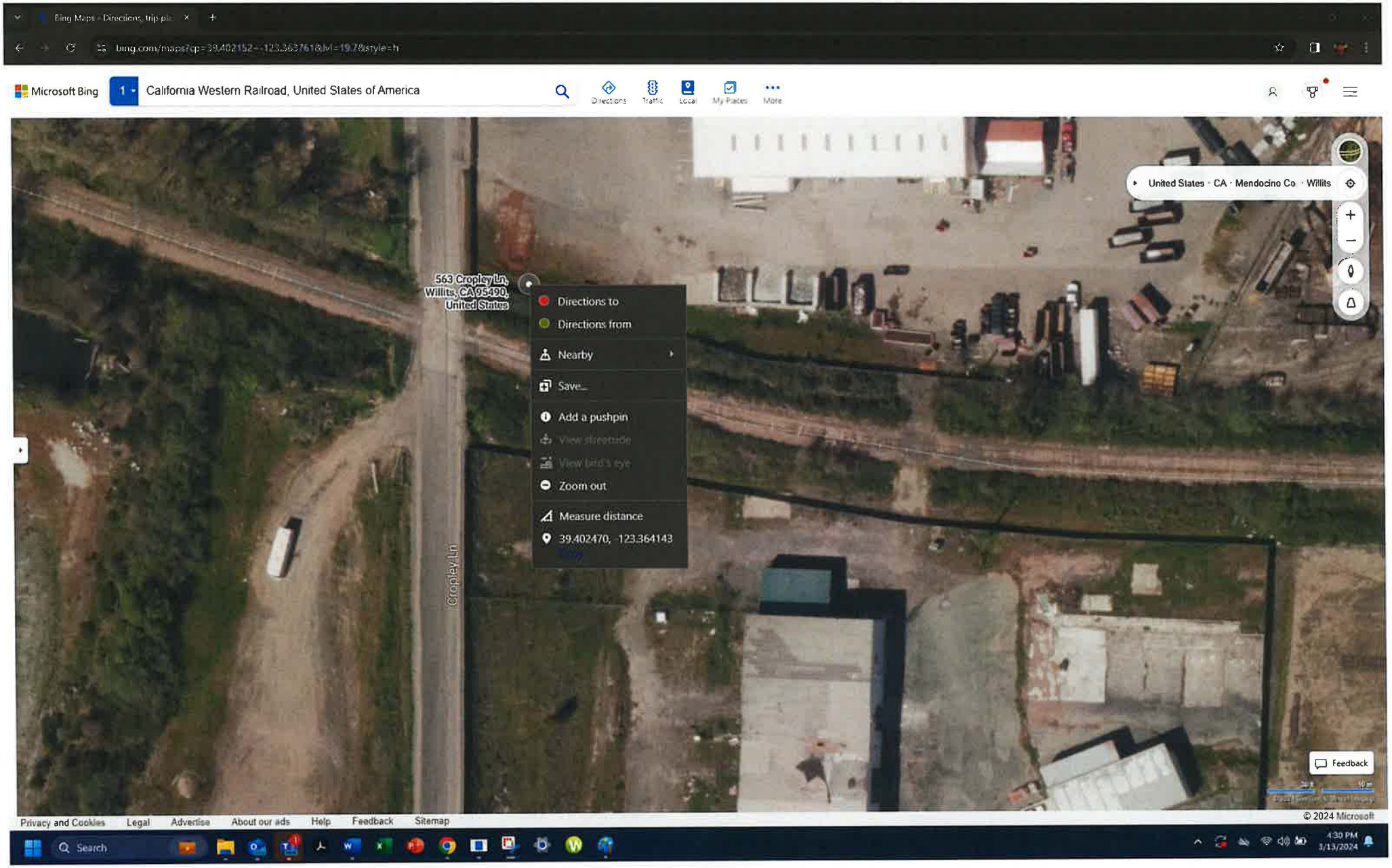
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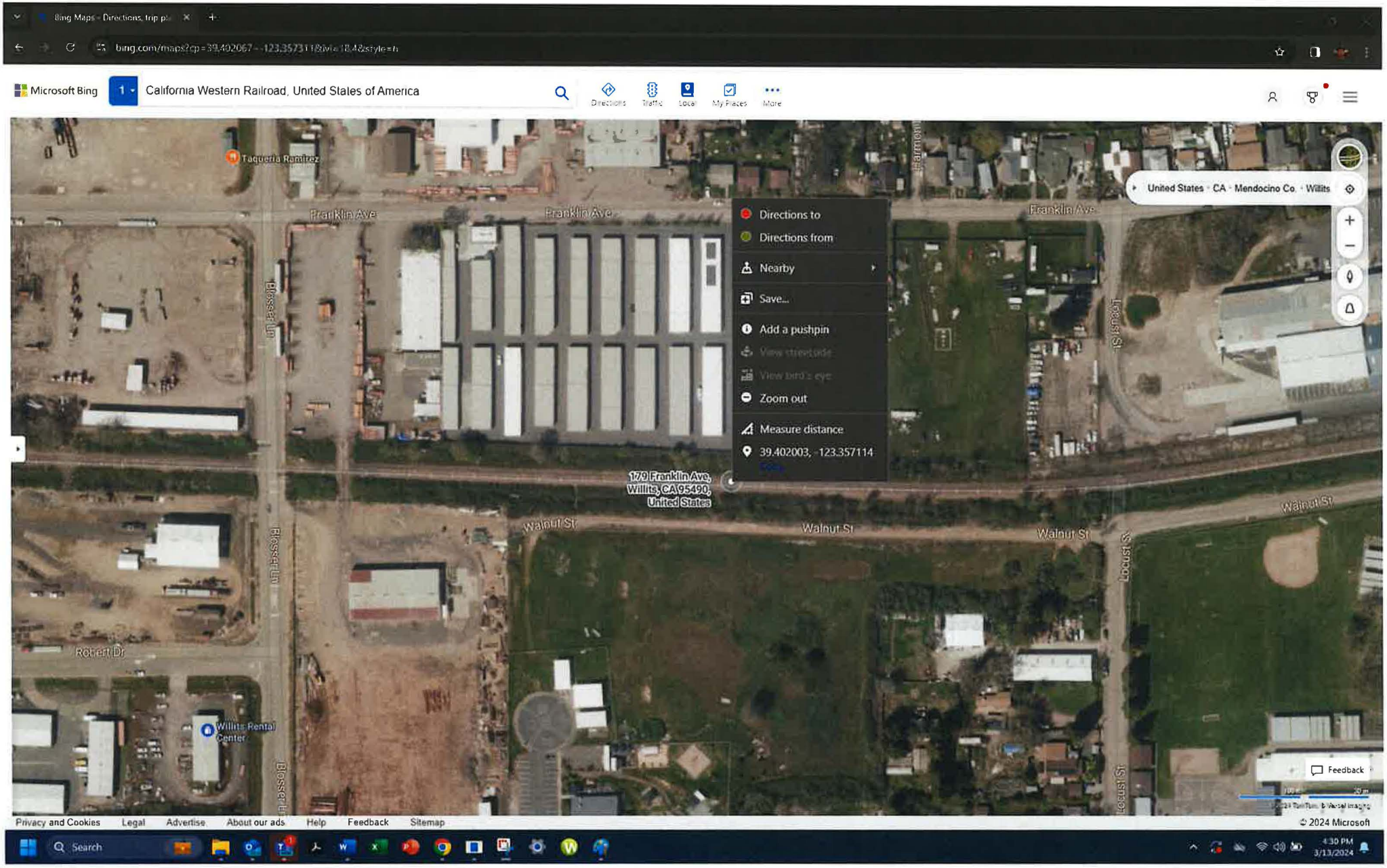
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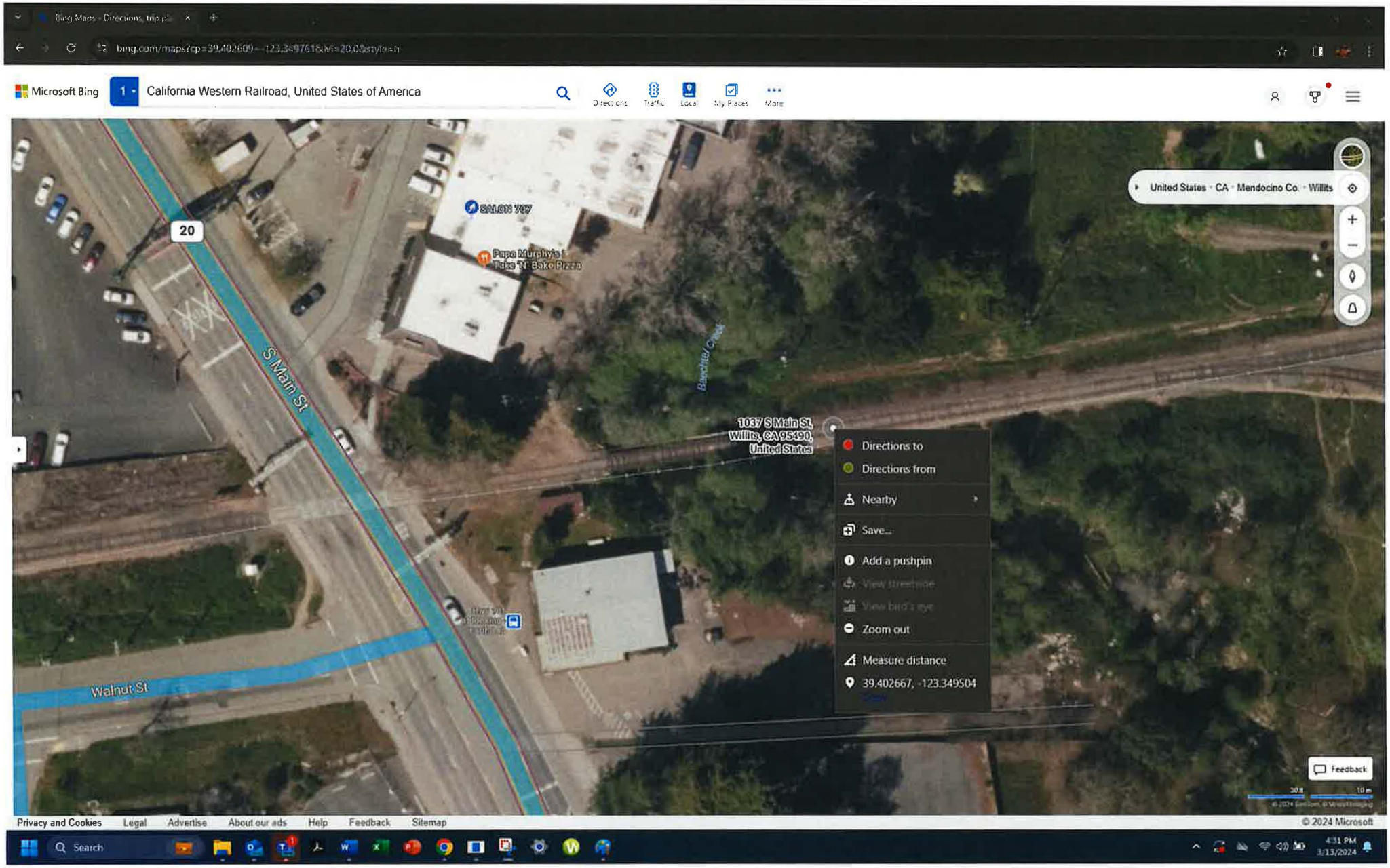
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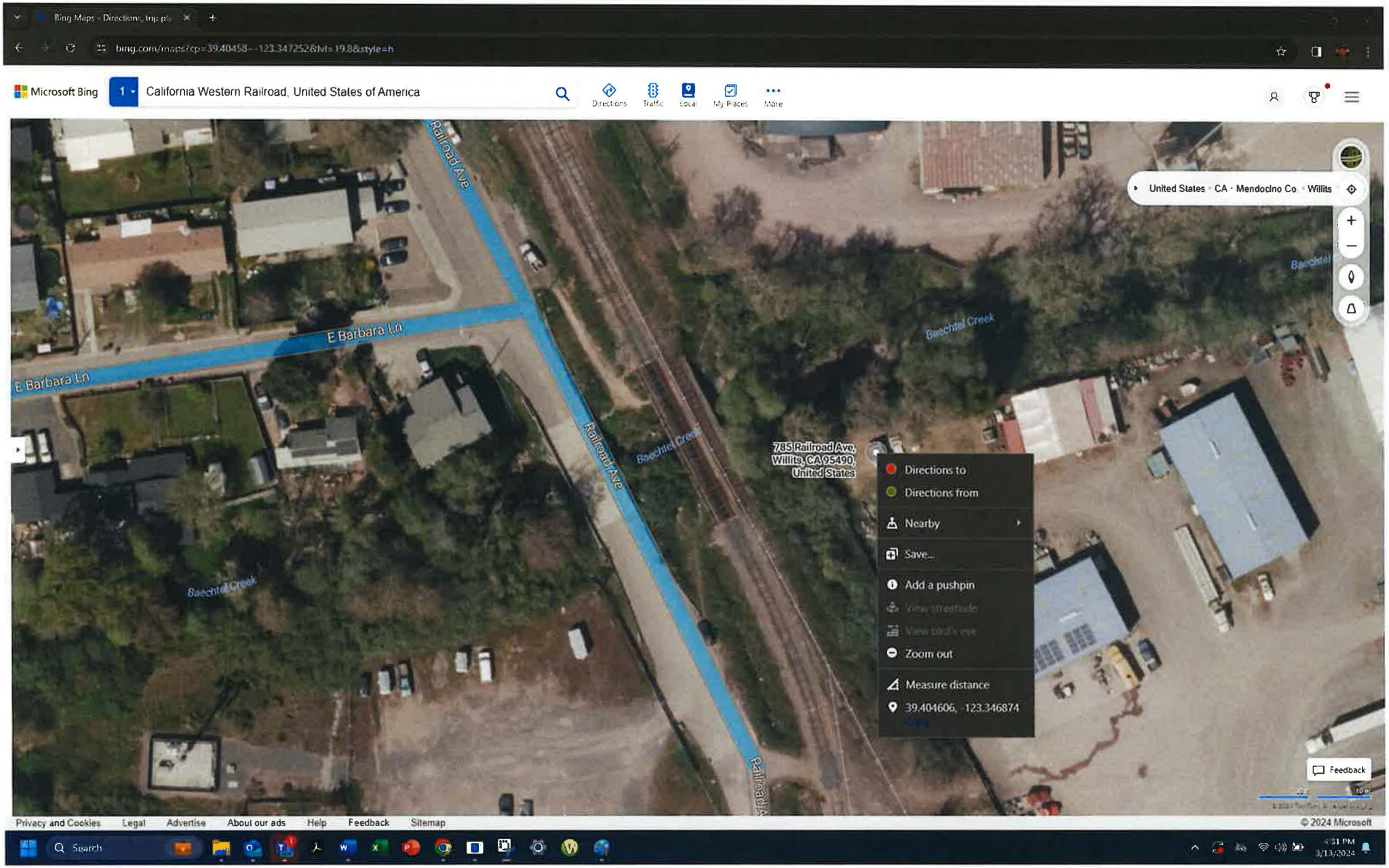
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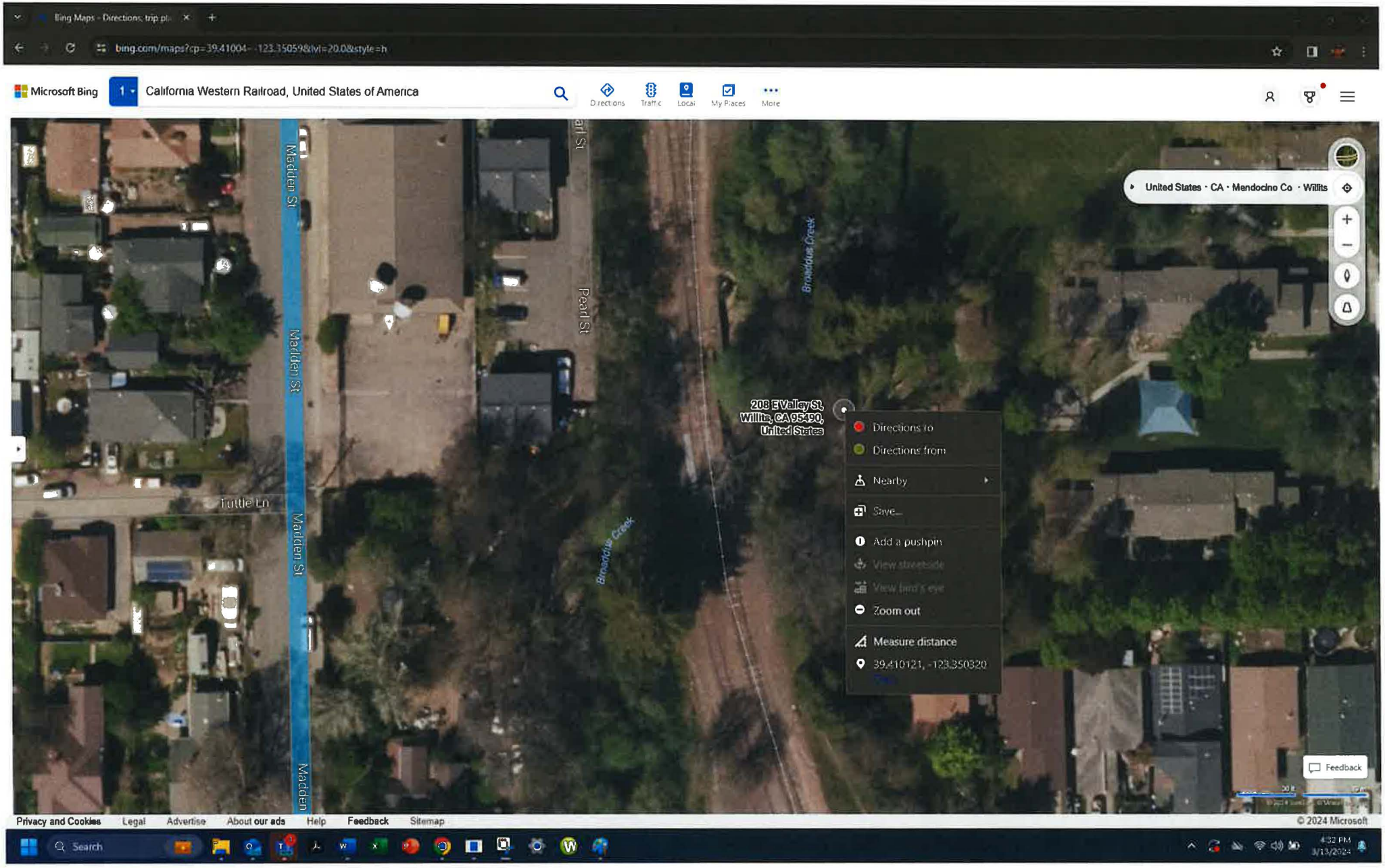
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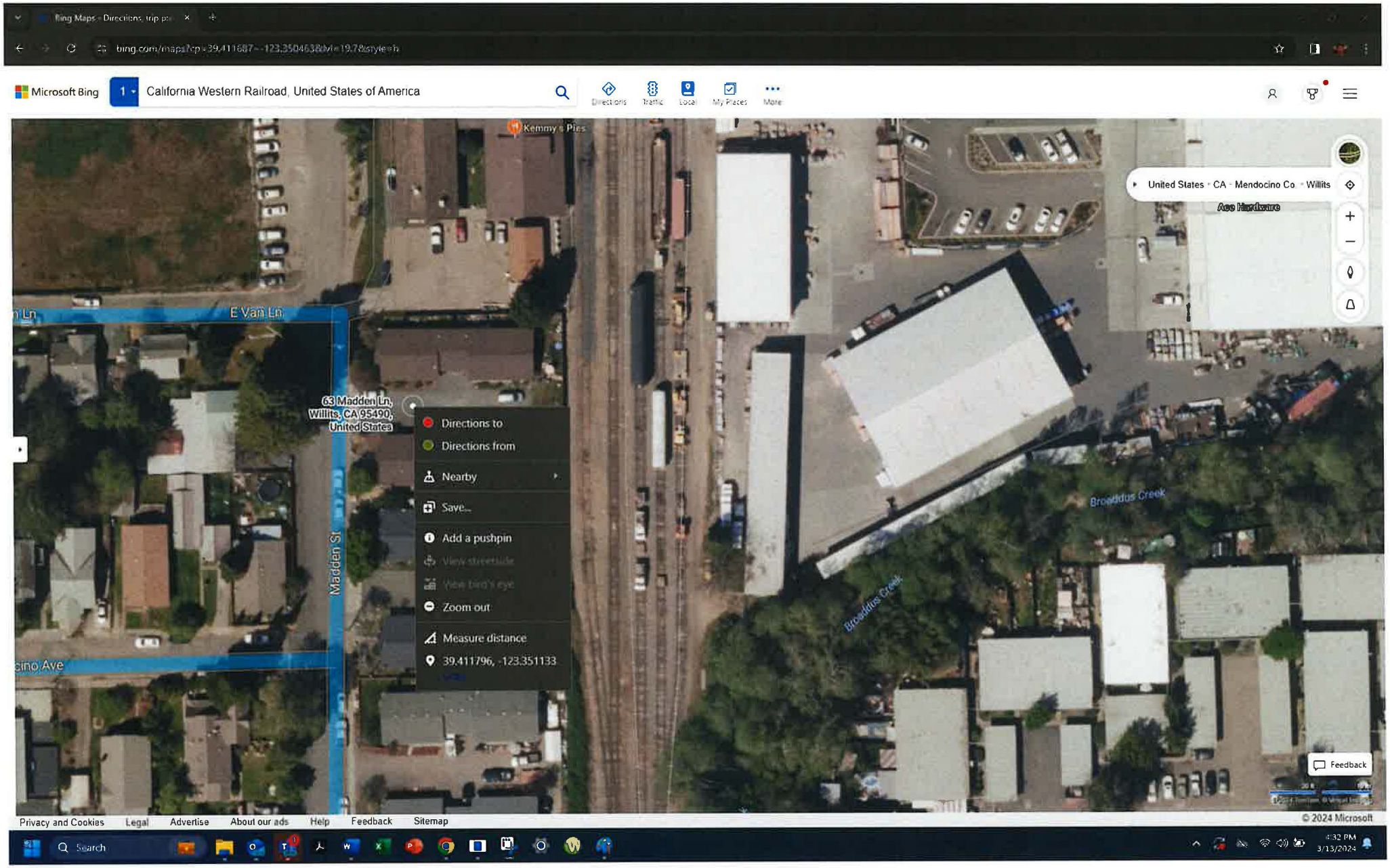
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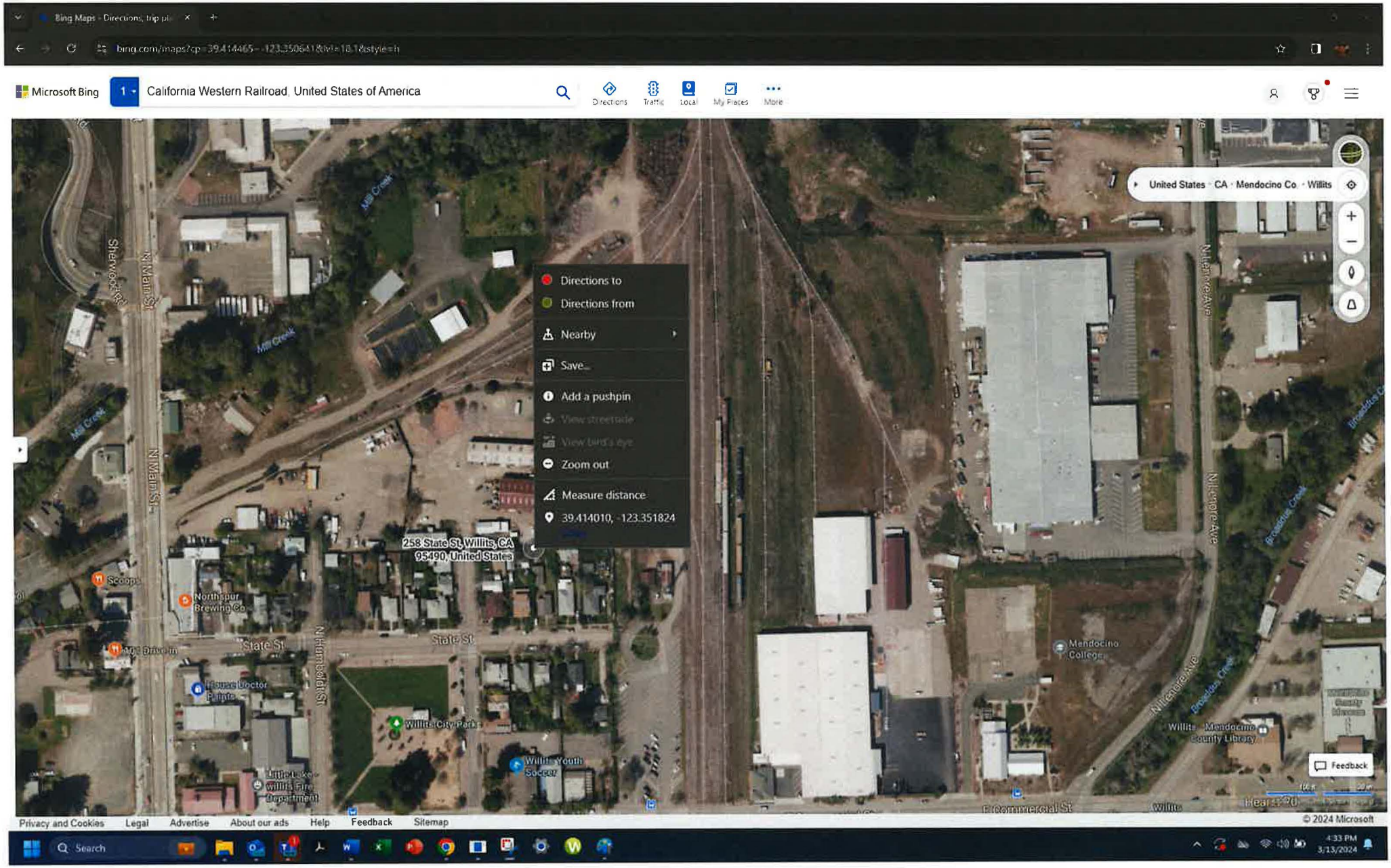
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Attorneys for Plaintiff MENDOCINO RAILWAY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MENDOCINO

MENDOCINO RAILWAY, Plaintiff, v. GEORGIA-PACIFIC LLC; NORTH AMERICAN TIMBER CORP.; HAWTHORNE TIMBER COMPANY, LLC; MENDOCINO COUNTY TREASURER-TAX COLLECTOR; All other persons unknown claiming an interest in the property; and DOES 1 through 100, inclusive, Defendants.	Case No. 21CV00595 [APN 018-430-21; 018-430-22; 018-040-61; 018-120-50; 008-151-26; 008-020-17 (aka 008-020-19); 008-171-07; 008-161-08; 008-070-31; 020-550-02; 020-550-08; 020-550-10; and 020-550-11] **STIPULATION RE: SETTLEMENT, JUDGMENT AND FINAL ORDER OF CONDEMNATION**

Plaintiff Mendocino Railway (hereinafter "Mendocino Railway" or "Plaintiff") and Defendant Georgia-Pacific LLC, successor in title to Defendant North American Timber Corp. and Defendant Hawthorne Timber Company (hereinafter "Defendant Georgia-Pacific"), and Defendant Mendocino County Tax Collector ("Defendant Tax Collector") (Collectively "Defendants") (Parties hereto may be individually referenced herein as "Party," or may be collectively referenced herein as "Parties") hereby stipulate as follows:

RECITALS

A. On or about August 11, 2021, Mendocino Railway filed a Complaint in Eminent Domain, Mendocino County Superior Court Case Number 21CV00595 against Defendants (the "Eminent Domain Action"), seeking to acquire the fee simple interest in and to the real property which has been assigned Assessor's Parcel Numbers 018-430-21; 018-430-22; 018-040-61; 018-120-50; 008-151-26; 008-020-17 (aka 008-020-19); 008-171-07; 008-161-08; 008-070-31; 020-550-02; 020-550-08; 020-550-10; and 020-550-11("Subject Property") as identified and described in the Complaint.

B. Mendocino Railway's acquisition of the Subject Property is necessary for construction and maintenance of rail facilities related to Mendocino Railway's ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto ("Project"), a public use.

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

D. Defendant Georgia-Pacific is the fee owner of the Subject Property. Defendant Georgia-Pacific is successor in title to Defendant North American Timber Corp. and Defendant Hawthorne Timber Company.

E. Mendocino County Treasurer-Tax Collector is a lienholder for property taxes.

F. Mendocino Railway and Defendants now desire to resolve any and all claims and interests in connection with Mendocino Railway's acquisition of the Subject Property, on the terms and conditions set forth herein.

BASED ON THE FOREGOING, the Parties hereby stipulate and agree as follows:

1. **Compensation to be Paid.** Mendocino Railway and Defendants hereby agree that the total compensation to be paid by Mendocino Railway in this proceeding is the sum of One Million Two Hundred Thirty Thousand Dollars ($1,230,000.00) (the "Total Compensation"). Said Total Compensation shall be paid to Defendant as set forth herein below.

Mendocino Railway and Defendants further agree that said Total Compensation reflects the fair market value of the Subject Property in consideration of the Subject Property in its environmental and physical condition as of said date, including without limitation the California Department of Toxic Substances Control Site Investigation and Remediation Order No. HAS-RAO 06-07-150, and subject to all encumbrances, easements, rights-of-way, servitudes, covenants or other matters of record as of August 13, 2021 (the date the Lis Pendens was recorded). Defendant Georgia Pacific shall provide to Mendocino Railway, within ten (10) days of execution of this Stipulation, any environmental tests or reports relating to the Subject Property (including draft reports if not finalized) generated after 2007 and which are not available on DTSC's Envirostor or Geotracker. Such documents are provided as information only.

Further, said Total Compensation constitutes full and final settlement and resolution of any and all claims and interests in connection with Mendocino Railway's acquisition of the Subject Property and this Eminent Domain Action, including without limitation compensation for: real property, severance damages, improvements pertaining to realty, fixtures and equipment, personal property, business goodwill, relocation benefits, precondemnation damages, pre-judgment interest, and post-judgment interest, any and all other compensation, damages, litigation expenses and costs.

2. **Manner of Payment.** The Total Compensation shall be paid as follows:

a. Pursuant to the [Proposed] Final Judgment, Mendocino Railway shall pay Defendant Georgia-Pacific LLC the Total Compensation of One Million Two Hundred Thirty Thousand Dollars ($1,230,000.00) no later than November 20, 2021.

Upon receipt of payment, as set forth above, Defendant Georgia-Pacific LLC shall immediately execute a Satisfaction of Judgment and return it to Mendocino Railway for filing with the Court.

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

3. **Entry of Final Judgment and Final Order of Condemnation.** The Court shall enter Final Judgment consistent with the terms of this stipulation in the form attached hereto as Exhibit A and filed concurrently herewith. Thereafter, upon payment of Total Compensation, the Court may enter a Final Order consistent with the terms of this Stipulation, transferring fee title to the Subject Property to Mendocino Railway subject to all encumbrances, easements, rights-of-way, servitudes, covenants or other matters of record as of August 13, 2021. No further notice to Defendants or execution or approval by Defendants shall be necessary prior to the Court's entering such Final Order of Condemnation. Defendants hereby waive the right to further trial by court or jury, and waive the right to Statement of Decision, and any and all right to appeal as to any and all issues related to the Subject Property, Mendocino Railway's acquisition of the Subject Property or this Eminent Domain Action.

4. **Possession.** Mendocino Railway shall take, and Defendant Georgia-Pacific LLC shall relinquish, possession of the Subject Property on November 15, 2021. Moreover, Mendocino Railway is entitled to entry of an Order for Prejudgment Possession, if Mendocino Railway determines it to be necessary, on an ex parte basis and without further notice to Defendants, or as otherwise sought by Mendocino Railway, authorizing and empowering

Mendocino Railway to take possession and use said fee interest, and to remove any and all persons, obstacles, improvements, or structures of every kind and nature situated thereon.

Defendants waive the provision of Cal. Code Civ. Proc. § 1255.450 (b) requiring service of an Order for Prejudgment Possession and agree that notwithstanding the date the Order for Prejudgment Possession is actually entered, the effective date of the Order for Prejudgement Possession is November 15, 2021.

Defendant Georgia-Pacific LLC agrees that that the Court may issue an Order for Possession and that in the event Defendant or any occupant fails to comply with this Stipulation and said Order for Possession by vacating and relinquishing possession of the Subject Property on or before November 15, 2021, the Court may forthwith and upon ex parte application issue a Writ of Assistance effective immediately authorizing the Mendocino County Sheriff to remove Defendant Georgia-Pacific LLC or any other occupants from the Subject Property and assist Mendocino Railway in obtaining immediate possession of the Subject Property.

Pursuant to Section 1268.410 et seq. of the Code of Civil Procedure, property taxes on the Subject Property shall be prorated as of November 14, 2021. Georgia Pacific shall be responsible for payment of property taxes on the Subject Property for the period prior to November 15, 2021. Property taxes, if any, on the Subject Property for the period starting November 15, 2021 shall be payable by Plaintiff.

5. **Full and Final Resolution.** This Stipulation and the Court's entry of the Final Judgment and Final Order of Condemnation constitute full and final resolution of any and all claims, interests and issues of the Parties in connection with the Subject Property, Mendocino Railway's acquisition of the Subject Property or this Eminent Domain Action, and the Parties' mutual waiver and release of any and all claims made to date and issues in connection therewith that were asserted or could have been asserted, other than the duties and obligations created by this Stipulation, including without limitation all compensation, damages and benefits for real property, severance damages, improvements pertaining to real property, loss of goodwill, personal property, fixtures and equipment, precondemnation damages, loss of inventory, pre-judgment and post-judgment interest, attorneys or other fees, litigation expenses and costs.

6. **Mutual General Release.** Except as otherwise set forth in this Stipulation, all Parties waive and forever release the other Parties, including their successors, officers, employees, attorneys, agents, representatives, and anyone acting on their behalf or for them, of and from any and all existing or potential future claims, demands, actions or causes of action, or liabilities, known or unknown, based upon or arising in connection with the Subject Property, Mendocino Railway's acquisition of the Subject Property and/or this Eminent Domain Action.

By such release, the Parties waive any rights under California Civil Code Section 1542, which provides, "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

7. **Indemnity.** Mendocino Railway expressly assumes any and all liability related to any Environmental Conditions (any circumstance or set of circumstances in, on, under or about the Property that arise directly or indirectly out of or related to the presence, suspected presence, release or threatened release of any Hazardous Material (Any "hazardous waste", "hazardous substance", "extremely hazardous substance", "toxic chemical", "hazardous chemical", "toxic pollutants", "contaminants", "chemical", "chemical substance", "mold" or "asbestos", as such terms are defined in any of the Environmental Laws, or related substances, in such quantities or concentrations as are regulated by such Environmental Laws or other applicable laws, or which may be declared to constitute a material threat to human health or to the Environment.) on the Property as of August 13, 2021 and any Hazardous Materials, and Mendocino Railway waives, relinquishes, releases, indemnifies and holds harmless Defendant Georgia-Pacific from any and all claims, demands, administrative orders, causes of action (including causes of action in tort, remedial actions, losses, damages, liabilities, judgments, settlements, penalties, fines, costs and expenses (including attorneys' fees and court costs actually incurred) of any and every kind or character, known or unknown, whether based upon negligence, strict liability or otherwise arising out of or related to the Environmental Condition of the Property, but excluding any claims or causes of action related to personal injury commencing prior to November 15, 2021. Mendocino Railway expressly acknowledges that the

Subject Property is subject to the California Department of Toxic Substances Control Site Investigation and Remediation Order No. HAS-RAO 06-07-150 ("Order"). As of November 15, 2021, Mendocino Railway will expressly assume any and all obligations, requirements and liabilities solely and exclusively related to the Subject Property that arise from the Order and shall hold Defendant Georgia-Pacific harmless from any such obligations, requirements and liabilities. As of November 15, 2021, Plaintiff will expressly assume any and all obligations, requirements and liabilities solely and exclusively related to the Subject Property that arise from the Order, shall use its best efforts to obtain DTSC's approval to insert Plaintiff as a party subject to the Order. Plaintiff shall provide evidence of its best efforts with respect to obtaining DTSC's approval no later than December 31, 2021 and monthly thereafter until Plaintiff is added to the Order.

8. Plaintiff shall indemnify and hold Defendant Georgia-Pacific harmless from any and all claims, causes of action, demands, damages or attorney's fees arising out of or relating in any way to claims or allegations by the City of Fort Bragg and/or any third party relating to this Eminent Domain Action and/or this Stipulation and Judgment.

9. **Representations and Warranties.**

a. Defendant Georgia-Pacific hereby represents and warrants that, other than such easements, rights-of-way, servitudes, covenants or other matters of record, the License Agreement for Winter Storm Site and Emergency Base Camp dated December 22, 2015 in favor of Pacific Gas and Electric Company, and any such matters that would be shown by an accurate survey or visual inspection of the Subject Property, as of the date this Stipulation is executed by all Parties, Defendant Georgia-Pacific is not aware of any other party having any interest in or claiming an interest in, nor has it assigned, hypothecated or otherwise transferred any interest or any claims of interest, in or to the Subject Property or the Eminent Domain Action which are the subject of this Stipulation, including without limitation any claims against Mendocino Railway for compensation or damages, or otherwise arising out of or in any way related to the Subject Property, Mendocino Railway's acquisition of the Subject Property or the Eminent Domain Action.

b. Defendant Georgia-Pacific further represents that it is the sole owner of the Subject Property and successor in title to Defendant North American Timber Corp. and Defendant Hawthorne Timber Company, and the owner of any and all claims against Mendocino Railway for compensation and damages, or any other claims arising out of or in any way related to the Subject Property, Mendocino Railway's acquisition of the Subject Property or the Eminent Domain Action.

c. Other than as specified in this Stipulation, Defendant Georgia-Pacific represents and warrants that it is not aware of any other party who is or may be entitled to, or claims an interest in, all or any portion of the Total Compensation in this matter.

d. Each Party represents and warrants that it has the full right and power to enter into this Stipulation and to execute and bind said Party to the release and all other provisions contained herein.

e. Defendant Georgia-Pacific hereby represents and warrants that, to the best of Georgia-Pacific's knowledge, other than as expressly disclosed in this Stipulation, there currently are no actual or threatened claims, demands, actions or causes of action, or liabilities regarding the Subject Property.

f. Each Party agrees to defend and indemnify each other party in the event any claim is made which is contrary to the representations and warranties contained herein. If any action or other proceeding is brought for the enforcement of these representations and warranties, or interpretation thereof, the successful or prevailing party shall be entitled to recover actual attorneys' fees and other costs it incurs in that action or proceeding, in addition to any other relief to which it may be entitled, including fees for any in-house counsel of the party or attorney's fees for self-represented party acting as his/her own attorney and/or of his/her spouse.

10. **No Admission of Liability.** This Stipulation is a compromise of disputed claims between the Parties hereto and shall not be construed as an admission of liability by any party for any purpose.

11. **Integration.** This Stipulation constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous

agreements and understandings of the Parties; there are no warranties, representations or other agreements between the Parties except as expressly set forth herein. No amendment hereto shall be binding unless set forth in a writing stating that it is intended to amend this agreement, executed by the party to be bound thereby. No waiver of any of the provisions of this Stipulation shall be deemed or constitute a waiver of any of the other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

12. **Counterparts.** This Stipulation may be transmitted by facsimile/EMAIL and executed in counterparts and, as so executed, shall constitute one agreement binding on all Parties.

13. **Severability.** In the event that any provision of this Stipulation is found by a court of competent jurisdiction to be void, the remaining provisions of this Agreement shall remain in full force and effect.

14. **Each Party to Bear Own Costs and Fees.** Each party shall bear its own litigation expenses, including but not limited to all attorney's fees and expert witness fees and any and all other fees or costs of any nature, including costs set forth in Code of Civil Procedure Section 1033.5.

15. **Choice of Law.** This Stipulation and any dispute hereunder shall be governed by the laws of the State of California.

16. **Each Party Authorized.** By signing this Stipulation, each party attests that he or she is duly authorized by his or her respective corporation or entity, if applicable, to execute this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

Dated: 4-November-2021

MENDOCINO RAILWAY

Robert Jason Pinoli, President

Dated: _____

GEORGIA-PACIFIC LLC

_____

By: _____

Its: _____

Dated: _____

MENDOCINO COUNTY TREASURER-
TAX COLLECTOR.

_____

By: _____

Its: _____

DocuSign Envelope ID: 1DDD1D56-AA09-463B-8BE9-94229028DAEB

Dated: _____

MENDOCINO RAILWAY

_____

Robert Jason Pinoli, President

Dated: 11/12/2021 | 1:29:05 PM PST

GEORGIA-PACIFIC LLC

DocuSigned by:

_____
77BC00EFB7E3440...

DS

By: Michael E. Cruz

AFM

Its: Vice President - Real Estate

Dated: _____

MENDOCINO COUNTY TREASURER-
TAX COLLECTOR.

_____

By: _____

Its: _____

Dated: _____

MENDOCINO RAILWAY

_____

Robert Jason Pinoli, President

Dated: _____

GEORGIA-PACIFIC LLC

_____

By: _____

Its: _____

Dated: 11-16-21

MENDOCINO COUNTY TREASURER-TAX COLLECTOR.

Shari L. Schapmire

By: Shari L. Schapmire

Its: Treasurer-Tax Collector

EXHIBIT A

GLENN L. BLOCK (SB#208017)
ANDREW S. PARSLOW (SB#332916)
CALIFORNIA EMINENT DOMAIN LAW GROUP, A PC
3429 Ocean View Blvd., Suite L
Glendale, CA 91208
Telephone: (818) 957-0477
Facsimile: (818) 957-3477

Attorneys for Plaintiff MENDOCINO RAILWAY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MENDOCINO

MENDOCINO RAILWAY, Plaintiff, v. GEORGIA-PACIFIC LLC; NORTH AMERICAN TIMBER CORP.; HAWTHORNE TIMBER COMPANY, LLC; MENDOCINO COUNTY TREASURER-TAX COLLECTOR; All other persons unknown claiming an interest in the property; and DOES 1 through 100, inclusive, Defendants.	Case No. 21CV00595 [APN 018-430-21; 018-430-22; 018-040-61; 018-120-50; 008-151-26; 008-020-17 (aka 008-020-19); 008-171-07; 008-161-08; 008-070-31; 020-550-02; 020-550-08; 020-550-10; and 020-550-11] **[PROPOSED] FINAL JUDGMENT**

Plaintiff Mendocino Railway (hereinafter "Mendocino Railway" or "Plaintiff") and Defendant Georgia-Pacific LLC, successor in interest to Defendant North American Timber Corp. and Defendant Hawthorne Timber Company (hereinafter "Defendant Georgia-Pacific"), and Defendant Mendocino County Tax Collector ("Defendant Tax Collector") (Collectively "Defendants") (parties hereto may be individually referenced herein as "Party," or may be collectively referenced herein as "Parties") having entered into the concurrently filed Stipulation Re: Settlement, Judgment, and Final Order of Condemnation ("Stipulation"), judgment may be made and entered in accordance with these terms and conditions and without further notice to any of the Defendants.

IT APPEARING that on or about August 11, 2021, Mendocino Railway filed a Complaint in Eminent Domain, Mendocino County Superior Court Case Number 21CV00595 against Defendants (the "Eminent Domain Action"), seeking to acquire the fee simple interest in and to the real property which has been assigned Assessor's Parcel Numbers 018-430-21; 018-430-22; 018-040-61; 018-120-50; 008-151-26; 008-020-17 (aka 008-020-19); 008-171-07; 008-161-08; 008-070-31; 020-550-02; 020-550-08; 020-550-10; and 020-550-11("Subject Property") as identified and described in the Complaint. The Subject Property is more particularly described, together with maps, in Exhibits "A" and "B" to the Complaint, true and correct copies of which are attached hereto as Exhibits "A" and "B."

IT FURTHER APPEARING that Mendocino Railway's acquisition of the Subject Property is necessary for construction and maintenance of rail facilities related to Mendocino Railway's ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto ("Project"), a public use.

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

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

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

filed its Answer. Property taxes may remain outstanding for the Subject Property, thus Defendant Mendocino County Treasurer-Tax Collector may be entitled to compensation for outstanding property taxes incurred for the period up to November 4, 2021.

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The use for which the Subject Property is being acquired by Mendocino Railway in this action, for construction and maintenance of rail facilities related to Mendocino Railway's ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto, is a public use authorized by law and the acquisition of the Subject Property is necessary to such use.

2. Plaintiff is entitled to and shall take possession of the Subject Property effective November 5, 2021.

3. Defendant North American Timber Corp. and Defendant Hawthorne Timber Company, predecessors in interest to Defendant Georgia-Pacific, are hereby dismissed from this action.

4. The stipulating Defendants have waived the right to a Statement of Decision, Notice of Entry of Judgment, Notice of Entry of Final Order of Condemnation and any and all right to appeal as to any and all issues related to the taking of the Subject Property.

5. Except as otherwise set forth in this Judgment and except for breach of any terms or conditions contained in the parties' Stipulation, all parties waive and forever release the other parties, including their successors, officers, employees, attorneys, agents, representatives, and anyone acting on their behalf or for them, of and from any and all claims made to date, demands, actions or causes of action, or liabilities, known or unknown, based upon or arising in connection

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

6. In connection with the release set forth in Section 4 above, Plaintiff expressly assumes any and all liability related to any Environmental Conditions (any circumstance or set of circumstances in, on, under or about the Subject Property that arise directly or indirectly out of or related to the presence, suspected presence, release or threatened release of any Hazardous Material (Any "hazardous waste", "hazardous substance", "extremely hazardous substance", "toxic chemical", "hazardous chemical", "toxic pollutants", "contaminants", "chemical", "chemical substance", "mold" or "asbestos", as such terms are defined in any of the Environmental Laws, or related substances, in such quantities or concentrations as are regulated by such Environmental Laws or other applicable laws, or which may be declared to constitute a material threat to human health or to the Environment.) on the Subject Property as of August 13, 2021 and any Hazardous Materials, and Plaintiff waives, relinquishes, releases, indemnifies and holds harmless Defendant Georgia-Pacific from any and all claims, demands, administrative orders, causes of action (including causes of action in tort), remedial actions, losses, damages, liabilities, judgments, settlements, penalties, fines, costs and expenses (including attorneys' fees and court costs actually incurred) of any and every kind or character, known or unknown, whether based upon negligence, strict liability or otherwise arising out of or related to the Environmental Condition of the Property, but excluding any claims or causes of action related to personal injury commencing prior to November 5, 2021. Plaintiff expressly acknowledges that the Subject Property is subject to the California Department of Toxic Substances Control Site Investigation and Remediation Order No. HAS-RAO 06-07-150 ("Order"). As of November 5, 2021, Plaintiff will expressly assume any and all obligations, requirements and liabilities solely and exclusively related to the Subject Property that arise from the Order, shall seek DTSC's approval to insert Plaintiff as a party subject to the Order.

7. Plaintiff agrees to hold Defendant Georgia-Pacific harmless from any and all claims, causes of action, demands, damages or attorney's fees arising out of or relating in any

way to claims or allegations by the City of Fort Bragg and/or any third party relating to the this Eminent Domain Action and/or the Parties' Stipulation and this Judgment.

8. By such release, and subject to the above exclusions, the parties waive any rights under California Civil Code Section 1542, which provides, "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

9. The total compensation for Mendocino Railway's taking of the Subject Property is One Million Two Hundred Thirty Thousand dollars ($1,230,000.00). Said Total Compensation shall be disbursed and paid to Defendant Georgia-Pacific as set forth below.

10. Mendocino Railway shall tender payment directly to Defendant Georgia-Pacific the sum of One Million Two Hundred Thirty Thousand Dollars ($1,230,000.00) paid by wire transfer to Hill Farrer & Burrill LLP Client Trust Account no later than November 15, 2021:

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

11. To the extent that there are any outstanding taxes due and payable to Defendant Mendocino County Treasurer-Tax Collector through and including November 4, 2021, said outstanding taxes shall be paid from the Total Compensation from Hill Farrer & Burrill LLP Client Trust Account to Defendant Mendocino County Treasurer-Tax Collector. Upon determining that no outstanding taxes are due and payable, or upon receiving payment of any outstanding taxes pursuant to this paragraph, Defendant Mendocino County Treasurer-Tax Collector shall immediately execute a Satisfaction of Judgment and return it to Mendocino Railway for filing with the Court.

12. Upon receipt of the payment as set forth in paragraph 9 above, Defendant Georgia-Pacific LLC shall immediately execute a Satisfaction of Judgment and return it to Mendocino Railway for filing with the Court.

13. Upon the filing of the Satisfaction of Judgments executed by Defendant Georgia-Pacific pursuant to paragraph 10, above, and Defendant Mendocino County Treasurer-Tax Collector pursuant to paragraph 11, above, Mendocino Railway shall forthwith be entitled to a Final Order of Condemnation condemning the Subject Property in fee simple for the public use and purpose stated in the Complaint, to wit, for construction and maintenance of rail facilities related to Mendocino Railway's ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto. Mendocino Railway to take all right, title, and interest in and to the Subject Property, together with any and all improvements thereon, subject to all encumbrances, easements, rights-of-way, servitudes, covenants or other matters of record or as stated in the Stipulation for Entry of Judgment, as of August 13, 2021, whatever kind or nature, without further notice to any party.

14. Pursuant to Section 1268.410 et seq. of the Code of Civil Procedure, the Mendocino County Treasurer-Tax Collector shall prorate property taxes on the Subject Property through November 4, 2021. Property taxes, if any, on the Subject Property for the period starting November 5, 2021 shall be payable by Plaintiff.

11/18/2021 2:45:03 PM

DATED: 11/18/2021

Judge of the Superior Court

EXHIBIT A

EXHIBIT "A"

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

Tract One:

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

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

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

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

APN: 018-120-50

Tract Two:

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

Beginning at the Southwest corner of said Section 7; thence South 88° 17' 06" East, 283.93 feet along the Southerly line of said Section 7 to a point on the Westerly boundary of said Highway One; said point is on a 5,949.72 foot (Record 5,950 foot) radius curve to the left, a tangent at said point bears North 06° 06' 14" East, proceeding along the arc of said curve for a distance of 333,09 feet through an angle of 3° 12' 27" along said Highway boundary to a 6" x 6" concrete right-of-way monument; thence continuing along said Highway boundary North 2° 54' 12" East, 356.23 feet to a line that is an extension of the Southerly line of Cypress Street projected Westerly, thence along said projected line North 88° 41' 01" West, 312.49 feet to the West boundary of said Section 7; thence South 01° 18' 01" West, 686.66 feet along said West boundary of Section 7 to the point of beginning.

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

APN: 018-040-52

Tract Three:

Parcel One:

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

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

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

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

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

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

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

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

ALSO EXCEPTING all that portion described as follows:

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

Parcel Two:

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

Beginning at the corner to Sections I and 12, Township 18 North, Range 18 West, and Sections 6 and 7, Township 18 North, Range 17 West, Mount Diablo Base and Meridian; and running thence South along the Range line 2640 feet to a point in the City Limit on the South side of Fort Bragg, according to the "Map of the City of Fort Bragg, showing the Town Lots" tiled February 15, 1910 in Map Case 1, Drawer 3, Page 44, Mendocino County Records; thence East along said City Limit 380 feet to a point in the West line of Main Street; thence North along said West line 1260 feet to a point in the South line of Oak Avenue; thence West along said South line 200 feet; thence North 980 feet to a point in the North line of Redwood Avenue; thence East along the North line of Redwood Avenue 200 feet to the West line of Main Street; thence North along said West line 119.50 feet to the Northeast corner of a strip of land described in a Deed from Coast National Bank in Fort Bragg to Union Lumber Company, dated November 9, 1955, recorded in Book 413 of Official Records, Page 502, Mendocino County Records; thence West along said North line 121 feet to a point in the West line of a parcel of land described in a Deed from Union Lumber Company to Coast National Bank of Fort Bragg, dated November 3, 1955, recorded in Book 413 of

Official Records, Page 500, Mendocino County Records; thence North along the West line of said parcel 38.50 feet to the Northwest corner thereof; thence East 121 feet to a point on the West line of Main Street and being the Northeast corner of a parcel of land described in a Deed from Union Lumber Company to the Bank of Fort Bragg, dated June 3, 1904, recorded in Book 97 of Deeds, Page 354, Mendocino County Records; thence North along the West line of Main Street 161.5 feet to the Southeast corner of a parcel of land described in a Deed from Union Lumber Company to the City of Fort Bragg, dated October 31, 1912, recorded in Book 133 of Deeds, Page 421, Mendocino County Records; thence West along the South line of said last mentioned Parcel 56 feet to its Southwest corner; thence North along its West line 42.5 feet to a point in the South line of a parcel of land described in a Deed from Union Lumber Company to Fort Bragg Commercial Bank, dated May 11, 1912, recorded in Book 131 of Deeds, Page 33, Mendocino County Records; thence West along the South line of said last mentioned Parcel 44 feet to its Southwest corner; thence North along its West line 35 feet to its Northwest corner; thence West 280 feet to the point of beginning.

EXCEPTING THEREFROM the following:

1. That portion described in the Deed to City of Fort Bragg, recorded January 9, 1985, in Book 1489, Page 317, Mendocino County Records.

2. That portion described in the Deed to California Western Railroad recorded November 19, 1987, in Book 1656 Official Records, Page 374, Mendocino County Records.

3. That portion described in the Deed to Mendocino Coast Railway recorded November 19, 1987, in Book 1656 Official Records, Page 378, Mendocino County Records.

4. Those portions described in the Deeds to Joe H. Mayfield, et ux, recorded October 31, 1984 in Book 1480 Official Records, Page 252 and recorded June 27, 1986 in Book 1566 Official Records, Page 363, Mendocino County Records.

5. Parcel 1 as shown on that certain Parcel Map of Division No. 3-84 filed October 23, 1984 in Map Case 2, Drawer 42, Page 23, Mendocino County Records.

6. Parcels 1, 2 and 3 as numbered and designated on the certain Parcel Map of Division 4-01 filed September 23, 2005 in Drawer 72 of Maps, Page 79, Mendocino County Records.

7. Those portions described in the Deeds to the State of California recorded February 19, 1999 as Serial #1999-03294 and Serial #1999-03295, Mendocino County Records.

8. All that portion as described as follows:

That certain real property situated in the City of Fort Bragg, County of Mendocino, State of California, and being a portion of the West one-half of the Northwest one-quarter of Section 7, Township 18 North, Range 17 West, Mount Diablo Meridian, more particularly described as follows:

The bearings used in this description are in terms of the California State Grid, Zone 2.

Beginning at a point where the West line of Main Street intersects the South line of Oak Avenue extended Westerly in the City of Fort Bragg, said point of beginning being 1380 feet South and 380 feet East of the section corner common to Sections 6 and 7, Township 18 North, Range 17 West, and Section 1 and 12, Township 18 North, Range 18 West, Mount Diablo Meridian: thence from said point of beginning and along the exterior boundary lines of the parcel of land to be described as follows:

South 01° 37' 54" West (Record= South) along the West line of said Main Street, 145.88 feet; thence leaving said street side line, North 85° 10' 18" West, 100.15; thence North 01° 37' 54" East (Record= North) and Parallel with the West line of said Main Street, 139.83 feet to a point in the South line of said Oak Avenue extended Westerly; thence South 88° 38' 00" East (Record =East) along said Oak Avenue side line, 100.00 feet to the point of beginning.

9. All that portion described as follows:

Commencing at the section corner common to Sections 6 and 7, Township 18 North, Range 17 West, and Sections I and 12, Township 18 North, Range 18 West, Mount Diablo Meridian; thence South 01°18'24" West along the range line, a distance of 460.05 feet to the POINT OF BEGINNING; thence leaving said range line, South 88°41'11" East, a distance of 179.92 feet; thence South 01 °21'03" West, a distance of 229.27 feet; thence North 87°51 '29" West, a distance of 12.77 feet; thence South 00°17'51" West, a distance of21.09 feet; thence North 89°10'25" West, a distance of 74.38 feet; thence North 00°41'57" East, a distance of 9.95 feet; thence North 88°17'22" West, a distance of 10.04 feet; thence North 60°27'42" West, a distance of 7.99 feet; thence North 88°58'07" West, a distance of 75.78 feet to the range line; thence North 01 °18'24" East along the range line, a distance of237.38 feet to the POINT OF BEGINNING.

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

EXCEPTING FROM PARCELS ONE AND TWO ALL THAT LAND LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SECTION CORNER COMMON TO SECTIONS 6 AND 7, TOWNSHIP 18 NORTH, RANGE 17 WEST, AND SECTIONS 1 AND 12, TOWNSHIP 18 NORTH, RANGE 18 WEST, MOUNT DIABLO MERIDIAN; THENCE SOUTH 13°42'42" EAST, A DISTANCE OF 414.22 FEET TO THE SOUTHWEST CORNER OF PARCEL ONE AS SHOWN ON "PARCEL MAP OF DIVISION NO. 5-84" FILED IN MAP CASE 2, DRAWER 42, PAGE 59 MENDOCINO COUNTY RECORDS AND BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 88°41'11" WEST, A DISTANCE OF 1,809.58 FEET MORE OR LESS TO A POINT ON THE WEST BOUNDARY OF THE LANDS OF GEORGIA-PACIFIC CORPORATION.

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

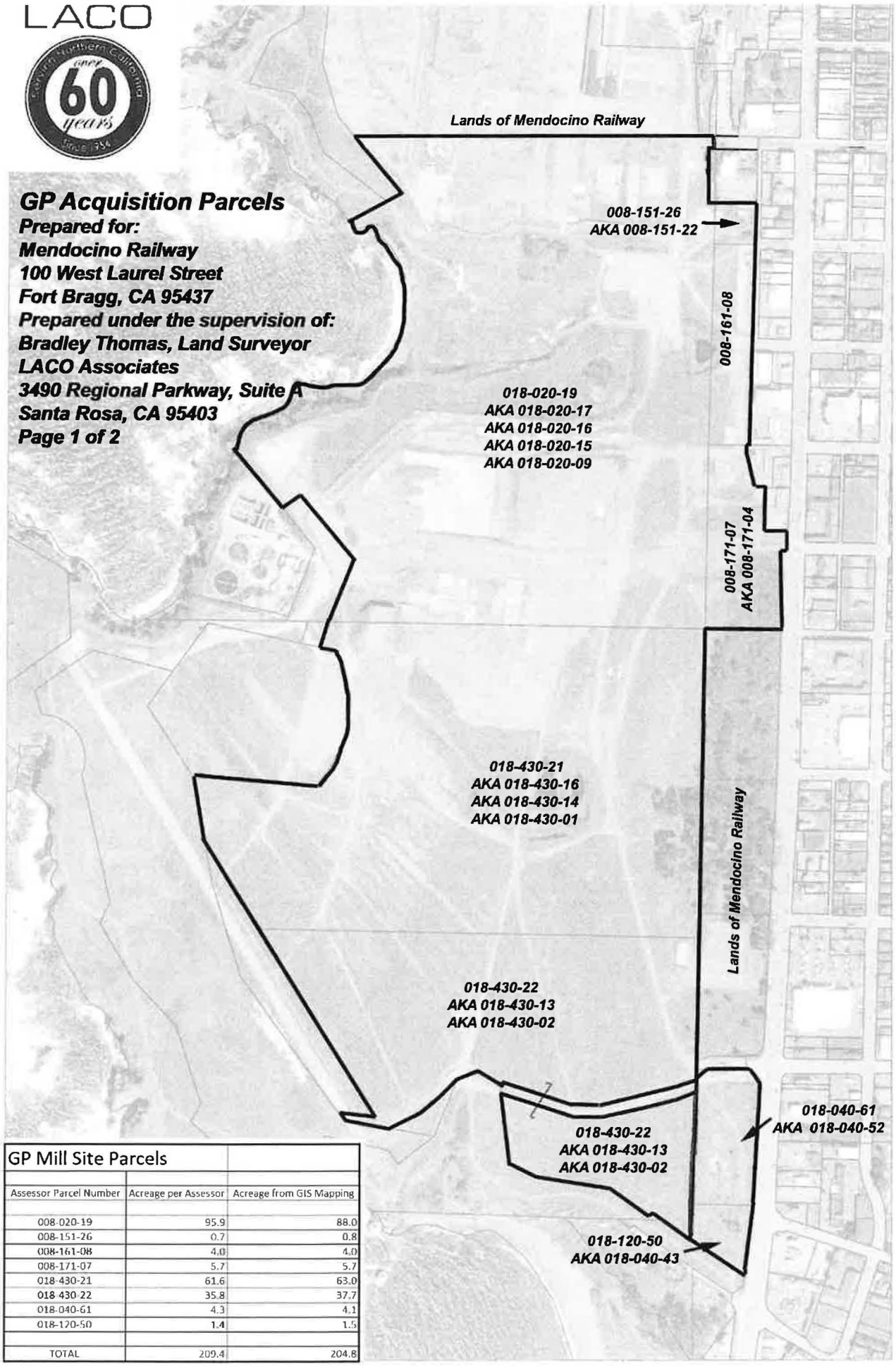
APN(s): 008-151-26, 008-161-08 and 008-171-07, 008-020-19, 008-430-21 and 008-430-22

LACO

GP Acquisition Parcels

Prepared for:
Mendocino Railway
100 West Laurel Street
Fort Bragg, CA 95437

Prepared under the supervision of:
Bradley Thomas, Land Surveyor
LACO Associates
3490 Regional Parkway, Suite A
Santa Rosa, CA 95403



GP Mill Site Parcels		
Assessor Parcel Number	Acreage per Assessor	Acreage from GIS Mapping
008-020-19	95.9	88.0
008-151-26	0.7	0.8
008-161-08	4.0	4.0
008-171-07	5.7	5.7
018-430-21	61.6	63.0
018-430-22	35.8	37.7
018-040-61	4.3	4.1
018-120-50	1.4	1.5
TOTAL	209.4	204.8

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

EXHIBIT B

EXHIBIT "B"

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

Tract One:

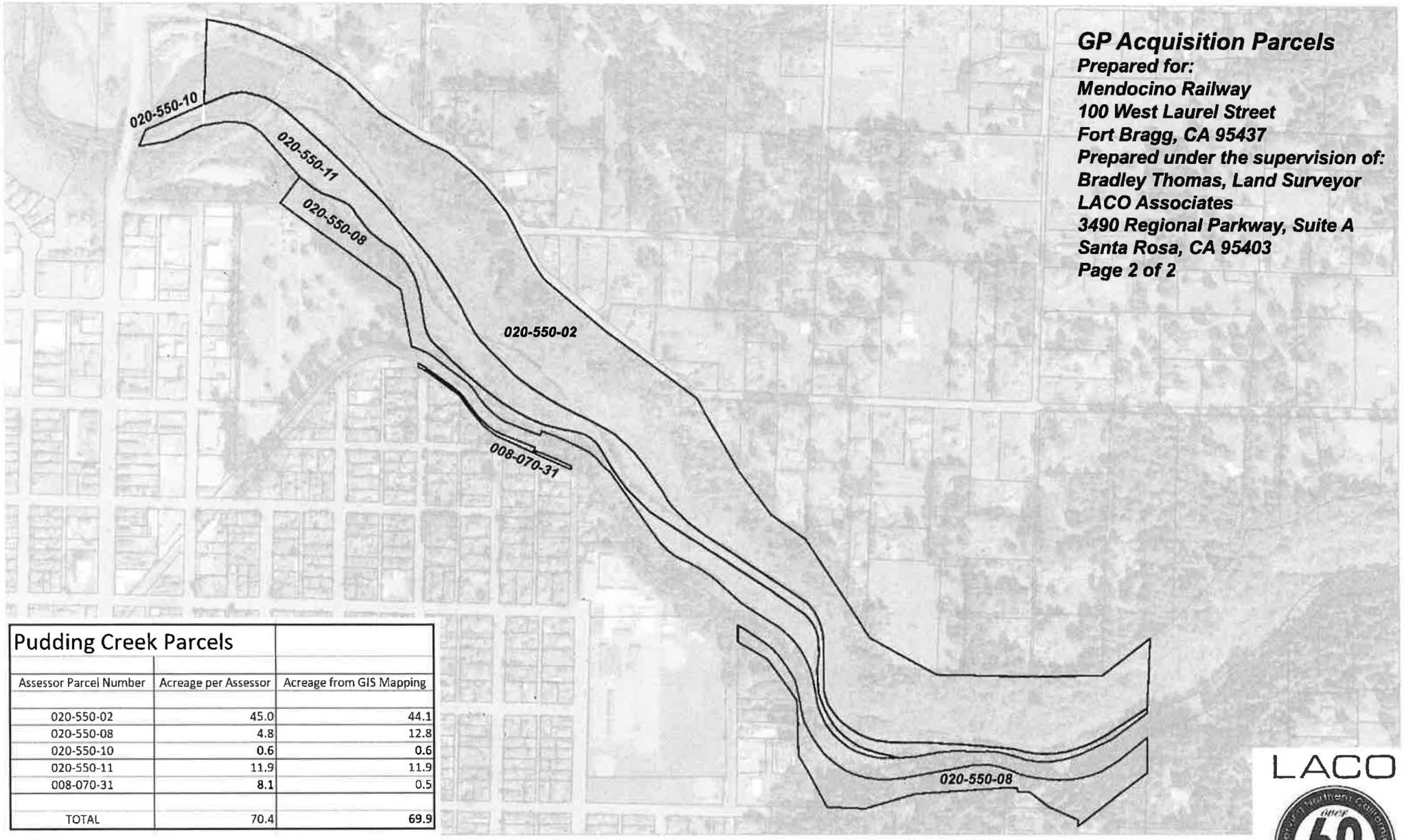
All that certain real property more particularly described in Exhibit B of the Grant Deed executed by Boise Cascade Corporation to Georgia-Pacific Corporation, under the heading of"Fort Bragg Properties, Township 18 North, Range 17 West, M.D.M., Section 6" in Parcel One, Parcel Two, Parcel Three and Parcel Eight, which deed recorded March 25, 1974 in Book 957 of Official Records, Page I 08, Mendocino County Records, excepting therefrom that portion described in the Grant Deed executed by Georgia-Pacific Corporation to Michael S. Bennett, etal recorded November 29, 1989 in Book 1792 of Official Records, Page 432, Mendocino County Records.

APN: 020-550-02, 020-550-10, 020-550-11 and 020-550-x08

Tract Two:

All that certain real property more particularly described in Exhibit B of the Grant Deed executed by Boise Cascade Corporation to Georgia-Pacific Corporation, under the heading of"Fort Bragg Properties, Township 18 North, Range 17 West, M.D.M., Section 6" in Parcel Four and Parcel Six, which deed recorded March 25, 1974 in Book 957 of Official Records, Page 108, Mendocino County Records.

APN: 020-550-x08



GP Acquisition Parcels

Prepared for:
Mendocino Railway
100 West Laurel Street
Fort Bragg, CA 95437
Prepared under the supervision of:
Bradley Thomas, Land Surveyor
LACO Associates
3490 Regional Parkway, Suite A
Santa Rosa, CA 95403
Page 2 of 2

Pudding Creek Parcels		
Assessor Parcel Number	Acreage per Assessor	Acreage from GIS Mapping
020-550-02	45.0	44.1
020-550-08	4.8	12.8
020-550-10	0.6	0.6
020-550-11	11.9	11.9
008-070-31	8.1	0.5
TOTAL	70.4	69.9

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

LACO

EXHIBIT L

FILED
04/28/2022
KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALFORNIA,
COUNTY OF MENDOCINO
Jess, Dorothy
DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO, TEN MILE BRANCH

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

I. Standard of Review on Demurrer:

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

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

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

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

II. The Complaint:

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

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

III. The Demurrer:

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

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

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

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

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

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

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A. Requests for Judicial Notice:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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IV. Discussion:

A. Public Utilities Code Section 1759:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As the Pegastaff court concludes,

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

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

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

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

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

The CPUC writes,

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

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

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

The *City of St. Helena* court writes,

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

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

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

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

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

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

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

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

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

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

***Borough* makes clear that,**

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

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

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

As noted in *Borough*,

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

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

V. Order:

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

SO ORDERED.

DATED: 4/28/2022

Clayton L. Brennan
JUDGE OF THE SUPERIOR COURT

Superior Court of California, County of Mendocino

PROOF OF SERVICE

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

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

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

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

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

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

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

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

☐ Ukiah, California ☒ Fort Bragg, California

4/28/2022 10:22:37 AM

Date: 4/28/2022

KIM TURNER, Clerk of the Court

By: DOROTHY JESS, Deputy Clerk

EXHIBIT M

Court of Appeal, First Appellate District
Charles D. Johnson, Clerk/Executive Officer
Electronically FILED on 6/9/2022 by A. Reasoner, Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

MENDOCINO RAILWAY,
Petitioner,
v.
SUPERIOR COURT FOR THE
COUNTY OF MENDOCINO,
Respondent;
CITY OF FORT BRAGG,
Real Party in Interest.
A165104
Mendocino County No. 21CV00850

BY THE COURT:*

The court has carefully considered the parties' briefing regarding the propriety of writ review. Writ review could be found appropriate under *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 913 & fn. 17, which differs from the present matter in some important respects, but the court retains discretion to decide whether writ review is appropriate in this particular case. The court determines the circumstances of this case warrant a denial of extraordinary writ review. The factors asserted by petitioner in favor of writ review—to the extent the court finds them persuasive—are outweighed by other considerations, including but not limited to the desirability of reviewing these issues after development of a more complete factual record in the superior court, petitioner's failure to persuasively

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* Before Simons, Acting P.J., Burns, J., and Wiseman, J. (Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

demonstrate as a factual matter that it will suffer cognizable irreparable harm absent writ review and lacks other adequate remedies at law, and the lack of a showing that resolution of the issues will impact (significantly or otherwise) any other cases. (*Babb v. Superior Court* (1971) 3 Cal.3d 841, 851; *James W. v. Superior Court* (1993) 17 Cal.App.4th 246, 252; *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1269, 1271-1274; *Los Angeles Gay & Lesbian Center v. Superior Court* (2011) 194 Cal.App.4th 288, 299-300; *Ordway v. Superior Court* (1988) 198 Cal.App.3d 98, 101, fn. 1, disapproved on other grounds, *Knight v. Jewett* (1992) 3 Cal.4th 296; *Lamadrid v. Municipal Court* (1981) 118 Cal.App.3d 786, 789 ["It is well established that the court in which extraordinary review is sought has discretion to gauge the potential adequacy of subsequent . . . review on a case-by-case basis."].) The court further observes that "[t]he Court of Appeal is generally in a far better position to review a question when called upon to do so in an appeal instead of by way of a writ petition," since on "appeal, the court has a more complete record, more time for deliberation and, therefore, more insight into the significance of the issues." (*Omaha Indemnity Co., supra,* 209 Cal.App.3d at p. 1273.)

In light of the court's decision, as well as the parties' agreement that the California Public Utilities Commission (CPUC) should not be considered a real party in interest to this proceeding, and the lack of a response filed by the CPUC to this court's May 4, 2022 order served on that entity, the court does not take any further action regarding that issue.

The previously issued stay is dissolved.

Date: 06/09/2022 ___Simons, Acting P.J.

EXHIBIT N

FILED
10/20/2022
KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALFORNIA,
COUNTY OF MENDOCINO
Jess, Dorothy
DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MENDOCINO, TEN MILE BRANCH

CITY OF FORT BRAGG, a California Municipal corporation **Plaintiff,** **vs.** **MENDOCINO RAILWAY and DOES 1-10, inclusive,** **Defendants,** **CALIFORNIA COASTAL COMMISSION,** **Intervenor.**	**Case No.: 21CV00850** **MINUTE ORDER GRANTING CALIFORNIA COASTAL COMMISSION'S MOTION FOR LEAVE OF COURT TO INTERVENE**

On September 8, 2022, the California Coastal Commission (hereinafter, the Commission) filed a motion for leave of court to intervene in the above-captioned case. The motion came on for hearing in the Ten Mile Branch of the Mendocino County Superior Court at 2:00 p.m. on October 20, 2022, the Hon. Clayton L. Brennan presiding. The Commission appeared through counsel, Deputy Attorney General, Patrick Tuck.

Defendant Mendocino Railway appeared through counsel, attorney Paul J. Beard II. Plaintiff, the City of Fort Bragg appeared through counsel, Krista MacNevin Jee.

Defendant, City of Fort Bragg, has no objection to the intervention and supports the Commission's request to intervene.

The court, having considered all the pleadings and papers filed herein, and the oral arguments of counsel, hereby grants the motion to intervene and grants the California Coastal Commission's request for leave to file the proposed complaint in intervention attached to its motion filed September 8, 2022.

The action filed by the City of Fort Bragg seeks an injunction ordering that Defendant Mendocino Railway must comply with the City's ordinances, regulations, and authority. The City also seeks a judicial declaration that the Railway is not exempt from the City's laws and authority. The California Coastal Commission is the state agency responsible for administering the Coastal Act. Plaintiff, City of Fort Bragg, implements the permitting requirements of the Coastal Act via the City's Local Coastal Program ("LCP").

The Commission, like the City of Fort Bragg, seeks a judicial declaration that the development activities of Mendocino Railway in the coastal zone of the City of Fort Bragg are properly subject to the City's LCP permitting requirements, as well as any applicable provisions of the Coastal Act. Further, based on the Mendocino Railway's alleged ongoing unpermitted development activities in the coastal zone, the Commission seeks injunctive relief and civil penalties related to Mendocino Railway's purported violations of the Coastal Act.

Code of Civil Procedure section 387, subdivision (d)(1)(B) requires courts to allow a non-party to intervene where the party "claims an interest relating to the property or transaction that is the subject of the action," where the non-party "is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties." CCP § 387(d)(1)(B). Further, mandatory intervention pursuant to CCP § 387(d)(1)(B) is to be "liberally construed in favor of intervention.'" (*Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th, 560, 572, *quoting Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1200.)

The Court finds that the Commission readily meets the requirements for mandatory intervention. There is no question that the Commission has a strong interest in the subject of this litigation. Specifically, the relevant allegations are that Mendocino Railway has undertaken unpermitted development activities within the Coastal Zone in violation of the City's LCP and the Coastal Act. The Commission is the statewide entity responsible for ensuring compliance with the Coastal Act. The City's LCP is simply designed to implement the Coastal Act's coastal zone permitting requirements. The Commission still retains ultimate decision-making authority regarding any development subject to the Coastal Act. As the Commission notes in their reply brief,

"... [t]he California Supreme Court described, "[an] action taken under a locally issued permit is appealable to the [Commission. Thus, '[u]nder the Coastal Act's legislative scheme,... the [local coastal program] and the development permits issued by local agencies pursuant to the Coastal Act are not solely a matter of local law, but embody state policy. In fact, a fundamental purpose of the Coastal Act is to ensure that the state policies prevail over the concerns of local government.'" (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 794, citing to Pub. Resources Code § 30603, and quoting *Charles A. Pratt Construction Co., Inc. v. California Coastal Com.* (2008) 162 Cal.App.4th 1068, 1075.

In addition, the Commission's interest in the litigation is further demonstrated by its initiation of an enforcement action against Mendocino Railway as evidenced by the Notice of Violation attached as Exhibit A to the Declaration of Josh Levine.

Finally, the City of Fort Bragg, pursuant to Public Resources Code Section 30810 has requested that the Commission be the primary enforcer of the LCP with respect to Mendocino Railway as set forth in the declaration of Josh Levine. The fact that the City of Fort Bragg has sought the Commission's assistance is hardly surprising, and further militates toward granting the request for intervention. The City of Fort Bragg simply hopes to rely on the Commission's expertise as it relates to enforcement of all aspects of the Coastal Act.

The Coastal Act gives the Commission the primary responsibility for enforcing the Act's provisions and provides that the Commission shall "*assist local governments* in exercising [their] planning and regulatory powers and responsibilities" under the Act. (Pub. Resources Code §§ 30330, 30336.) Thus, the Legislature also recognizes the Commission's expertise and its key role in ensuring that the Coastal Act is properly implemented on both a state and local level.

Finally, as the Commission notes in its citation to *Arakaki v. Cayetano* (9th Cir. 2003) 324 F.3d 1078, 1086, "if an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." The Commission's ultimate objective is to obtain a ruling that its authority to implement and enforce the Coastal Act, with regard to Mendocino Railway's use and development of its property, is not preempted under state or federal law. The Commission, by way of the Second Cause of Action to its Complaint, further seeks to be awarded penalties and damages for the Railway's alleged prior and ongoing violations of the Coastal act—remedies that fall outside the scope of the City's lawsuit. Accordingly, the Commission's interest in the litigation, while substantively aligned with the City of Fort Bragg's interest, is not identical to it.

As noted in the pleadings, the Commission's burden of showing inadequacy of representation is "minimal" and is satisfied if the Commission can demonstrate that

representation of its interest "may be" inadequate. ***(Citizens for Balance Use v. Montana Wilderness Ass'n*** **(9th Cir. 2011) 647 F.3d 893, 898. Here, the City has requested the Commission to assume primary control over enforcement of the Coastal Act regarding the Railway's development activities within the coastal zone. Implicit in this request is an admission that the City is unable to adequately represent the Commission's interests. Further, because the interests of the City and the Commission are only aligned but not identical, the City will not be able to obtain a full resolution of the dispute between the Commission and the Railway.**

Given the above considerations, this court finds that any presumption of adequate representation of the Commission by the City has been overcome.

The Court further finds that granting the Commission leave to intervene will not substantially enlarge the issues in the litigation. Mendocino Railway has already alleged defenses involving both state and federal pre-emption. Thus, regardless of whether the Commission is permitted to intervene or not, any factual disputes related to those issues will still need to be addressed by the court.

In sum, the central question in the City of Fort Bragg's lawsuit and the Commission's proposed complaint in intervention is the authority of the City and Commission to regulate the activities of Mendocino Railway within the coastal zone. If the Commission were forced to bring a separate action against Mendocino Railway, the same issues regarding the scope of permitted regulation and the applicability of any state or federal preemption defenses, will remain central in either case. Accordingly, the court finds that the interests of judicial economy and "prevent[ing] a multiplicity of suits arising out of the same facts, while protecting the interests of those affected by the judgment" favor permitting the Commission to intervene. (*Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1203.)

For the reasons set forth above, the court grants the Commission's motion for leave to intervene on the side of Plaintiff herein, City of Fort Bragg, and file its proposed complaint in intervention.

SO ORDERED.

DATED: 10/21/2022

CLAYTON L. BRENNAN
Judge of the Superior Court

EXHIBIT O

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MENDOCINO RAILWAY,

Plaintiff,

v.

JACK AINSWORTH, et al.,

Defendants.

Case No. 22-cv-04597-JST

ORDER GRANTING MOTIONS TO DISMISS

Re: ECF Nos. 15 & 16

Before the Court are Defendants Jack Ainsworth's and the City of Fort Bragg's motions to dismiss. ECF Nos. 15 & 16. The Court will grant the motions.

I. BACKGROUND

This case is the second in an ongoing controversy between the City of Fort Bragg ("City") and the California Coastal Commission ("Commission"), on the one hand, and Mendocino Railway, on the other, over whether state and local laws apply to Mendocino Railway. In the first case, *City of Fort Bragg v. Mendocino Railway*, No. 21CV00850 (Cal. Super. Ct.) ("state court action"), the City and the Commission sued Mendocino Railway in the Superior Court of Mendocino County, primarily seeking a declaration that Defendant Mendocino Railway is subject to such laws and regulations. *See* ECF No. 15-1 at 6-11, 69-76.[1] The City also seeks an injunction requiring Mendocino Railway to comply with local law as it applies to dilapidating railroad infrastructure within City boundaries. *Id.* at 6-11. In addition, the Commission seeks a declaration that the Railway is subject to the California Coastal Act of 1976 ("Coastal Act"), Cal.

[1] The Commission's request that the Court take judicial notice of filings from the state court action, ECF No. 15-1 at 1-2, is granted. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

Pub. Res. Code § 30000 *et seq.*, and an injunction requiring Mendocino Railway to comply with the Act's permitting requirements. *Id.* at 69-76.

In the state court action, the City filed its complaint on October 28, 2021. ECF No. 15-1 at 11. Mendocino Railway demurred to the complaint on January 14, 2022, arguing, *inter alia*, that the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. § 10101 *et seq.*, preempts the City's claims. ECF No. 15-1 at 28-29. The court overruled the demurrer on April 28, 2022. *Id.* at 32-43. The court rejected Mendocino Railway's federal preemption argument as "overbroad" because "not all state and local regulations that affect railroads are preempted" by the ITCCA. *Id.* at 41. Rather "the applicability of preemption" in this context "is necessarily a 'fact bound' question." *Id.* at 43. The court further concluded that because Mendocino Railway "is simply a luxury sightseeing excursion service with no connection to interstate commerce," "its 'railroad activities,' for the purposes of federal preemption, are extremely limited." *Id.* at 42. Mendocino Railway filed its answer to the City's complaint on June 24, 2022, asserting federal preemption as an affirmative defense. *Id.* at 54. On September 8, 2022, the Commission moved to intervene and filed a proposed complaint-in-intervention. *Id.* at 59-84. The complaint notes that Mendocino Railway "contends that state and federal law preempts" the permitting requirements of the Coastal Act, *id.* at 74, and, as part of the Commission's prayer for relief, asks the court to declare that the Coastal Act and the City's local laws "are not preempted by any state or federal law," *id.* at 75.

Mendocino Railway removed the state court action to this Court on October 20, 2022. *See* Notice of Removal, *City of Fort Bragg, et al. v. Mendocino Railway*, No. 22-cv-06317-JST (N.D. Cal. Oct. 20, 2022), ECF No. 1. The notice of removal invokes this Court's federal question jurisdiction on the ground that the resolution of the City's and the Commission's claims requires "a judicial determination of *federal questions* arising under ICCTA." *Id.* at 2 (emphasis in original). The City and Commission moved to remand the action to state court, and this Court granted the motions. *See* Order Granting Motions to Remand, *City of Fort Bragg, et al. v. Mendocino Railway*, No. 22-cv-06317-JST (N.D. Cal. May 11, 2023), ECF No. 33.

Mendocino Railway filed the instant complaint in this case on August 9, 2022, against the

City and Jack Ainsworth in his official capacity as Executive Director of the Commission. ECF No. 1. Mendocino Railway seeks a declaration that the ICCTA preempts state and local law and an injunction prohibiting the City and the Commission from "interfer[ing] with Mendocino Railway's operation." ECF No. 1 at 10. Ainsworth and the City filed motions to dismiss Mendocino Railway's complaint. ECF Nos. 15 & 16. The Court took the motions under submission without a hearing on December 12, 2022.

II. JURISDICTION

The Court has jurisdiction under 28 U.S.C. § 1331.

III. LEGAL STANDARD

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Dismissal "is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* While this standard is not "akin to a 'probability requirement' . . . it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550 U.S. at 556). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557). In determining whether a plaintiff has met the plausibility requirement, a court must "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable" to the plaintiff. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).

IV. DISCUSSION

The parties dispute, *inter alia*, whether a *Colorado River* stay or dismissal is appropriate in

this case. Before staying or dismissing a case under *Colorado River*, the Court must find that there are concurrent state and federal court proceedings involving the same matter. If the Court makes such a finding, it then weighs a "complex [set]" factors to determine whether "exceptional circumstances justify such a stay" or dismissal. *Intel Corp. v. Advanced Micro Devices*, 12 F.3d 908, 912 (9th Cir. 1993). These factors include:

> (1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court.

Seneca Ins. Co., Inc. v. Strange Land, Inc., 862 F.3d 835, 841 (9th Cir. 2017) (quoting *R.R. St. & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 978-79 (9th Cir. 2011)). In balancing these factors, the Court must remain "mindful that '[a]ny doubt as to whether a factor exists should be resolved against a stay.'" *R.R. St.*, 656 F.3d at 979 (quoting *Travelers Indem. Co. v. Madonna*, 914 F.2d 1364, 1369 (9th Cir. 1990)). However, "these factors are not a 'mechanical checklist'; indeed, some may not have any applicability to a case." *Seneca Ins. Co.*, 862 F.3d at 842 (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983)). "Courts generally rely on the state of affairs at the time of the *Colorado River* analysis." *R.R. St.*, 656 F.3d at 982.

The Court finds the predicate existence of concurrent state and federal court proceedings, as discussed above. The first factor is "irrelevant" because "the dispute does not involve a specific piece of property." *R.R. Street*, 656 F.3d at 979. The second factor is neutral because the state proceedings are in the Mendocino County Superior Court in Fort Bragg, California, and the federal proceeding is in the Northern District of California in Oakland, California, which are approximately 150 miles apart. *Montanore Minerals Corp v. Bakie*, 867 F.3d 1160, 1167 (9th Cir. 2017) (treating a distance of 200 miles as neutral); *accord Travelers Indem. Co. v. Madonna*, 912 F.3d 1364, 1368 (9th Cir. 1990) ("Although 200 miles is a fair distance, it is not sufficiently great that this factor points toward abstention. The district court did not err in finding this factor 'unhelpful.'").

The third factor – the desire to avoid piecemeal litigation – is a "substantial factor in the *Colorado River* analysis." *Seneca Ins. Co.*, 862 F.3d at 835. "Piecemeal litigation occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly reaching inconsistent results." *Id.* (quoting *Am. Int'l Underwriters (Philippines), Inc. v. Cont'l Ins. Co.*, 843 F.2d 1253, 1258 (9th Cir. 1988)). "[T]here must be exceptional circumstances present that demonstrate that piecemeal litigation would be particularly problematic." *Id.* Such exceptional circumstances are present here, as the issue of federal preemption under the ICCTA is squarely before the state court. As discussed above, in overruling Mendocino Railway's demurrer, the state court rejected Mendocino Railway's federal preemption argument as overbroad and deferred resolution of the issue to a later juncture. ECF No. 15-1 at 42-43. Federal preemption is the sole issue raised in Mendocino Railway's complaint in this action, and for the Court to adjudicate that claim would necessarily duplicate the state court's efforts and risk the possibility of this Court and the state court reaching different results. Because "[p]ermitting this suit to continue would undeniably result in piecemeal litigation," the third factors "weighs significantly against jurisdiction." *Nakash v. Marciano*, 882 F.2d 1411, 1415 (9th Cir. 1989); *R.R. St.*, 656 F.3d at 966.

The fourth factor requires the Court to assess "'the order in which the forums gained jurisdiction,'" considering "'the realities of the case at hand' 'in a pragmatic, flexible manner.'" *Montanore Minerals Corp.*, 867 F.3d at 1168 (first quoting *Moses H. Cone*, 460 U.S. at 21; and then quoting *Am. Int'l Underwriters*, 843 F.2d at 1257). The Court "consider[s] not only the order, but also the relative progress of the state and federal proceedings." *Id.* Mendocino Railway filed its complaint in this case on August 9, 2022, which is nearly two years after the state court action commenced on October 28, 2021. Additionally, the state court action is largely past the pleading stage, as the Court overruled Mendocino Railway's demurrer to the City's complaint, Mendocino Railway filed its answer to the complaint on June 24, 2022, and trial was scheduled to begin on June 21, 2023. ECF No. 15-1 at 102. Because the state forum gained jurisdiction first, and because the state court action has progressed further than the federal court action, the fourth factor weighs in favor of dismissal.

The fifth factor requires the Court to "consider 'whether federal law or state law provides

the rule of decision on the merits.'" *Seneca Ins. Co.*, 862 F.3d at 844 (quoting *R.R. St.*, 656 F.3d at 978). "The 'presence of federal-law issues must always be a major consideration weighing against surrender' of jurisdiction, but 'the presence of state-law issues may weigh in favor of that surrender' only 'in some rare circumstances.'" *Id.* (quoting *Cone Mem'l Hosp.*, 460 U.S. at 26). Federal law supplies the rule of decision on the merits of Mendocino Railway's complaint. The text of the ICCTA determines whether Mendocino Railway falls within the statute's ambit so as to trigger the statute's preemptive effect, *see* 49 U.S.C. §§ 10102, 10501(b), and federal preemption law determines the extent to which the ICCTA preempts the state and local laws that substantiate the challenged actions of the City and the Commission, *see BNSF Ry. Co. v. Cal. Dep't of Tax and Fee Admin.*, 904 F.3d 755, 760 (9th Cir. 2018) ("The ICCTA 'preempts all state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation. What matters is the degree to which the challenged regulation burdens rail transportation[.]'" (alteration in original) (quoting *Ass'n of Am. R.Rs. v. South Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1097-98 (9th Cir. 2010)). Accordingly, this factor weighs against dismissal.

The sixth factor "looks to whether the state court might be unable to enforce federal rights." *Seneca Ins. Co.*, 862 F.3d at 845. This factor weighs in favor of dismissal "[w]hen it is clear that 'the state court has authority to address the rights and remedies at issue.'" *Montanore Minerals Corp.*, 867 F.3d at 1169 (quoting *R.R. St.*, 656 F.3d at 981). Here, "[t]here is no doubt that California state courts have the authority" to determine the preemptive effect, if any, of the ICCTA on the City's and the Commission's regulatory authority over Mendocino Railway. *Id.* Not only do state courts have the authority to determine the preemptive effect of federal law, but those determinations are often entitled to preclusive effect as well. *Cf. Readylink Healthcare, Inc. v. State Compensation Ins. Fund*, 754 F.3d 754, 761-62 (9th Cir. 2014). And Mendocino Railway does not "claim that the state court would . . . lack the power to enter any orders to protect its rights." *Montanore Minerals Corp.*, 867 F.3d at 1169. The sixth factor weighs in favor of dismissal.

The seventh factor requires the Court to "consider whether either party sought more favorable rules in its choice of forum of pursued suit in a new forum after facing setbacks in the original proceeding." *Seneca Ins. Co.*, 862 F.3d at 846. Following the state court's overruling of the demurrer in the state court action, Mendocino Railway filed a petition for writ review in the California Court of Appeal, which the Court of Appeal denied. ECF No. 15-1 at 47-48. The California Supreme Court denied Mendocino Railway's petition for review of the Court of Appeal's denial on June 10, 2022. *Id.* at 100. Mendocino Railway then filed the instant complaint on August 9, 2022, asserting a claim premised entirely on the argument rejected on demurrer by the state court. Subsequently, in the state court action, Mendocino Railway moved to disqualify the presiding judge, Judge Clayton L. Brennan, who had overruled Mendocino Railway's demurrer. ECF No. 15-1 at 101-102. After Judge Brennan denied the motion on September 14, 2022, *id.*, the Commission moved to intervene on October 6, 2022, *id.*, and Mendocino Railway removed that action to federal court on October 20, 2022 – nearly two years after the action had commenced. Mendocino Railway's notice of removal cited the federal preemption issue in the Commission's complaint as the basis for federal question jurisdiction. But Mendocino Railway was already aware of – and indeed had made – the very same argument in its demurrer to the City's complaint, and that argument now serves as the sole basis for the claims in this case. The only "reasonably infer[ence]" from this litigation conduct, considered as a whole, is that Mendocino Railway "has become dissatisfied with the state court and now seeks a new forum." *Montanore Minerals Corp.*, 867 F.3d at 1160; *Nakash*, 882 F.2d at 1411. Accordingly, this factor weighs in favor of dismissal.

The eighth factor requires the Court to consider "whether the state court proceeding sufficiently parallels the federal proceeding" in order "to ensure 'comprehensive disposition of litigation.'" *R.R. St.*, 656 F.3d 656 F.3d at 982 (quoting *Colo. River*, 424 U.S. at 817). "'[E]xact parallelism'" is not required; rather, "it is sufficient if the proceedings are 'substantially similar.'" *Montanore Minerals Corp.*, 867 F.3d at 1170 (quoting *Nakash*, 882 F.2d at 1416). Courts are to be "particularly reluctant to find that the actions are not parallel when the federal action is but a 'spin-off' of more comprehensive state litigation." *Nakash*, 882 F.2d at 1416. Mendocino

Railway has asserted ICCTA preemption as a defense in the state action, so there the state court must resolve that issue in the course of adjudicating the City's and the Commission's claims against Mendocino Railway. Because that issue is the sole issue in this case, it is difficult for the Court to conceptualize this action as anything but a spinoff of the state court action. Accordingly, the Court concludes that the state court proceeding sufficiently parallels the federal court proceeding. The eighth factor thus weighs in favor of dismissal.

In sum, only the fifth factor weighs against dismissal, and the remaining factors weigh in favor of dismissal. Therefore, "[o]n balance, the *Colorado River* factors strongly counsel in favor of" dismissal. *Montanore Minerals Corp.*, 867 F.3d at 1170.

The Court recognizes that the Ninth Circuit "'generally require[s] a stay rather than dismissal' under *Colorado River*." *Montanore Minerals Corp.*, 867 F.3d at 1171. The general rule ensures "that the federal forum will remain open if for some unexpected reason the state forum . . . . turn[s] out to be inadequate." *Id.* at 886 (quoting *Attwood v. Mendocino Coast Dist. Hosp.*, 886 F.2d 241, 243 (9th Cir. 1989)). That purpose is not served here because the adjudication of the state court action will necessarily resolve the sole issue in this case and the state court proceedings can undoubtedly protect Mendocino Railway's rights.[2] And although the Ninth Circuit has not delineated the circumstances warranting dismissal rather than a stay, its framing of the rule as general necessarily contemplates exceptions. Indeed, *Colorado River* itself involved dismissal of a federal action. *See Colo. River*, 424 U.S. at 821; *accord Arizona v. San Carlos Apache Tribe of Ariz.*, 463 U.S. 545 (1983); *cf. Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 282 (2006). Thus, to the extent that there are exceptions to the general rule, the strength of the factors and the degree to which their balance tips sharply in Defendants' favor demonstrate "the clearest of justifications . . . warrant[ing] dismissal."[3] *Colo. River*, 424 U.S. at

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[2] Additionally, the state court's decision on the issue would likely be entitled to preclusive effect. *Cf. Readylink Healthcare, Inc. v. State Compensation Ins. Fund*, 754 F.3d at 761-62.

[3] Although the fact that federal law supplies the rule of decision weighs against dismissal, that weight is substantially lessened because "state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States." *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990); *accord Yellowbear v. Atty. Gen. of Wyoming*, 380 F. App'x 740, 741 (10th Cir. 2010) (Gorsuch, J.) (Under our federal system, . . . there is nothing inherently

819. Accordingly, the Court will dismiss the case.

CONCLUSION

For the foregoing reasons, Defendants' motions are granted, and this case is dismissed. The Clerk shall enter judgment and close the file.

IT IS SO ORDERED.

Dated: May 12, 2023

JON S. TIGAR
United States District Judge

suspect about state courts deciding questions of federal law. . . . Indeed, the Supremacy Clause contemplates that state courts *will* decide questions of federal law . . . ."). The balance would differ if, for example, the eighth factor weighed against a stay or dismissal. *Cf. United States v. State Water Res. Control Bd.*, 988 F.3d 1194, 1203 (9th Cir. 2021) (explaining that "doubt" as to "whether the state proceedings will resolve the federal action" is "'a significant countervailing consideration that' can be 'dispositive.'" (quoting *Intel Corp.*, 12 F.3d at 913)).

EXHIBIT 4

DRAFT FEDERAL REGISTER NOTICE

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
-ADVERSEABANDONMENT-
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

On April 12, 2024, Great Redwood Trail Agency ("Applicant") filed with the Surface Transportation Board ("Board"), Washington, D.C. 20423, an application seeking adverse abandonment of the authority of Mendocino Railway ("MR") to operate over its line of railroad extending between Milepost 0 at Fort Bragg and Milepost 40 in Willits, a total distance of approximately 40 miles in Mendocino County, California ("MR Line". The MR Line traverses through United States Postal Service ZIP Codes 95437 and 95490.

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

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

Any interested person may file with the Board written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), within 45 days after the application is filed. All interested persons should be aware that following any abandonment of rail service and salvage of the MR Line, the MR Line may

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

In addition, a commenting party or protestant may provide:

i. Recommended provisions for protection of the interests of employees;

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

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

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

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB No. AB-1305 (Sub-No. 1) and should be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001, no later than 45 days after the date Applicant files its application. Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the Applicant Daniel Elliott, GKG Law, 1055 Thomas Jefferson Street, NW, Suite 620, Washington, D.C. 20007,

phone: (703) 863-9670; email: delliott@gkglaw.com. Every comment or protest shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR § 1104.12(a).

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

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

EXHIBIT 5 - HIGHLY CONFIDENTIAL MATERIAL REMOVED

EXHIBIT 6

FILED
04/19/2023
KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MENDOCINO
Delgado, Samuel
DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO

MENDOCINO RAILWAY **Plaintiff,** **v** **JOHN MEYER; MARYELLEN SHEPPARD; REDWOOD EMPIRE TITLE COMPANY OF MENDOCINO COUNTY; SHEPPARD INVESTMENTS; MENDOCINO COUNTY TREASURER-TAX COLLECTOR; all other persons unknown claiming and interest in the property; and DOES 1 through 100 inclusive.** **Defendants.**	**Case Nos.: SCUK-CVED-2020-74939** Decision After Trial Trial Dates: 8/23,24,24,29 and 11/10/22

This matter came on regularly for trial on August 23, 2022, and after a short delay concluded on 11/10/22. Plaintiff Mendocino Railway ("MR") was present through its President Robert Pinoli ("Pinoli") and represented by Glenn L. Block. Stephen Johnson appeared on behalf of John Meyer ("Meyer") who was also present. No other Defendant was required to appear. After trial, the parties were granted the opportunity to submit written closing briefs and reply briefs. The matter was submitted on February 8, 2022. In this case, Plaintiff seeks to acquire through eminent domain a 20-acre parcel owned by Meyer. The property is located west of the town of Willits and abuts Highway 20. It is known as 1401 West Highway 20 and Mendocino County Assessor Parcel Number 038-180-53. ("Property"). It is alleged by MR that it wants the property to construct and maintain a rail facility related to its ongoing and future freight and passenger rail operations.

Relevant Facts

Robert Pinoli, the President, and Chief Executive Officer of MR was the only witness who testified at trial. He testified that MR is a privately held corporation that owns and operates a railroad line commonly known as the "California Western Railroad" ("CWR") which is also most known as the "Skunk Train." In 2002, CWR filed a petition in Bankruptcy Court under Subchapter IV (Railroad Reorganization) of Chapter 11 of the Bankruptcy Code. Sierra Railroad Company (SRC), a holding company without carrier status was the successful bidder for the assets of CWR. SRC then formed Mendocino Railway, also a non-carrier, as a holding company to acquire the assets of CWR. The Articles of Incorporation for MR do not reflect the intent to operate as a

railroad. Rather, the Articles simply state that *"The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California…":* According to Pinoli, MR was a holding company and a "non-carrier" intending to initially operate CWR with the help of its affiliated entities, Sierra Northern Railway (a class III carrier) (SNR) , Midland Railroad Enterprises Corporation (a railroad construction and track maintenance company) (MREC) and Sierra Entertainment (a tourism entertainment and passenger operations company) (SE), all subsidiaries of SRC. MR certified that its projected revenues would not exceed revenue regulations that would render a designation other than a Class III rail carrier. A class III carrier is one that is a small or midsized railroad company that operates over a relatively short distance. (See Surface Transportation Board Notice of Exemption. (EX21). There was no designation of MR's status by the STB offered by MR. MR acquired CWR in 2004 when it purchased its assets through bankruptcy and operated it as a non-carrier.

The railroad line is approximately 40 miles in length and runs from its main station in the City of Fort Bragg to its eastern depot in the City of Willits. According to Pinoli the Fort Bragg Station is developed as a rail facility, with spur and siding tracks, a depot building, locomotives, passenger and freight cars, an engine house and storage facilities for its equipment. Presently, MR contends that it does not have adequate maintenance, repair and freight rail facilities to serve its ongoing operations at the Willits end of the line. MR contends that the acquisition of the Meyer property which is on the rail line will allow MR to fully operate its freight rail services with storage yards, maintenance, and repair shops, transload facilities, rail car storage capacity and a passenger depot.

In 2015, there was a landslide in "Tunnel No.1" that has prevented the trains from running the full length of the line since that date. No transportation between Fort Bragg and Willits has occurred since the tunnel was closed. It will take considerable funds to repair the tunnel so that it can function and there is no specified time frame for its completion.

MR concedes that currently its main function is the operation of a popular excursion train known as the Skunk Train for sightseeing purposes on the line through the redwoods. At present, the Skunk Train can leave the Willits station and travel west approximately 7.5 miles before turning around and traveling back to Willits. From Ft. Bragg, due to the tunnel collapse, the train can only travel east for 3.5 miles before it turns around and returns to Ft. Bragg. MR also operates motorized train bikes, and trail walks along the tracks. The excursion service generates ninety percent of MR's income. The other ten percent of MR's income is from leases and easement revenue.

In 1998, the California Public Utilities Commission made findings regarding MR's predecessor, CWRR regarding its status as a public entity. [1] The CPUC found that "[I]n providing its excursion service, CWRR is not functioning as a public utility, ….we conclude that CWRR's excursion service should not be regulated by

[1] The court takes judicial notice of the decision pursuant to Evidence Code Section 451(a)

the CPUC." (1988 Ca. PUC LEXIS 189 (1998). The CPUC through its counsel in 2022, concluded that MR is subject to inspections of railroad property as part of the Commission's obligation to ensure the safe operation of all railroads in California. (Pub. Util. Code §309.7) MR is designated as a Class III Commission regulated railroad. The Class III designation relates to the safety regulations and does not mean that it advances MR's status to public entity. MR does not dispute the 1998 findings and agrees that the term "transportation" for purposes of the public utility analysis excludes excursion services. Instead, according to Pinoli, MR is a public utility because it is a common carrier.

Analysis

1. **Public Utility Status**

Article 1, Section 19 of the California Constitution and CCP§1240.010 specify that private property can be taken by eminent domain for public use. The power of eminent domain by a public entity or utility is balanced with its constitutional obligation to pay "just compensation" to the owner of the property interest being acquired. This power is clearly defined and limited to certain circumstances by statute. The appropriate entity's right to take property must meet both constitutional and statutory limitations, to ensure the property owner of his or her right to be justly compensated for such taking. "The power of eminent domain may be exercised to acquire property for a particular use only by a person authorized by statute to exercise the power of eminent domain to acquire such property for that use." (CCP§1240.020.)

MR claims that it is entitled to avail itself of the eminent domain statute because it is a railroad corporation, a common carrier and through its activities it qualifies as a public utility.

Eminent Domain proceedings in the utility sector are permitted so long as the utility is a corporation or person that is a public entity. Public Utilities Code §610. A railroad corporation may condemn any property necessary for the construction and maintenance of its railroad. Public Utility Code §611. A railroad corporation includes every corporation or person owning, controlling, operating, or managing any railroad for compensation with this state. (See §230). PUC §229 provides that a "railroad" includes every commercial, interurban, and other railway.... owned, controlled, operated, or managed for public use in the transportation of persons or property." By definition a "common carrier" means every person and corporation providing transportation for compensation to or for the public or any portion thereof, including every railroad corporation providing transportation for compensation. (See §211). The central issue in this case is whether MR can be deemed a public utility for purposes of this eminent domain proceeding.

As stated above, MR operates a popular excursion train for sightseeing purposes on the line through the redwoods. MR also operates motorized train bikes and trail walks along its tract. Courts have defined and the parties do not dispute that "transportation" in the public utility context means "the taking up of persons or property at some point and putting them down at another." *City of St. Helena v Public Utilities Com. (2004) 119 Cal. App. 4th 793,902 (Quoting Golden Gate Scenic S.S. Lines, Inc. v Public Utilities Com. (1962) 57 Cal. 2d*

373). Round trip excursions do not qualify as "transportation" under Section 211 of the Public Utilities Code. (*City of St. Helena, supra).* As stated above, MR does not dispute the 1998 findings of the CPUC and agrees that the term "transportation" for purposes of the public utility analysis excludes excursion services.

Counsel for MR argues that "transportation" is not the only qualifier, but that the court should also interpret the term "provide" as it is stated Public Utilities Code §211. MR contends that to "provide" a service is to offer it by making the service available. In other words, MR should not be penalized simply because it is not transporting freight or passengers, it is the availability of the services that matters. MR argues that the "volume of service actually accepted by the public or a portion thereof is not relevant to whether the provider is a common carrier or any other kind of public utility." Addressing the participation of the affiliate entities, MR alleges a further distinction between providing the service and performance of the service. MR argues that even though it was not a common carrier it made the service available and its affiliate entities which may have been recognized as common carriers performed the service until at least 2022 when MR took over the operations of SNR. Assuming the court accepts this distinction, the testimony demonstrates otherwise.

A common carrier is a private or public utility that transports goods or people from one place to another for a fee. Unlike a private carrier, a public utility carrier makes no distinction in its customers as it is available to anyone willing to pay its fee. Pinoli testified that in addition to the excursion service, MR operates commuter passenger and freight services between Ft. Bragg and Willits and has been doing so since it purchased CWR in 2004. This testimony was later amended by Pinoli to reflect it was the affiliate entities SNR, MREC and Sierra Entertainment that performed the services through its own employees. Except for the excursion services, freight and passenger were minimal. This clarification came after Meyer discovered a Decision of the Railroad Retirement Act (45 U.S.C.§231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C.§351 et seq.). MR had requested the Board to re-consider whether it, along with Sierra Entertainment, would be required to pay into the respective funds when they were not employers as defined under the act. (CWRR had been terminated as an employer effective September 30, 2003.) MR was merely a holding company and had no employees and Sierra Entertainment only provided excursion services. The Board found that MR was not a carrier performing freight and passenger services between the time of its acquisition in 2004 when it took over operations from Sierra Northern Railway in 2022 and to date. The Board further advised that their opinion could change upon proof of MR's carrier status. Pinoli agreed with this finding.

Pinoli clearly testified that 90% of the railroad revenue comes from the excursion train activities. The other 10% of its revenue comes from leases and revenue. When questioned, Pinoli finally clarified that MR did not actually perform common carrier services between the time it purchased the assets of California Western Railroad in 2004 through 2022 when it took over operations from Sierra Northern Railway. Those services were allegedly performed by the affiliate companies. No evidence was submitted to support this allegation. MR did not offer evidence in the form of contracts with the affiliated entities, operating agreements, ledgers, receipts, payments etc. The court can infer that such agreements would be appropriate to address at least compensation for services, liability, and indemnification, if in fact, the services were provided. MR is the

Plaintiff in this action and has the burden of proof to establish its legal status as a public utility. There is no dispute that the only evidence of railroad income during the relevant time was and is earned from the excursion services only. MR concedes that the excursion service does not fall under the category of "transportation" and does not qualify MR as a public utility.

Despite agreeing with the findings made by the Retirement Board, Pinoli testified that MR as the successor to CWR is doing today what CWR has been doing for 137 years of existence. Pinoli testified that besides hauling approximately 100 loads of aggregate and steel for two environmental restoration projects along the line, it hauls a very limited amount of freight at present. [2] He offered into evidence various letters from local businesses that have expressed an interest in obtaining freight services once they become available. Pinoli also acknowledged that any freight service from Ft. Bragg to Willits cannot happen until "Tunnel No. 1" is repaired. There was no specified time frame for completion of the repairs. In addition, it was not clear as to whether MR had the available funds to complete the necessary repairs anytime soon. The letters were purposely solicited by MR in connection with a grant application to obtain funds from the federal government to improve its line for freight services. The letters are no more than letters of a possible interest in services should they become available. The court gives little weight to the letters of support.

Pinoli also testified that over the years passenger service was provided to residents of the various cabins along the route between Fort Bragg and Willits. Despite the court's comments that Pinoli appeared to be a credible and knowledgeable witness, the best evidence would have been written documentation in the form of ticket receipts, ledgers evidencing income, contracts with Mendocino Transit Authority, and contracts for freight transportation. When given the opportunity by the court, MR was unable to provide any documentary evidence of MR's claim for the freight or passenger services it allegedly provided either through MR or its affiliates. The court therefore gives little weight to Pinoli's testimony regarding the abundant array of services provided. (CACI 203.) The court ultimately was not persuaded by Pinoli's testimony alone.

Pinoli testified that when MR assumed control of SNR services in 2022, it planned to expand freight and passenger services with equipment and new business opportunities. While the efforts were noted, the intention to provide services in the future is not sufficient to establish the railway as a public utility. (*See City of St. Helena v. Public Utilities Commission (2004) 119 Cal. App. 4th 793)* Through its enhanced efforts MR may be able to obtain public utility status in the future but court is not convinced that such status is appropriate at this time based on the evidence provided by MR at trial.

2. Eminent Domain

[2] No documents, including but not limited to contracts, invoices, receipts were produced regarding this alleged " freight transportation" with Trout Unlimited. The oral testimony reflected a contract with Trout Unlimited and all funding was from state or federal funds. The work appeared to this court to be a combined project to benefit the environment including the rail line.

Assuming for purposes of this opinion that MR has public utility status, it still needs to meet the statutory requirements of the eminent domain law. As stated above, a railroad company is entitled to condemn property that is necessary for the construction and maintenance of its railroad. (See Public Util. Code §611). "The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established: (a) the public interest and necessity require the project.; (b) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (c) the property sought to be acquired is necessary for the project." CCP§1240.30. The power to take property under eminent domain is not unlimited. Such power "[M]ay be exercised to acquire property only for public use." *(CCP §1240.010; City of Oakland v. Oakland Raiders (1982) 32 Cal. 3d 60,69.)* "The statutory authorization to utilize the power of eminent domain for a given "use, purpose, object, or function' constitutes a legislative declaration that the exercise is a 'public use.'" (*City of Oakland.*)

Acquisition of the 20-acre site would enhance the operations of MR's excursion service that admittedly does not fall within the definition of transportation. MR cannot exercise the power of eminent domain to carry on its private business activities. In *City & County of San Francisco v. Ross (1955) 44 Cal 2d 52,54*, the City sought to acquire by eminent domain a site that would subsequently be leased to private individuals who were planning to build and operate a parking structure and other facilities including private commercial retail. The court stated, "[w]hile it might be argued in the present case that the percentage area to be used for other commercial activity is small enough to be merely an incident to the parking activity and not in itself enough to invalidate the whole plan, nevertheless it aids in characterizing the whole operation as a private one for private gain." "The Constitution does not contemplate that the exercise of the power of eminent domain shall secure to private activities the means to carry on a private business whose primary objective and purpose is private gain and not public need." *(Council of San Benito County Governments v. Hollister Inn, Inc. (2012) 209 Cal. App. 4th 473,494 (citations omitted.)* As stated previously, the income generated from the Skunk Train excursion service is 90% of MR's revenue. The court can easily find that MR's primary objective is to obtain the property to serve the excursion service. No explanation was offered to distinguish the private operations from the "proposed" freight and passenger enhancements.

Notwithstanding the above, MR's proposed use of the property conflicts with the statutory requirements of public use and least private injury. At trial, approximately seven months of internal MR emails were admitted into evidence. Pinoli conceded the emails revealed that the original conception of the MR project reflected a train station, campground, and RV park. He also testified that his boss was known to brainstorm ideas and concepts for the acquisition and use of property acquired by MR, but those ideas were not always fully vetted. The only conceptual drawing for the Meyer property prepared by MR at the time it filed its complaint however, depicted a station/store, campground, and long-term RV rental park. It wasn't until June 2022, approximately 18 months after the eminent domain action was filed that a preliminary site plan was prepared. The site plan offered at trial is one that generally depicts maintenance/repair facilities, a yard, vehicle parking, a rail transloading facility, dept offices, a platform and a natural habitat preserve. The site plan is considerably different from the original conceptual drawing.

Pinoli admitted that the use of the property for a private campground was not consistent with the operation of a railroad and could not be the basis for eminent domain. Instead, he said that the current purpose is to develop the necessary maintenance and depot facilities on the Willits side of the line and to create a transload facility. The transload facility would not be operational or even necessary until "Tunnel No. 1" was usable. In addition to the original drawing utilized at the time the case was filed, the site drawing was the only evidence offered to address the use of the property. There was no evidence of an actual plan for development or funding for the project. "[A]n adequate project description is essential to the three findings of necessity that are required to be made in all condemnation cases. Only by ascertaining what the project is can the governing body made those findings." *(City of Stockton v. Marina Towers LLC (2009)171 Cal. App. 4th 93,113.)* While the plan in the City of Stockton case was severely lacking in detail, which arguably differs from the instant case, the principle that a property owner is entitled to know what is being planned for the land remains the same. The court questions the credibility of the late hour evidence of a site drawing presented in the instant case. Particularly so, when a transload facility was added with MR's knowledge that freight transportation could not happen until "Tunnel No. 1" was available. No evidence was presented to establish whether or when the tunnel would be available for use.

The credibility of the testimony is also questionable when the initial plan prepared at the time the complaint was filed included a campground. Following the initial plan, in preparation for trial, MR develops a new site plan that eliminates the initial concept. This was done presumably to satisfy the requirements of the statute. Also lacking is an analysis from MR as to the impact the maintenance and transload facility would have on the residents (including Meyer) living directly adjacent to the proposed 20 acre site. The court finds that Pinoli's testimony that there would be no real impact on the residents is simply insufficient. Without such information the court is unable to determine if the project would impose a greater injury to the residents. The court finds that MR did not meet its burden to establish that the current site plan supports a project that is planned or located in the matter that will be most compatible with the greatest public good and least private injury which is required by statute and case law. *(See CCP §1240.030 and SFPP v. Burlington Northern & Santa Fe Ry. Co. (2004) 121 Cal. App. 4th 452.)*

The court concludes that MR has failed to meet its burden of establishing that its attempt to acquire Meyer's property through eminent domain is supported by constitutional and statutory powers. The court finds in favor of Meyer.

Dated: 4/19/2023

Hon. Jeanine B. Nadel
Judge of the Superior Court

Superior Court of California, County of Mendocino

PROOF OF SERVICE

Case: **SCUK-CVED-2020-74939** **MENDOCINO RAILWAY VS. MEYER, JOHN**

Document Served: Decision After Trial

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

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

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

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

Party Served	Ukiah US Mail	Ten Mile US Mail	Ukiah Attorney Box	Ten Mile Attorney Box	Inter Office Mail	Fax	E-mail
Gleen Block Christopher G. Washington Paul Beard II glb@caledlaw.com cgw@caledlaw.com paul.beard@sigherbroyles.com	☐	☐	☐	☐	☐	☐	☒
Stephen Johnson steve@mkjlex.com	☐	☐	☐	☐	☐	☐	☒
Mayellen Sheppard sheppard@mcn.org	☐	☐	☐	☐	☐	☐	☒
Christian Curtis Brina Blanton curtisc@mendocinocounty.org blantonb@mendocinocounty.org	☐	☐	☐	☐	☐	☐	☒
Krista MacNevin Jee kmj@jones-mayer.com	☐	☐	☐	☐	☐	☐	☒
	☐	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐	☐

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

☒ Ukiah, California ☐ Fort Bragg, California

Date: 04/19/2023

KIM TURNER, Clerk of the Court

By: Samuel Delgado, Deputy Clerk

EXHIBIT 7

FILED
06/02/2023
KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MENDOCINO
6/2/2023 8:33:25 AM
Bynum, Dineen
DEPUTY CLERK

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Attorneys for Defendant John Meyer

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MENDOCINO

MENDOCINO RAILWAY, Plaintiff, vs. JOHN MEYER; REDWOOD EMPIRE TITLE COMPANY OF MENDOCINO COUNTY; SHEPPARD INVESTMENTS; MARYELLEN SHEPPARD; MENDOCINO COUNTY TREASURER-TAX COLLECTOR; all other persons unknown claiming an interest in the property; and DOES 1 through 100, inclusive Defendants.	Unlimited Case No. SCUK-CVED 20-74939 ~~[Proposed]~~ JUDGMENT AFTER TRIAL BY COURT Dept: E Judge: Hon. Jeanine B. Nadel

The above-entitled action came on regularly for trial on August 23, 2022, and after a short delay concluded on November 10, 2022. The Honorable Jeanine B. Nadel, Judge, presided over the trial, sitting without a jury. Glenn L. Block, Esq., appeared on behalf of Mendocino Railway (MR) and Stephen F. Johnson, Esq., appeared on behalf of defendant John Meyer (Meyer).

The court heard and considered witness testimony, and reviewed the documentary evidence. The matter was submitted on November 10, 2022, and the Court filed a written "Decision After Trial" on April 19, 2023. MR subsequently filed a Request For

Statement Of Decision, Or In The Alternative Objections To Proposed Statement of Decision. On May 16, 2023, the court issued a minute order finding that all issues raised by MR have been addressed by the court in its Decision After Trial and the Decision After Trial will constitute the Statement of Decision. The court ordered that Meyer prepare and submit a proposed judgment.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff MR has failed to meet its burden of establishing that it can acquire Meyer's real property by eminent domain pursuant to constitutional and statutory powers. Accordingly, MR cannot acquire Meyer's real property by eminent domain. Plaintiff MR shall take nothing by its complaint, and judgment is in favor of Defendant Meyer.

2. Defendant Meyer is the prevailing party in this action.

3. Defendant Meyer is awarded his litigation expenses including costs and attorney fees pursuant to Code of Civil Procedure § 1268.610(a) in the amount of $_____. The court shall consider an award of attorney fees and costs to Meyer upon the filing and hearing of a motion therefor.

6/1/2023 11:01:49 AM

IT IS SO ORDERED.

Dated: 6/1/2023

Hon. Jeanine B. Nadel
Judge of the Superior Court

PROOF OF SERVICE

Mendocino County Superior Court Case No.: SCUK-CVED-20-74939

I declare that I am over the age of 18 years, employed in the County of Mendocino, and not a party to the within action; my business address is P.O. Box 419, 200 N. School Street, Room 304, Ukiah, CA 95482.

On May 24, 2023, I served the **JUDGMENT AFTER TRIAL BY COURT** on the interested parties in this action by placing ☐ the original ☒ true copies thereof, as follows:

SEE ATTACHED SERVICE LIST

☐	By E-SERVICE. Pursuant to California Rules of Court Rule 2.251(c), adopted effective July 1, 2013, I am e-Serving the above-listed document(s) to the electronic service address(es) on the attached Service List and e-Filing the document(s) using one of the court's approved electronic service providers. A true and correct copy of the e-Service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
☐	By MAIL. I am readily familiar with this law firm's practice for collection and processing of documents for mailing with the U. S. Postal Service. The above-listed document(s) will be deposited with the U. S. Postal Service on the same day shown on this affidavit, to the addressee(s) on the attached Service List in the ordinary course of business. I am the person who sealed and placed for collection and mailing the above-listed document(s) on this date at Ukiah, California, following ordinary business practices.
☒	By E-MAIL. I e-mailed above-listed document(s) to the e-mail address(es) of the addressee(s) on the attached Service List. A true and correct copy of the e-mail transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
☐	By OVERNIGHT DELIVERY. The above-listed document(s) will be deposited with an Overnight Delivery Service on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and overnight delivery the above-listed document(s) on this date at Ukiah, California, to the addressee(s) on the attached Service List following ordinary business practices. A true and correct copy of the overnight delivery service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
☐	By PERSONAL SERVICE. I caused to have hand delivered, the above-listed document(s) to the parties indicated on the service list.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 24, 2023, at Ukiah, California.

Erika Brewer, Legal Assistant

SERVICE LIST

Mendocino County Superior Court Case No.: CVED-20-74939

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EXHIBIT 8 - HIGHLY CONFIDENTIAL MATERIAL REMOVED

EXHIBIT 9

VERIFICATION

State of CALIFORNIA

ss.

County of MENDOCINO

Elaine Hogan makes oath and says that she is the Executive Director of the Great Redwood Trail Agency, applicant herein; that she has been authorized by the applicant to verify and file with the Surface Transportation Board the foregoing application in STB AB-1305 (Sub-No. 1); that she has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that she has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of her knowledge, information and belief.

Elaine Hogan

CALIFORNIA JURAT WITH AFFIANT STATEMENT **GOVERNMENT CODE § 8202**

☒ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], *not* Notary)

1
2
3
4
5
6

Signature of Document Signer No. 1 *Signature of Document Signer No. 2 (if any)*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Mendocino

Subscribed and sworn to (or affirmed) before me on this 11 (Date) day of April (Month), 20 24 (Year), by (1) Elaine Benham Hogan (and (2) _____), (Name(s) of Signer(s)) proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

DONNEAL COMPEAN
Notary Public - California
Mendocino County
Commission # 2344485
My Comm. Expires Jan 31, 2025

Signature Donneal Compean
Signature of Notary Public

Seal
Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

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EXHIBIT 10

ELECTRONICALLY FILED
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Superior Court of California
County of Mendocino

By: D. Jess
Deputy Clerk

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CITY OF FORT BRAGG

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MENDOCINO

CITY OF FORT BRAGG, a California municipal corporation,

Plaintiff,

vs.

MENDOCINO RAILWAY AND DOES 1–10, inclusive

Defendants.

Case No. 21CV00850

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(GOV. CODE, § 11350; CODE CIV. PROC., § 1060)

JUDGE: CLAYTON BRENNAN
DEPT.: TEN MILE

Plaintiff CITY OF FORT BRAGG, CA ("City" or "Plaintiff") files this action seeking judicial declaration regarding the validity of the Mendocino Railway's status as a public utility pursuant to Code of Civil Procedure section 1060 and/or injunctive relief, alleging as follows:

1. The operations of the Mendocino Railway have been reduced over time and now consist of only the operation of out and back excursion trips starting in either Fort Bragg, California or Willits, California and therefore the Mendocino Railway is no longer entitled to status as a public utility, is in fact an excursion only railroad, and therefore is subject to the jurisdiction of the City of Fort Bragg and all ordinances, codes and regulations set forth in the City of Fort Bragg Municipal Code.

PARTIES

2. At all relevant times herein, Plaintiff City of Fort Bragg was and is a municipal corporation organized and existing under and by virtue of the laws of the State of California.

3. Defendant Mendocino Railway is currently listed as a class III railroad by the California Public Utilities Commission ("CPUC"), and as such is subject to CPUC jurisdiction and has all legal rights of a public utility. At all relevant times herein, it has and does own and operate the "Skunk Train," as described herein, within the City of Fort Bragg, as well as owning and thus having maintenance and other responsibilities for real property relating thereto and also situated within the City of Fort Bragg.

4. Plaintiff is currently unaware of the true names and capacities of Does 1 through 10, inclusive, and therefore sues those parties by such fictitious names. Does 1 through 10, inclusive, are responsible in some manner for the conduct described in this complaint, or other persons or entities presently unknown to the Plaintiff who claim some legal or equitable interest in regulations that are the subject of this action. Plaintiff will amend this complaint to show the true names and capacities of Does 1 through 10 when such names and capacities become known.

BACKGROUND FACTS

5. The Mendocino Railway, aka the "Skunk Train," does in fact have a long and storied history of operations between Fort Bragg and Willits. Since the 1980s, Defendant's rail operations consisted primarily of an excursion train between Fort Bragg and Willits.

6. In 1998, the Public Utilities Commission issued an opinion that the predecessor owner of the Skunk Train, California Western Railroad ("CWRR"), was not operating a service qualifying as "transportation" under the Public Utilities Code because in providing this "excursion service, CWRR is not functioning as a public utility." (CPUC Decision 98-01-050, Filed January 21, 1998.)

7. Although the rail lines of the Mendocino Railway and/or the trains it was operating thereafter apparently did or may have had the capacity to carry freight and passengers from point-to-point, no rail lines presently have any such capacity. Moreover, the excursion train, even when it was running previously between Fort Bragg and Willits was exclusively a sightseeing excursion, was not transportation, was not essential, and did not otherwise constitute a public utility function or purpose.

8. On April 11, 2013, Defendant's operations were disrupted following the partial collapse of Tunnel No. 1, which buried nearly 50 feet of its 1,200 feet of track under rocks and soil, the third major collapse in the over 100-year-old tunnel's history. The collapse of the tunnel eliminated the ability of rail operations temporarily to continue between Fort Bragg and Willits. On June 19, Save the Redwoods League announced an offer to pay the amount required to meet the fundraising goal for repair work, in exchange for a conservation easement along the track's 40-mile (64 km) right-of-way. The acceptance of the offer allowed the railroad to resume full service of the whole sightseeing line in August 2013.

9. Tunnel No. 1 was once again closed in 2016 after sustaining damage from the 2015–16 El Niño, but Defendant had equipment at the Willits depot to allow the running of half-routes to the Northspur Junction and back (which had not been the case during the 2013 crisis), as well as trains running loops from Fort Bragg to the Glen Blair Junction and back.

10. Plaintiff is informed and believes the estimates for the repair to reopen the tunnel are in the area of $5 Million, and that Defendant has stated the tunnel repair will happen in 2022, but there are currently no construction contracts in place for that repair.

11. Current operations of the Defendant consist of a 3.5 mile excursion out and back trip from Fort Bragg to Glen Blair Junction, and a 16 mile out and back trip originating in Willits to Northspur Junction – both of which are closed loop sightseeing excursions.

12. In June, 2017, City staff deemed the roundhouse as so dilapidated that it may be necessary to demolish the building and rebuild instead of repairing. The City even offered to assist with funding to assist with those costs. Attempts to inspect the roundhouse by the County Building Inspector were refused and rebutted with a message from the Defendant that the City has no authority over a railroad. In 2019, when the City red tagged Defendant's work on a storage shed on the Skunk Train's property for failure to obtain a City building permit, the Defendant removed the tag and proceeded with the work. More recently in August, the City sent an email to Defendant to inform them that they needed a Limited Term Permit for a special event after 10pm that would create additional noise in the neighborhood surrounding the Defendant's property. Defendant's response was that they are "outside the City's jurisdictional boundaries and thus not subject to a permit".

13. Defendant is directly responsible for the activities occurring as set forth herein in connection with operation of the Skunk Train and the condition of real property in violation of law as alleged herein. Defendant is thus responsible for continuing violations of the laws and public policy of the State of California and/or local codes, regulations and/or requirements applicable to such operations and activities and/or have permitted, allowed, caused, or indirectly furthered such activities/operations in a manner in violation of law, and Defendant's use of and activities in connection with the Skunk Train and the condition of real property relating thereto, including the allowance or maintenance of such activities, operations and conditions in violation of law are inimical to the rights and interests of the general public and constitute a public nuisance and/or violations of law.

FIRST CAUSE OF ACTION

Declaratory and/or Injunctive Relief

[Cal. Civil Proc. Code §§ 1060, 526]

14. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 13 as if fully set forth herein.

15. An actual controversy has arisen and now exists between Plaintiff and Defendant. Defendant has failed to comply with City's code enforcement efforts to have Defendant repair a dangerous building on their property. Defendant also claims its status as a public utility preempts local jurisdiction and provides immunity from the City's Land Use and Development Codes. City disagrees and maintains that, as an excursion-only railroad, Defendant is not a public utility, is not a common carrier, and/or does not provide transportation, and therefore Defendant is subject to the City's ordinances, regulations, codes, local jurisdiction, local control and local police power and other City authority. City is entitled to a declaration of its rights and authority to exercise local control/regulation over the property and Defendant and Plaintiff City has the present right, obligation and need to exercise such control, power and authority for the public interest, benefit and safety.

16. A judicial determination of these issues and of the respective duties of Plaintiff and Defendant is necessary and appropriate at this time under the circumstances because the Defendant continues to resist compliance with City directives to repair and make safe the dangerous building on its property, and to comply with the City Land Use and Development Codes, and/or other valid exercise of City governing authority.

17. No other adequate remedy exists by which the rights and duties at issue herein between the parties can be determined.

18. The City and the public will suffer irreparable injury if the nature of Defendant's conduct, as alleged herein, is not determined by the Court and/or enjoined.

19. Plaintiff City also, or in the alternative, seeks injunctive relief against Defendant and thus brings this action pursuant to California Civil Code Section 526 in order to enjoin or require Defendant to refrain from engaging in the conduct alleged here, cease violations of law, and/or to require Defendant to bring its property and operations into compliance with the law, as applicable.

20. Unless and until restrained and enjoined by this Court's issuance of injunctive relief as requested herein, Defendant will continue to maintain nuisance

conditions and violations of law as alleged, to the substantial harm and risk to the health, safety and welfare of the public, and directly contrary to the lawful and valid authority of Plaintiff City to regulate such nuisance and dangerous conditions, and to compel compliance with applicable law.

21. Unless and until the activities alleged herein are restrained and enjoined by this Court, as requested herein, they will continue to cause great and irreparable injury to Plaintiff City's lawful exercise of jurisdiction and authority over Defendant's operations, activities, and its real property, and the conditions thereof, as well as allowing the continuation of injury and risk to the public.

PRAYER

WHEREFORE, Plaintiff prays for relief as follows:

1. For a declaration that the Mendocino Railway is not subject to regulation as a public utility because it does not qualify as a common carrier providing "transportation.";
2. For a stay, temporary restraining order, preliminary injunction, and permanent injunction commanding the Mendocino Railway to comply with all City ordinances, regulations, and lawfully adopted codes, jurisdiction and authority, as applicable;
3. For costs of the suit; and
4. For such other and further relief as the Court deems just and proper.

Dated: October 28, 2021

JONES & MAYER

By: _____
Russell A. Hildebrand
Krista MacNevin Jee
Attorneys for Plaintiff
CITY OF FORT BRAGG

EXHIBIT 11

FILED
04/28/2022
KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALFORNIA,
COUNTY OF MENDOCINO
Jess, Dorothy
DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MENDOCINO, TEN MILE BRANCH

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

I. Standard of Review on Demurrer:

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

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

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

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

II. The Complaint:

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

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

III. The Demurrer:

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

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

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

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

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

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

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A. Requests for Judicial Notice:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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IV. Discussion:

A. Public Utilities Code Section 1759:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As the Pegastaff court concludes,

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

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

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

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

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

The CPUC writes,

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

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

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

The *City of St. Helena* court writes,

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

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

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

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

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

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

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

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

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

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

Borough makes clear that,

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

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

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

As noted in *Borough*,

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

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

V. Order:

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

SO ORDERED.

DATED: 4/28/2022

Clayton L. Brennan
JUDGE OF THE SUPERIOR COURT

Superior Court of California, County of Mendocino

PROOF OF SERVICE

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

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

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

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

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

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

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

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

☐ Ukiah, California ☒ Fort Bragg, California

4/28/2022 10:22:37 AM

Date: 4/28/2022

KIM TURNER, Clerk of the Court

By: DOROTHY JESS, Deputy Clerk

EXHIBIT 12

ELECTRONICALLY FILED
11/17/2021 5:02 PM
Superior Court of California
County of Mendocino

By:
T. Johnson
Deputy Clerk

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Attorneys for Plaintiff MENDOCINO RAILWAY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MENDOCINO

MENDOCINO RAILWAY,

Plaintiff,

v.

GEORGIA-PACIFIC LLC; NORTH AMERICAN TIMBER CORP.; HAWTHORNE TIMBER COMPANY, LLC; MENDOCINO COUNTY TREASURER-TAX COLLECTOR; All other persons unknown claiming an interest in the property; and DOES 1 through 100, inclusive,

Defendants.

Case No. 21CV00595

[APN 018-430-21; 018-430-22; 018-040-61; 018-120-50; 008-151-26; 008-020-17 (aka 008-020-19); 008-171-07; 008-161-08; 008-070-31; 020-550-02; 020-550-08; 020-550-10; and 020-550-11]

STIPULATION RE: SETTLEMENT, JUDGMENT AND FINAL ORDER OF CONDEMNATION

Plaintiff Mendocino Railway (hereinafter "Mendocino Railway" or "Plaintiff") and Defendant Georgia-Pacific LLC, successor in title to Defendant North American Timber Corp. and Defendant Hawthorne Timber Company (hereinafter "Defendant Georgia-Pacific"), and Defendant Mendocino County Tax Collector ("Defendant Tax Collector") (Collectively "Defendants") (Parties hereto may be individually referenced herein as "Party," or may be collectively referenced herein as "Parties") hereby stipulate as follows:

RECITALS

A. On or about August 11, 2021, Mendocino Railway filed a Complaint in Eminent Domain, Mendocino County Superior Court Case Number 21CV00595 against Defendants (the "Eminent Domain Action"), seeking to acquire the fee simple interest in and to the real property which has been assigned Assessor's Parcel Numbers 018-430-21; 018-430-22; 018-040-61; 018-120-50; 008-151-26; 008-020-17 (aka 008-020-19); 008-171-07; 008-161-08; 008-070-31; 020-550-02; 020-550-08; 020-550-10; and 020-550-11("Subject Property") as identified and described in the Complaint.

B. Mendocino Railway's acquisition of the Subject Property is necessary for construction and maintenance of rail facilities related to Mendocino Railway's ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto ("Project"), a public use.

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

D. Defendant Georgia-Pacific is the fee owner of the Subject Property. Defendant Georgia-Pacific is successor in title to Defendant North American Timber Corp. and Defendant Hawthorne Timber Company.

E. Mendocino County Treasurer-Tax Collector is a lienholder for property taxes.

F. Mendocino Railway and Defendants now desire to resolve any and all claims and interests in connection with Mendocino Railway's acquisition of the Subject Property, on the terms and conditions set forth herein.

BASED ON THE FOREGOING, the Parties hereby stipulate and agree as follows:

1. **Compensation to be Paid.** Mendocino Railway and Defendants hereby agree that the total compensation to be paid by Mendocino Railway in this proceeding is the sum of One Million Two Hundred Thirty Thousand Dollars ($1,230,000.00) (the "Total Compensation"). Said Total Compensation shall be paid to Defendant as set forth herein below.

Mendocino Railway and Defendants further agree that said Total Compensation reflects the fair market value of the Subject Property in consideration of the Subject Property in its environmental and physical condition as of said date, including without limitation the California Department of Toxic Substances Control Site Investigation and Remediation Order No. HAS-RAO 06-07-150, and subject to all encumbrances, easements, rights-of-way, servitudes, covenants or other matters of record as of August 13, 2021 (the date the Lis Pendens was recorded). Defendant Georgia Pacific shall provide to Mendocino Railway, within ten (10) days of execution of this Stipulation, any environmental tests or reports relating to the Subject Property (including draft reports if not finalized) generated after 2007 and which are not available on DTSC's Envirostor or Geotracker. Such documents are provided as information only.

Further, said Total Compensation constitutes full and final settlement and resolution of any and all claims and interests in connection with Mendocino Railway's acquisition of the Subject Property and this Eminent Domain Action, including without limitation compensation for: real property, severance damages, improvements pertaining to realty, fixtures and equipment, personal property, business goodwill, relocation benefits, precondemnation damages, pre-judgment interest, and post-judgment interest, any and all other compensation, damages, litigation expenses and costs.

2. **Manner of Payment.** The Total Compensation shall be paid as follows:

a. Pursuant to the [Proposed] Final Judgment, Mendocino Railway shall pay Defendant Georgia-Pacific LLC the Total Compensation of One Million Two Hundred Thirty Thousand Dollars ($1,230,000.00) no later than November 20, 2021.

Upon receipt of payment, as set forth above, Defendant Georgia-Pacific LLC shall immediately execute a Satisfaction of Judgment and return it to Mendocino Railway for filing with the Court.

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

3. **Entry of Final Judgment and Final Order of Condemnation.** The Court shall enter Final Judgment consistent with the terms of this stipulation in the form attached hereto as Exhibit A and filed concurrently herewith. Thereafter, upon payment of Total Compensation, the Court may enter a Final Order consistent with the terms of this Stipulation, transferring fee title to the Subject Property to Mendocino Railway subject to all encumbrances, easements, rights-of-way, servitudes, covenants or other matters of record as of August 13, 2021. No further notice to Defendants or execution or approval by Defendants shall be necessary prior to the Court's entering such Final Order of Condemnation. Defendants hereby waive the right to further trial by court or jury, and waive the right to Statement of Decision, and any and all right to appeal as to any and all issues related to the Subject Property, Mendocino Railway's acquisition of the Subject Property or this Eminent Domain Action.

4. **Possession.** Mendocino Railway shall take, and Defendant Georgia-Pacific LLC shall relinquish, possession of the Subject Property on November 15, 2021. Moreover, Mendocino Railway is entitled to entry of an Order for Prejudgment Possession, if Mendocino Railway determines it to be necessary, on an ex parte basis and without further notice to Defendants, or as otherwise sought by Mendocino Railway, authorizing and empowering

Mendocino Railway to take possession and use said fee interest, and to remove any and all persons, obstacles, improvements, or structures of every kind and nature situated thereon.

Defendants waive the provision of Cal. Code Civ. Proc. § 1255.450 (b) requiring service of an Order for Prejudgment Possession and agree that notwithstanding the date the Order for Prejudgment Possession is actually entered, the effective date of the Order for Prejudgement Possession is November 15, 2021.

Defendant Georgia-Pacific LLC agrees that that the Court may issue an Order for Possession and that in the event Defendant or any occupant fails to comply with this Stipulation and said Order for Possession by vacating and relinquishing possession of the Subject Property on or before November 15, 2021, the Court may forthwith and upon ex parte application issue a Writ of Assistance effective immediately authorizing the Mendocino County Sheriff to remove Defendant Georgia-Pacific LLC or any other occupants from the Subject Property and assist Mendocino Railway in obtaining immediate possession of the Subject Property.

Pursuant to Section 1268.410 et seq. of the Code of Civil Procedure, property taxes on the Subject Property shall be prorated as of November 14, 2021. Georgia Pacific shall be responsible for payment of property taxes on the Subject Property for the period prior to November 15, 2021. Property taxes, if any, on the Subject Property for the period starting November 15, 2021 shall be payable by Plaintiff.

5. **Full and Final Resolution.** This Stipulation and the Court's entry of the Final Judgment and Final Order of Condemnation constitute full and final resolution of any and all claims, interests and issues of the Parties in connection with the Subject Property, Mendocino Railway's acquisition of the Subject Property or this Eminent Domain Action, and the Parties' mutual waiver and release of any and all claims made to date and issues in connection therewith that were asserted or could have been asserted, other than the duties and obligations created by this Stipulation, including without limitation all compensation, damages and benefits for real property, severance damages, improvements pertaining to real property, loss of goodwill, personal property, fixtures and equipment, precondemnation damages, loss of inventory, pre-judgment and post-judgment interest, attorneys or other fees, litigation expenses and costs.

6. **Mutual General Release.** Except as otherwise set forth in this Stipulation, all Parties waive and forever release the other Parties, including their successors, officers, employees, attorneys, agents, representatives, and anyone acting on their behalf or for them, of and from any and all existing or potential future claims, demands, actions or causes of action, or liabilities, known or unknown, based upon or arising in connection with the Subject Property, Mendocino Railway's acquisition of the Subject Property and/or this Eminent Domain Action.

By such release, the Parties waive any rights under California Civil Code Section 1542, which provides, "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

7. **Indemnity.** Mendocino Railway expressly assumes any and all liability related to any Environmental Conditions (any circumstance or set of circumstances in, on, under or about the Property that arise directly or indirectly out of or related to the presence, suspected presence, release or threatened release of any Hazardous Material (Any "hazardous waste", "hazardous substance", "extremely hazardous substance", "toxic chemical", "hazardous chemical", "toxic pollutants", "contaminants", "chemical", "chemical substance", "mold" or "asbestos", as such terms are defined in any of the Environmental Laws, or related substances, in such quantities or concentrations as are regulated by such Environmental Laws or other applicable laws, or which may be declared to constitute a material threat to human health or to the Environment.) on the Property as of August 13, 2021 and any Hazardous Materials, and Mendocino Railway waives, relinquishes, releases, indemnifies and holds harmless Defendant Georgia-Pacific from any and all claims, demands, administrative orders, causes of action (including causes of action in tort, remedial actions, losses, damages, liabilities, judgments, settlements, penalties, fines, costs and expenses (including attorneys' fees and court costs actually incurred) of any and every kind or character, known or unknown, whether based upon negligence, strict liability or otherwise arising out of or related to the Environmental Condition of the Property, but excluding any claims or causes of action related to personal injury commencing prior to November 15, 2021. Mendocino Railway expressly acknowledges that the

Subject Property is subject to the California Department of Toxic Substances Control Site Investigation and Remediation Order No. HAS-RAO 06-07-150 ("Order"). As of November 15, 2021, Mendocino Railway will expressly assume any and all obligations, requirements and liabilities solely and exclusively related to the Subject Property that arise from the Order and shall hold Defendant Georgia-Pacific harmless from any such obligations, requirements and liabilities. As of November 15, 2021, Plaintiff will expressly assume any and all obligations, requirements and liabilities solely and exclusively related to the Subject Property that arise from the Order, shall use its best efforts to obtain DTSC's approval to insert Plaintiff as a party subject to the Order. Plaintiff shall provide evidence of its best efforts with respect to obtaining DTSC's approval no later than December 31, 2021 and monthly thereafter until Plaintiff is added to the Order.

8. Plaintiff shall indemnify and hold Defendant Georgia-Pacific harmless from any and all claims, causes of action, demands, damages or attorney's fees arising out of or relating in any way to claims or allegations by the City of Fort Bragg and/or any third party relating to this Eminent Domain Action and/or this Stipulation and Judgment.

9. **Representations and Warranties.**

a. Defendant Georgia-Pacific hereby represents and warrants that, other than such easements, rights-of-way, servitudes, covenants or other matters of record, the License Agreement for Winter Storm Site and Emergency Base Camp dated December 22, 2015 in favor of Pacific Gas and Electric Company, and any such matters that would be shown by an accurate survey or visual inspection of the Subject Property, as of the date this Stipulation is executed by all Parties, Defendant Georgia-Pacific is not aware of any other party having any interest in or claiming an interest in, nor has it assigned, hypothecated or otherwise transferred any interest or any claims of interest, in or to the Subject Property or the Eminent Domain Action which are the subject of this Stipulation, including without limitation any claims against Mendocino Railway for compensation or damages, or otherwise arising out of or in any way related to the Subject Property, Mendocino Railway's acquisition of the Subject Property or the Eminent Domain Action.

b. Defendant Georgia-Pacific further represents that it is the sole owner of the Subject Property and successor in title to Defendant North American Timber Corp. and Defendant Hawthorne Timber Company, and the owner of any and all claims against Mendocino Railway for compensation and damages, or any other claims arising out of or in any way related to the Subject Property, Mendocino Railway's acquisition of the Subject Property or the Eminent Domain Action.

c. Other than as specified in this Stipulation, Defendant Georgia-Pacific represents and warrants that it is not aware of any other party who is or may be entitled to, or claims an interest in, all or any portion of the Total Compensation in this matter.

d. Each Party represents and warrants that it has the full right and power to enter into this Stipulation and to execute and bind said Party to the release and all other provisions contained herein.

e. Defendant Georgia-Pacific hereby represents and warrants that, to the best of Georgia-Pacific's knowledge, other than as expressly disclosed in this Stipulation, there currently are no actual or threatened claims, demands, actions or causes of action, or liabilities regarding the Subject Property.

f. Each Party agrees to defend and indemnify each other party in the event any claim is made which is contrary to the representations and warranties contained herein. If any action or other proceeding is brought for the enforcement of these representations and warranties, or interpretation thereof, the successful or prevailing party shall be entitled to recover actual attorneys' fees and other costs it incurs in that action or proceeding, in addition to any other relief to which it may be entitled, including fees for any in-house counsel of the party or attorney's fees for self-represented party acting as his/her own attorney and/or of his/her spouse.

10. **No Admission of Liability.** This Stipulation is a compromise of disputed claims between the Parties hereto and shall not be construed as an admission of liability by any party for any purpose.

11. **Integration.** This Stipulation constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous

agreements and understandings of the Parties; there are no warranties, representations or other agreements between the Parties except as expressly set forth herein. No amendment hereto shall be binding unless set forth in a writing stating that it is intended to amend this agreement, executed by the party to be bound thereby. No waiver of any of the provisions of this Stipulation shall be deemed or constitute a waiver of any of the other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

12. **Counterparts.** This Stipulation may be transmitted by facsimile/EMAIL and executed in counterparts and, as so executed, shall constitute one agreement binding on all Parties.

13. **Severability.** In the event that any provision of this Stipulation is found by a court of competent jurisdiction to be void, the remaining provisions of this Agreement shall remain in full force and effect.

14. **Each Party to Bear Own Costs and Fees.** Each party shall bear its own litigation expenses, including but not limited to all attorney's fees and expert witness fees and any and all other fees or costs of any nature, including costs set forth in Code of Civil Procedure Section 1033.5.

15. **Choice of Law.** This Stipulation and any dispute hereunder shall be governed by the laws of the State of California.

16. **Each Party Authorized.** By signing this Stipulation, each party attests that he or she is duly authorized by his or her respective corporation or entity, if applicable, to execute this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

Dated: 4-November-2021

MENDOCINO RAILWAY

Robert Jason Pinoli, President

Dated: _____

GEORGIA-PACIFIC LLC

_____

By: _____

Its: _____

Dated: _____

MENDOCINO COUNTY TREASURER-
TAX COLLECTOR.

_____

By: _____

Its: _____

Dated: _____

MENDOCINO RAILWAY

_____

Robert Jason Pinoli, President

Dated: 11/12/2021 | 1:29:05 PM PST

GEORGIA-PACIFIC LLC

DocuSigned by:

_____

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DS

AFM

By: Michael E. Cruz

Its: Vice President - Real Estate

Dated: _____

MENDOCINO COUNTY TREASURER-TAX COLLECTOR.

_____

By: _____

Its: _____

Dated: _____

MENDOCINO RAILWAY

_____

Robert Jason Pinoli, President

Dated: _____

GEORGIA-PACIFIC LLC

_____

By: _____

Its: _____

Dated: 11-16-21

MENDOCINO COUNTY TREASURER-TAX COLLECTOR.

Shari L. Schapmire

By: Shari L. Schapmire

Its: Treasurer-Tax Collector

EXHIBIT A

GLENN L. BLOCK (SB#208017)
ANDREW S. PARSLOW (SB#332916)
CALIFORNIA EMINENT DOMAIN LAW GROUP, A PC
3429 Ocean View Blvd., Suite L
Glendale, CA 91208
Telephone: (818) 957-0477
Facsimile: (818) 957-3477

Attorneys for Plaintiff MENDOCINO RAILWAY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MENDOCINO

MENDOCINO RAILWAY, Plaintiff, v. GEORGIA-PACIFIC LLC; NORTH AMERICAN TIMBER CORP.; HAWTHORNE TIMBER COMPANY, LLC; MENDOCINO COUNTY TREASURER-TAX COLLECTOR; All other persons unknown claiming an interest in the property; and DOES 1 through 100, inclusive, Defendants.	Case No. 21CV00595 [APN 018-430-21; 018-430-22; 018-040-61; 018-120-50; 008-151-26; 008-020-17 (aka 008-020-19); 008-171-07; 008-161-08; 008-070-31; 020-550-02; 020-550-08; 020-550-10; and 020-550-11] **[PROPOSED] FINAL JUDGMENT**

Plaintiff Mendocino Railway (hereinafter "Mendocino Railway" or "Plaintiff") and Defendant Georgia-Pacific LLC, successor in interest to Defendant North American Timber Corp. and Defendant Hawthorne Timber Company (hereinafter "Defendant Georgia-Pacific"), and Defendant Mendocino County Tax Collector ("Defendant Tax Collector") (Collectively "Defendants") (parties hereto may be individually referenced herein as "Party," or may be collectively referenced herein as "Parties") having entered into the concurrently filed Stipulation Re: Settlement, Judgment, and Final Order of Condemnation ("Stipulation"), judgment may be made and entered in accordance with these terms and conditions and without further notice to any of the Defendants.

IT APPEARING that on or about August 11, 2021, Mendocino Railway filed a Complaint in Eminent Domain, Mendocino County Superior Court Case Number 21CV00595 against Defendants (the "Eminent Domain Action"), seeking to acquire the fee simple interest in and to the real property which has been assigned Assessor's Parcel Numbers 018-430-21; 018-430-22; 018-040-61; 018-120-50; 008-151-26; 008-020-17 (aka 008-020-19); 008-171-07; 008-161-08; 008-070-31; 020-550-02; 020-550-08; 020-550-10; and 020-550-11("Subject Property") as identified and described in the Complaint. The Subject Property is more particularly described, together with maps, in Exhibits "A" and "B" to the Complaint, true and correct copies of which are attached hereto as Exhibits "A" and "B."

IT FURTHER APPEARING that Mendocino Railway's acquisition of the Subject Property is necessary for construction and maintenance of rail facilities related to Mendocino Railway's ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto ("Project"), a public use.

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

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

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

filed its Answer. Property taxes may remain outstanding for the Subject Property, thus Defendant Mendocino County Treasurer-Tax Collector may be entitled to compensation for outstanding property taxes incurred for the period up to November 4, 2021.

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The use for which the Subject Property is being acquired by Mendocino Railway in this action, for construction and maintenance of rail facilities related to Mendocino Railway's ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto, is a public use authorized by law and the acquisition of the Subject Property is necessary to such use.

2. Plaintiff is entitled to and shall take possession of the Subject Property effective November 5, 2021.

3. Defendant North American Timber Corp. and Defendant Hawthorne Timber Company, predecessors in interest to Defendant Georgia-Pacific, are hereby dismissed from this action.

4. The stipulating Defendants have waived the right to a Statement of Decision, Notice of Entry of Judgment, Notice of Entry of Final Order of Condemnation and any and all right to appeal as to any and all issues related to the taking of the Subject Property.

5. Except as otherwise set forth in this Judgment and except for breach of any terms or conditions contained in the parties' Stipulation, all parties waive and forever release the other parties, including their successors, officers, employees, attorneys, agents, representatives, and anyone acting on their behalf or for them, of and from any and all claims made to date, demands, actions or causes of action, or liabilities, known or unknown, based upon or arising in connection

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

6. In connection with the release set forth in Section 4 above, Plaintiff expressly assumes any and all liability related to any Environmental Conditions (any circumstance or set of circumstances in, on, under or about the Subject Property that arise directly or indirectly out of or related to the presence, suspected presence, release or threatened release of any Hazardous Material (Any "hazardous waste", "hazardous substance", "extremely hazardous substance", "toxic chemical", "hazardous chemical", "toxic pollutants", "contaminants", "chemical", "chemical substance", "mold" or "asbestos", as such terms are defined in any of the Environmental Laws, or related substances, in such quantities or concentrations as are regulated by such Environmental Laws or other applicable laws, or which may be declared to constitute a material threat to human health or to the Environment.) on the Subject Property as of August 13, 2021 and any Hazardous Materials, and Plaintiff waives, relinquishes, releases, indemnifies and holds harmless Defendant Georgia-Pacific from any and all claims, demands, administrative orders, causes of action (including causes of action in tort), remedial actions, losses, damages, liabilities, judgments, settlements, penalties, fines, costs and expenses (including attorneys' fees and court costs actually incurred) of any and every kind or character, known or unknown, whether based upon negligence, strict liability or otherwise arising out of or related to the Environmental Condition of the Property, but excluding any claims or causes of action related to personal injury commencing prior to November 5, 2021. Plaintiff expressly acknowledges that the Subject Property is subject to the California Department of Toxic Substances Control Site Investigation and Remediation Order No. HAS-RAO 06-07-150 ("Order"). As of November 5, 2021, Plaintiff will expressly assume any and all obligations, requirements and liabilities solely and exclusively related to the Subject Property that arise from the Order, shall seek DTSC's approval to insert Plaintiff as a party subject to the Order.

7. Plaintiff agrees to hold Defendant Georgia-Pacific harmless from any and all claims, causes of action, demands, damages or attorney's fees arising out of or relating in any

way to claims or allegations by the City of Fort Bragg and/or any third party relating to the this Eminent Domain Action and/or the Parties' Stipulation and this Judgment.

8. By such release, and subject to the above exclusions, the parties waive any rights under California Civil Code Section 1542, which provides, "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

9. The total compensation for Mendocino Railway's taking of the Subject Property is One Million Two Hundred Thirty Thousand dollars ($1,230,000.00). Said Total Compensation shall be disbursed and paid to Defendant Georgia-Pacific as set forth below.

10. Mendocino Railway shall tender payment directly to Defendant Georgia-Pacific the sum of One Million Two Hundred Thirty Thousand Dollars ($1,230,000.00) paid by wire transfer to Hill Farrer & Burrill LLP Client Trust Account no later than November 15, 2021:

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

11. To the extent that there are any outstanding taxes due and payable to Defendant Mendocino County Treasurer-Tax Collector through and including November 4, 2021, said outstanding taxes shall be paid from the Total Compensation from Hill Farrer & Burrill LLP Client Trust Account to Defendant Mendocino County Treasurer-Tax Collector. Upon determining that no outstanding taxes are due and payable, or upon receiving payment of any outstanding taxes pursuant to this paragraph, Defendant Mendocino County Treasurer-Tax Collector shall immediately execute a Satisfaction of Judgment and return it to Mendocino Railway for filing with the Court.

12. Upon receipt of the payment as set forth in paragraph 9 above, Defendant Georgia-Pacific LLC shall immediately execute a Satisfaction of Judgment and return it to Mendocino Railway for filing with the Court.

13. Upon the filing of the Satisfaction of Judgments executed by Defendant Georgia-Pacific pursuant to paragraph 10, above, and Defendant Mendocino County Treasurer-Tax Collector pursuant to paragraph 11, above, Mendocino Railway shall forthwith be entitled to a Final Order of Condemnation condemning the Subject Property in fee simple for the public use and purpose stated in the Complaint, to wit, for construction and maintenance of rail facilities related to Mendocino Railway's ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto. Mendocino Railway to take all right, title, and interest in and to the Subject Property, together with any and all improvements thereon, subject to all encumbrances, easements, rights-of-way, servitudes, covenants or other matters of record or as stated in the Stipulation for Entry of Judgment, as of August 13, 2021, whatever kind or nature, without further notice to any party.

14. Pursuant to Section 1268.410 et seq. of the Code of Civil Procedure, the Mendocino County Treasurer-Tax Collector shall prorate property taxes on the Subject Property through November 4, 2021. Property taxes, if any, on the Subject Property for the period starting November 5, 2021 shall be payable by Plaintiff.

11/18/2021 2:45:03 PM

DATED: 11/18/2021

Judge of the Superior Court

EXHIBIT A

EXHIBIT "A"

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

Tract One:

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

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

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

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

APN: 018-120-50

Tract Two:

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

Beginning at the Southwest corner of said Section 7; thence South 88° 17' 06" East, 283.93 feet along the Southerly line of said Section 7 to a point on the Westerly boundary of said Highway One; said point is on a 5,949.72 foot (Record 5,950 foot) radius curve to the left, a tangent at said point bears North 06° 06' 14" East, proceeding along the arc of said curve for a distance of 333,09 feet through an angle of 3° 12' 27" along said Highway boundary to a 6" x 6" concrete right-of-way monument; thence continuing along said Highway boundary North 2° 54' 12" East, 356.23 feet to a line that is an extension of the Southerly line of Cypress Street projected Westerly, thence along said projected line North 88° 41' 01" West, 312.49 feet to the West boundary of said Section 7; thence South 01° 18' 01" West, 686.66 feet along said West boundary of Section 7 to the point of beginning.

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

APN: 018-040-52

Tract Three:

Parcel One:

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

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

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

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

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

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

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

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

ALSO EXCEPTING all that portion described as follows:

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

Parcel Two:

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

Beginning at the corner to Sections I and 12, Township 18 North, Range 18 West, and Sections 6 and 7, Township 18 North, Range 17 West, Mount Diablo Base and Meridian; and running thence South along the Range line 2640 feet to a point in the City Limit on the South side of Fort Bragg, according to the "Map of the City of Fort Bragg, showing the Town Lots" tiled February 15, 1910 in Map Case 1, Drawer 3, Page 44, Mendocino County Records; thence East along said City Limit 380 feet to a point in the West line of Main Street; thence North along said West line 1260 feet to a point in the South line of Oak Avenue; thence West along said South line 200 feet; thence North 980 feet to a point in the North line of Redwood Avenue; thence East along the North line of Redwood Avenue 200 feet to the West line of Main Street; thence North along said West line 119.50 feet to the Northeast corner of a strip of land described in a Deed from Coast National Bank in Fort Bragg to Union Lumber Company, dated November 9, 1955, recorded in Book 413 of Official Records, Page 502, Mendocino County Records; thence West along said North line 121 feet to a point in the West line of a parcel of land described in a Deed from Union Lumber Company to Coast National Bank of Fort Bragg, dated November 3, 1955, recorded in Book 413 of

Official Records, Page 500, Mendocino County Records; thence North along the West line of said parcel 38.50 feet to the Northwest corner thereof; thence East 121 feet to a point on the West line of Main Street and being the Northeast corner of a parcel of land described in a Deed from Union Lumber Company to the Bank of Fort Bragg, dated June 3, 1904, recorded in Book 97 of Deeds, Page 354, Mendocino County Records; thence North along the West line of Main Street 161.5 feet to the Southeast corner of a parcel of land described in a Deed from Union Lumber Company to the City of Fort Bragg, dated October 31, 1912, recorded in Book 133 of Deeds, Page 421, Mendocino County Records; thence West along the South line of said last mentioned Parcel 56 feet to its Southwest corner; thence North along its West line 42.5 feet to a point in the South line of a parcel of land described in a Deed from Union Lumber Company to Fort Bragg Commercial Bank, dated May 11, 1912, recorded in Book 131 of Deeds, Page 33, Mendocino County Records; thence West along the South line of said last mentioned Parcel 44 feet to its Southwest corner; thence North along its West line 35 feet to its Northwest corner; thence West 280 feet to the point of beginning.

EXCEPTING THEREFROM the following:

1. That portion described in the Deed to City of Fort Bragg, recorded January 9, 1985, in Book 1489, Page 317, Mendocino County Records.

2. That portion described in the Deed to California Western Railroad recorded November 19, 1987, in Book 1656 Official Records, Page 374, Mendocino County Records.

3. That portion described in the Deed to Mendocino Coast Railway recorded November 19, 1987, in Book 1656 Official Records, Page 378, Mendocino County Records.

4. Those portions described in the Deeds to Joe H. Mayfield, et ux, recorded October 31, 1984 in Book 1480 Official Records, Page 252 and recorded June 27, 1986 in Book 1566 Official Records, Page 363, Mendocino County Records.

5. Parcel 1 as shown on that certain Parcel Map of Division No. 3-84 filed October 23, 1984 in Map Case 2, Drawer 42, Page 23, Mendocino County Records.

6. Parcels 1, 2 and 3 as numbered and designated on the certain Parcel Map of Division 4-01 filed September 23, 2005 in Drawer 72 of Maps, Page 79, Mendocino County Records.

7. Those portions described in the Deeds to the State of California recorded February 19, 1999 as Serial #1999-03294 and Serial #1999-03295, Mendocino County Records.

8. All that portion as described as follows:

That certain real property situated in the City of Fort Bragg, County of Mendocino, State of California, and being a portion of the West one-half of the Northwest one-quarter of Section 7, Township 18 North, Range 17 West, Mount Diablo Meridian, more particularly described as follows:

The bearings used in this description are in terms of the California State Grid, Zone 2.

Beginning at a point where the West line of Main Street intersects the South line of Oak Avenue extended Westerly in the City of Fort Bragg, said point of beginning being 1380 feet South and 380 feet East of the section corner common to Sections 6 and 7, Township 18 North, Range 17 West, and Section 1 and 12, Township 18 North, Range 18 West, Mount Diablo Meridian: thence from said point of beginning and along the exterior boundary lines of the parcel of land to be described as follows:

South 01° 37' 54" West (Record= South) along the West line of said Main Street, 145.88 feet; thence leaving said street side line, North 85° 10' 18" West, 100.15; thence North 01° 37' 54" East (Record= North) and Parallel with the West line of said Main Street, 139.83 feet to a point in the South line of said Oak Avenue extended Westerly; thence South 88° 38' 00" East (Record =East) along said Oak Avenue side line, 100.00 feet to the point of beginning.

9. All that portion described as follows:

Commencing at the section corner common to Sections 6 and 7, Township 18 North, Range 17 West, and Sections I and 12, Township 18 North, Range 18 West, Mount Diablo Meridian; thence South 01°18'24" West along the range line, a distance of 460.05 feet to the POINT OF BEGINNING; thence leaving said range line, South 88°41'11" East, a distance of 179.92 feet; thence South 01 °21'03" West, a distance of 229.27 feet; thence North 87°51 '29" West, a distance of 12.77 feet; thence South 00°17'51" West, a distance of21.09 feet; thence North 89°10'25" West, a distance of 74.38 feet; thence North 00°41'57" East, a distance of 9.95 feet; thence North 88°17'22" West, a distance of 10.04 feet; thence North 60°27'42" West, a distance of 7.99 feet; thence North 88°58'07" West, a distance of 75.78 feet to the range line; thence North 01 °18'24" East along the range line, a distance of237.38 feet to the POINT OF BEGINNING.

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

EXCEPTING FROM PARCELS ONE AND TWO ALL THAT LAND LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SECTION CORNER COMMON TO SECTIONS 6 AND 7, TOWNSHIP 18 NORTH, RANGE 17 WEST, AND SECTIONS 1 AND 12, TOWNSHIP 18 NORTH, RANGE 18 WEST, MOUNT DIABLO MERIDIAN; THENCE SOUTH 13°42'42" EAST, A DISTANCE OF 414.22 FEET TO THE SOUTHWEST CORNER OF PARCEL ONE AS SHOWN ON "PARCEL MAP OF DIVISION NO. 5-84" FILED IN MAP CASE 2, DRAWER 42, PAGE 59 MENDOCINO COUNTY RECORDS AND BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 88°41'11" WEST, A DISTANCE OF 1,809.58 FEET MORE OR LESS TO A POINT ON THE WEST BOUNDARY OF THE LANDS OF GEORGIA-PACIFIC CORPORATION.

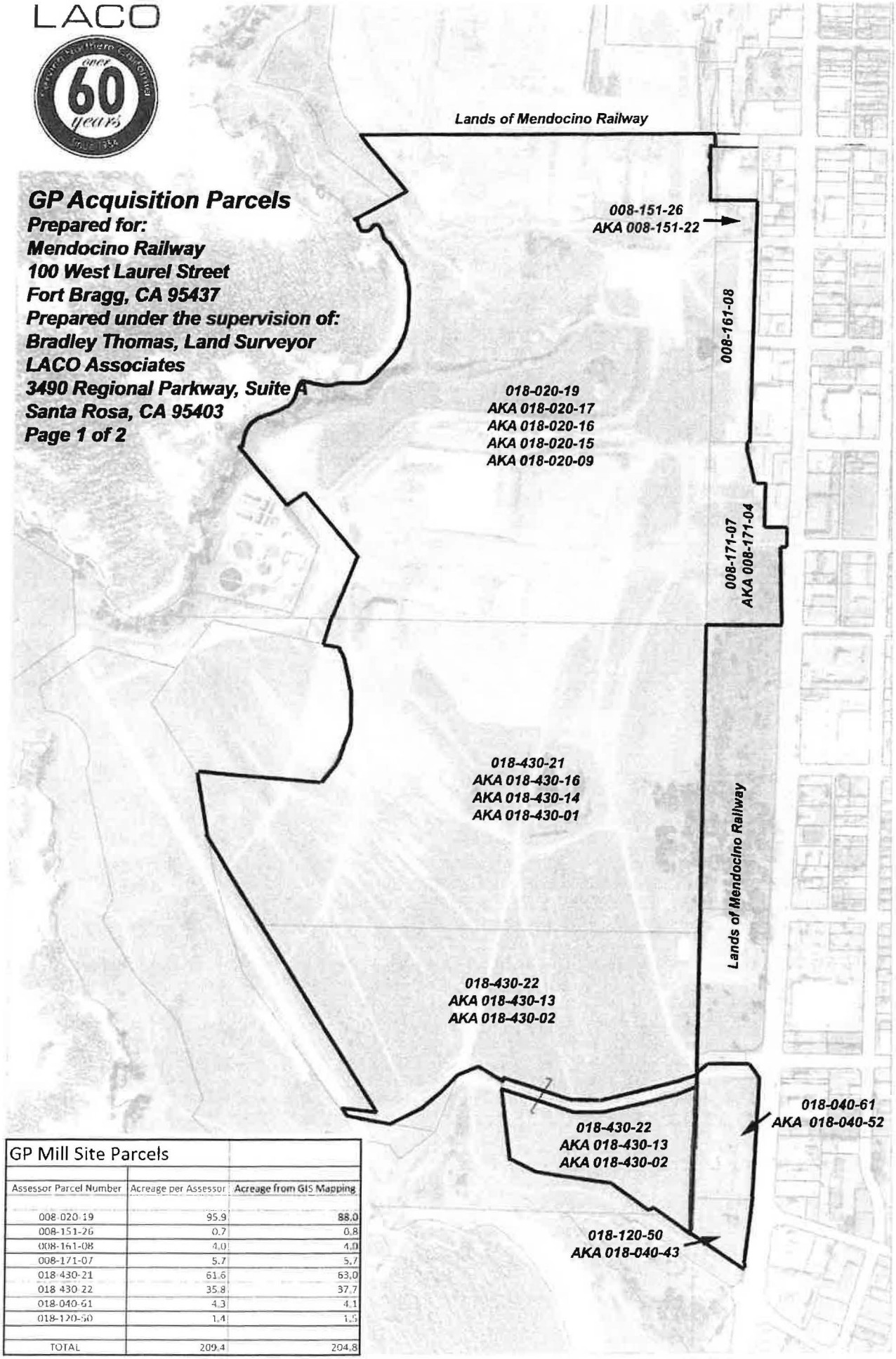
Basis of Bearings: That certain Record of Survey filed in Drawer 72 of Maps at Pages 58-64, Mendocino County Records.

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

LACO

GP Acquisition Parcels

Prepared for:
Mendocino Railway
100 West Laurel Street
Fort Bragg, CA 95437
Prepared under the supervision of:
Bradley Thomas, Land Surveyor
LACO Associates
3490 Regional Parkway, Suite A
Santa Rosa, CA 95403



GP Mill Site Parcels

Assessor Parcel Number	Acreage per Assessor	Acreage from GIS Mapping
008-020-19	95.9	88.0
008-151-26	0.7	0.8
008-161-08	4.0	4.0
008-171-07	5.7	5.7
018-430-21	61.6	63.0
018-430-22	35.8	37.7
018-040-61	4.3	4.1
018-120-50	1.4	1.5
TOTAL	209.4	204.8

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

EXHIBIT B

EXHIBIT "B"

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

Tract One:

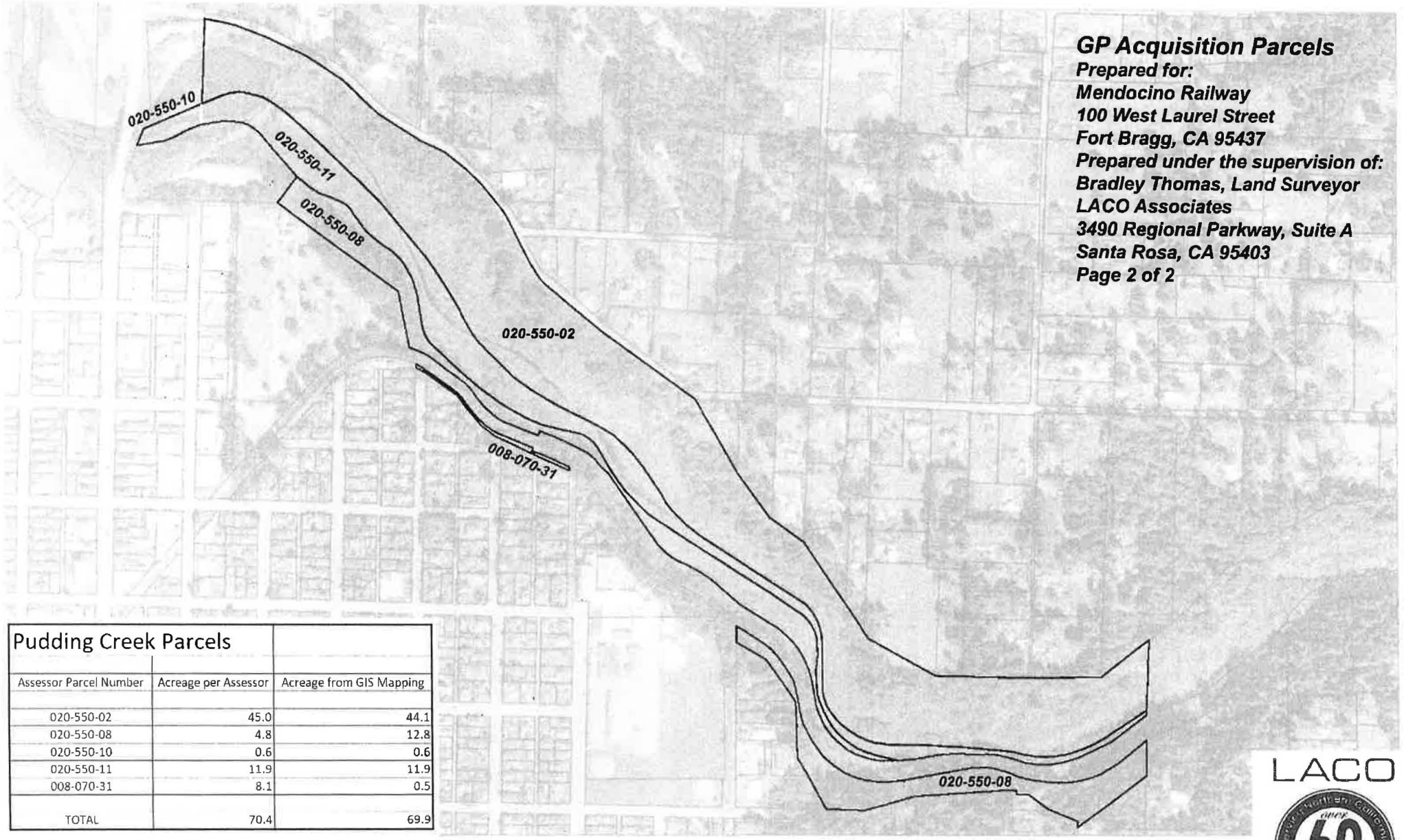
All that certain real property more particularly described in Exhibit B of the Grant Deed executed by Boise Cascade Corporation to Georgia-Pacific Corporation, under the heading of"Fort Bragg Properties, Township 18 North, Range 17 West, M.D.M., Section 6" in Parcel One, Parcel Two, Parcel Three and Parcel Eight, which deed recorded March 25, 1974 in Book 957 of Official Records, Page I 08, Mendocino County Records, excepting therefrom that portion described in the Grant Deed executed by Georgia-Pacific Corporation to Michael S. Bennett, eta! recorded November 29, 1989 in Book 1792 of Official Records, Page 432, Mendocino County Records.

APN: 020-550-02, 020-550-10, 020-550-11 and 020-550-x08

Tract Two:

All that certain real property more particularly described in Exhibit B of the Grant Deed executed by Boise Cascade Corporation to Georgia-Pacific Corporation, under the heading of"Fort Bragg Properties, Township 18 North, Range 17 West, M.D.M., Section 6" in Parcel Four and Parcel Six, which deed recorded March 25, 1974 in Book 957 of Official Records, Page 108, Mendocino County Records.

APN: 020-550-x08



GP Acquisition Parcels

Prepared for:
Mendocino Railway
100 West Laurel Street
Fort Bragg, CA 95437
Prepared under the supervision of:
Bradley Thomas, Land Surveyor
LACO Associates
3490 Regional Parkway, Suite A
Santa Rosa, CA 95403

Pudding Creek Parcels		
Assessor Parcel Number	Acreage per Assessor	Acreage from GIS Mapping
020-550-02	45.0	44.1
020-550-08	4.8	12.8
020-550-10	0.6	0.6
020-550-11	11.9	11.9
008-070-31	8.1	0.5
TOTAL	70.4	69.9

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

LACO
over 60 years
Since 1954

VERIFIED STATEMENT 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

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

VERIFIED STATEMENT OF DAVID ANDERSON, P.E.

1. I, David Anderson, state that I am a licensed civil engineer in the State of California and a Principal of D&A Enterprises LLC, a company which provides rail consulting services, including bridge evaluations and line inspections. I have personally served for the past twenty-two years as the civil engineering consultant for North Coast Railroad Authority ("NCRA")/Great Redwood Trail Agency ("GRTA"). I have repeatedly examined the GRTA right-of-way in California ("GRTA Line") and have examined the Mendocino Railway ("MR") rail line from Fort Bragg to Willits in Mendocino County ("MR Line").

2. I composed three reports that are attached to this Verified Statement. (1) *Railroad Rehabilitation Assessment Mendocino Railway Fort Bragg to Willits (D&A Report I)* is attached hereto as Appendix A*; Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5 (D&A Report II)* is attached hereto as Appendix B; and (3) *Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale (D&A Report III)* is attached hereto as Appendix C.

3. The *D&A Report I* was completed to determine an estimated cost necessary to rehabilitate the MR Line from Fort Bragg to Willits, as well as GRTA owned track, bridges, and signals that MR currently is using to FRA Class 1 track standards for freight rail service. The current condition

of the railroad was determined by field inspection of publicly accessible areas totaling approximately 17 miles of the line, Right of Way and Track Maps, and Google Earth of the remaining areas. In addition, MR's Build 2020 Grant Application and Exhibits were used as a basis for repair costs, overall condition, and improvement requirements. Based on my review and analysis, the D&A Report I provided the rehabilitation costs, subject to the assumptions in the report, to be $31,598,000, including $8,058,000 for Tunnel No. 1, $20,785,000 for the bridge and tie program, $2,295,000 for the bridge program and $920,000 for the public crossings.

4. The *D&A Report II* was completed to determine an estimated cost necessary to rehabilitate approximately 52.6 miles of the GRTA Line from Cloverdale, CA MP 85.6 at the First Street Crossing to Willits, CA MP 139.5 to FRA Class 1 track standards for freight rail service ("Willits Segment"). The Willits Segment was last in-service 25 years ago. It was embargoed on December 9, 1998, by the FRA due to washouts and flooding events associated with El Niño storms and crossing signal disrepair rendering the track unsafe. The 52.6 miles of rail line had minimal maintenance prior to the embargo and has not been maintained since the embargo. Therefore, obtaining access was challenging given the inherent geohazards, washouts from storms since the embargo, and heavy vegetation over much of the right-of-way. The current condition of the railroad was determined by field inspection of approximately 30 miles of the line and low-level photography and LiDAR collected by helicopter in 2022. The LiDAR was helpful in areas of heavy vegetation for detection of land formations, such as outlining landslides and washouts. It, however, was not helpful for more detailed information like tie conditions in areas that were not accessible on foot. In addition, past assessments in 2002, 2005, 2007, and 2019 provided insight to railroad conditions over time. Based on my review and analysis, the D&A Report II provided the rehabilitation costs, subject to the assumptions in the report, to be $56,561,000, including

$21,781,000 for geotechnical hazards, $23,626,000 for the track and trackbed program, $4,019,000 for the bridge repairs and $7,010,000 for the public crossings, among other costs.

5. The process for D&A Report III included the assemblage of operating requirements and costs. Key factors used to establish operations costs included:

- Track geometry and grades for the 54-mile segment from Willits to Cloverdale and the 39-mile segment from Fort Bragg to Willits.
- Tonnage based on the *City of Fort Bragg California's BUILD 2020 Grant Application to Rebuild Mendocino Railway's ("MR") Tunnel, Rehabilitate and Improve Safety Over Its Rural Rail Line, and Reinvigorate the Economy Exhibit 6 Benefit Cost Analysis, dated May 2020*, prepared by Michael Rodriguez, AICP, ("Benefit Cost Analysis").
- Crew size and operations base.
- Equipment requirements.

The operating expenses were derived from the traffic assumptions provided in the Benefit Cost Analysis for the Fort Bragg to Willits segment and assume the same level of traffic will be available for shipment on the rail segment from Willits to Fort Bragg except for 1 car of river gravel aggregate. This is not an admission that such amounts in fact will be made available for shipment. It is simply an effort to compose a scenario maximally favorable to MR should it initiate freight service. For simplicity of presentation, the analysis assumes the shipments are all aggregate, but this assumption is not critical to the analysis. Service cannot currently take place because the line from Willits to Cloverdale is embargoed. To lift the embargo substantial rehabilitation is required as outlined in the *D&A Report II* dated November 30, 2023. In addition, the MR Line

requires track repairs and tunnel reconstruction as outlined in the *D&A Report I* dated November 30, 2023. *D&A Report III* concludes the annual operating expenses on the MR Line would be $3,938,457 based on my analysis.

Verification

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

David Anderson, Principal
D&A Enterprises LLC

Dated: April 4, 2024

Appendix A – D&A Report I; Appendix B – D&A Report II; and Appendix C - D&A Report III

APPENDIX A

November 30, 2023

Railroad Rehabilitation Assessment
Mendocino Railway Fort Bragg to Willits

D&A Enterprises LLC

D&A Enterprises LLC

Contact: Dave Anderson, (714) 943-4068

Contents

1. Introduction 1
2. Geotechnical Assessment 1
3. Track Condition 4
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7. Rehabilitation Costs 11

1. Introduction

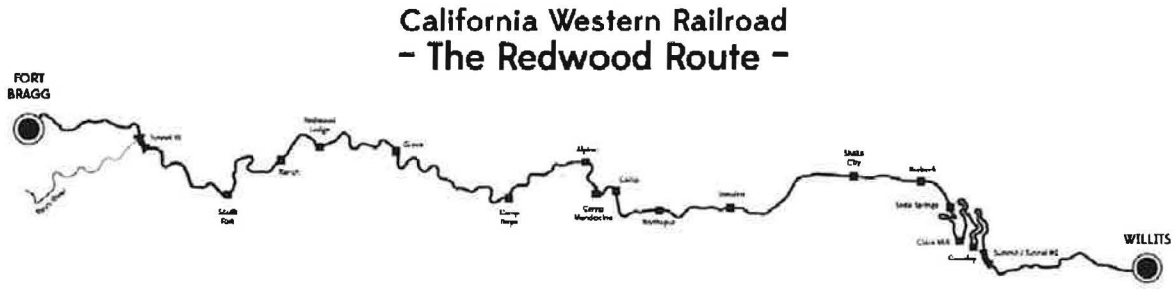
This Assessment was completed to determine an estimated cost necessary to rehabilitate the Mendocino Railway rail line (MR Line) from Fort Bragg to Willits, as well as GRTA owned track, bridges, and signals that MR currently is using to FRA Class 1 track standards for freight rail service.

The team that contributed to operational costs and general understanding of how freight rail standards will apply to this rehabilitation includes several senior individuals with decades of railroad experience. The separate individual's areas of expertise include:

- Geotechnical engineering with extensive experience working with shortline and Class 1 railroads addressing slides, erosion, and tunnels.
- Roadmaster responsibilities for track maintenance and safety with extensive knowledge of FRA regulations for Class 1 track.
- Railroad Bridges and Structures experience with extensive knowledge of FRA related requirements for Bridge Management Programs, inspection requirements and load capacity determinations.
- Railroad CEO responsible for overall operations and P&L.

Bios of the team members and their roles are included at the end of this document.

The current condition of the railroad was determined by field inspection of publicly accessible areas totaling approximately 17 miles of the line, Right of Way and Track Maps and Google Earth of the remaining areas. In addition, MR's Build 2020 Grant Application and Exhibits were used as a basis for repair costs, overall condition, and improvement requirements. The following map from the Build 2020 Grant Application shows the line configuration including several hairpin curves:



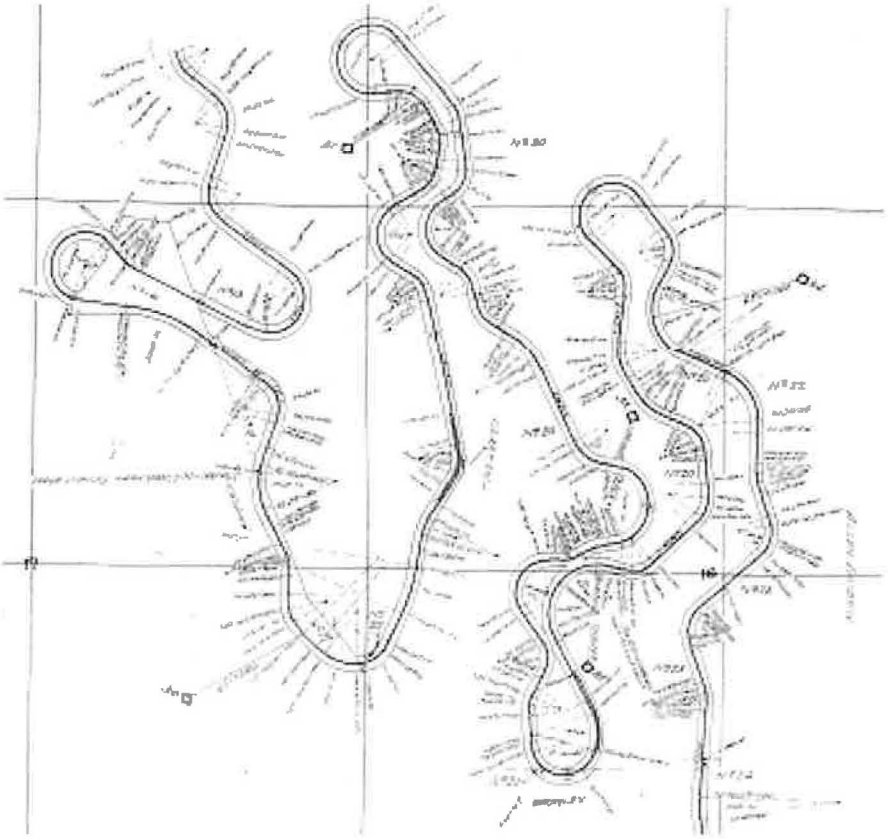
2. Geotechnical Assessment

Line Segment Description

The MR Line beginning at Fort Bragg has several street crossings prior to following the alignment of Pudding Creek to the collapsed Tunnel 1 located at MP 3.52. On the east side of Tunnel 1 it winds along the Noyo Creek toward Willits, with several creek crossings and hairpin switchbacks to Tunnel #2 at MP 35.4 (the summit). From Tunnel #2 the line winds to Willits. After crossing the Baechtel Creek bridge (MR MP 39.49) it switches to GRTA mainline. MR uses GRTA property through existing track right agreements to turn the locomotive. The track crosses E. San Francisco Ave, E. Valley Road, a GRTA bridge over

Broaddus Creek (GRTA MP 139.29), then comes to the Skunk Train Depot. To turn locomotives, it crosses Commercial St. to use the wye in the Willits Yard which includes GRTA bridge (MP 139.73).

The 40 miles of line has many curves, areas of steep hillsides and valleys, and for the most part is remotely accessed. The screenshot below shows five hairpin turns near the summit with a maximum degree of curvature 24 degrees.



Tunnel Work items

Tunnel #1 was constructed in 1893. In 2013 the tunnel experienced a partial collapse. Though some repairs were made, in 2015 the 1,000-foot-long tunnel experienced another collapse. MR hired AECOM to perform a field investigation, geologic site reconnaissance, and repair designs. Due to funding limitations, MR reconstructed the hillside above the tunnel with the intention of reconstructing the tunnel at a future date as funds become available. The work performed included removing a portion of landslide debris and installing drainage at the south portal, welding a ¾-inch steel plate to the south side of the steel portal frame to close the portal opening, backfill, ditching, edge drains along the reinstated hillsides, and a tension basin at the base of the hillside to retain surface water runoff and prevent sediment entering Pudding Creek.

In 2020 Mendocino Railway submitted for the FY 2020 City of Fort Bragg CA's BUILD 2020 Grant Application (BUILD Grant). Exhibit 5 of the application includes a description of items and a preliminary opinion to reconstructing Tunnel #1 based on 2019 unit prices prepared by Granite Construction. The cost of preconstruction and construction, updated to 2023 dollars is as follows:

Table 1 – Tunnel #1 Restoration Cost Estimate

From FY 2020 City of Fort Bragg CA's BUILD 2020 Grant Application (BUILD Grant) Exhibit 5
Prepared by Granite Construction on June 24, 2019 (updated to 2023 by DAE)

	Preconstruction Budget	UNIT	U/M	Unit Price	Total
1	Tunnel Design	1.00	LS	150,000.00	$150,000.00
2	Permitting	1.00	LS	50,000.00	$50,000
3	Geotechnical Inspection	1.00	LS	180,000.00	$180,000
4	Design contingency	5,027,606	PC	5%	$251,380
5	Rail inspection and installation	1.00	LS	150,000.00	$150,000
					$781,380
	Construction Budget	**UNIT**	**U/M**	**Unit Price**	**Total**
10	Temporary silt fence	1,000.00	LF	18.00	$18,000
20	Temporary gravel bag berm	500.00	LF	35.00	$17,500
30	West portal exposure soil nail	11,000.00	LF	68.00	$748,000.00
40	West portal face shotcrete	400.00	CY	1,080.00	$432,000.00
50	Tunnel safety	45,000.00	SF	7.00	$315,000.00
60	Tunnel soil nail shoring	19,600.00	LF	50.00	$980,000.00
70	Tunnel shotcrete	1,600.00	CY	1,080.00	$1,728,000.00
80	Entrance grading	80,000.00	SF	2.50	$200,000.00
90	Erosion Control and landscape	3.00	AC	31,500.00	$94,500.00
100	Fence	500.00	LF	12.00	$6,000
110	Mobilization	1.00	LS	488,606.00	$488,606
	Total preliminary opinion of cost - construction only				$5,027,606
	[1] Total preliminary opinion of cost				$5,808,986
	[2] Budget increase 2020	5,808,986.00		2.7%	$158,489
	[2] Budget increase 2021	5,967,475.00		10.0%	$597,510
	[2] Budget increase 2022	6,564,985.00		15.2%	$999,241
	[2] Budget increase 2023	7,564,226.00		6.5%	$494,111
	Estimated Design and Construction Cost in 2023				$8,058,337

The BUILD Grant cost estimate does not seem to reflect the preconstruction budget, but the design for the tunnel and the other items listed do not appear to have been completed.

Tunnel #2 was constructed with timber sets and timber lagging in the early 1900's and has had some timber sets filled with concrete at both ends of the tunnel. In 2017 Koppers performed a walk through and documented the following conditions:

- Timber lined section in poor condition
- Several rotted timbers
- Hanging timbers throughout
- A section on East Wall of the tunnel has bulged out 4" to 6", cap and timber is crushed
- Ballast is fouled throughout

The report included a Priority 2 to perform a detailed inspection. Koppers photos also indicate that the tunnel has experienced a fire that left fire char on several timber sets and timber lagging. MR states in

the BUILD Grant, "Tunnel #2 is structurally-sound and MR is budgeting for and reserving funds for ongoing maintenance to ensure that inspections and maintenance continue at regular intervals." No capital costs have been included for Tunnel 2, the repairs are assumed to be in MR's maintenance budget.

Steep slope slides: Several track segments are adjacent to steep embankment slopes. In these areas the track experiences several types of slides that require routine maintenance. Slide types include:

- Rockslides
- General debris slides
- Tree falls

Past NWP train crews, that ran trains 40 plus years ago from Willits to Fort Bragg, reported frequent need to stop trains to clear track resulting from slides and tree falls. No capital costs have been included for maintaining slides.

3. Track Condition

On page 24 of the BUILD Grant it states "MR's objective is to use BUILD in connection with RRIF to completely revitalize the Line by replacing 59,499 ties, 4,107 sticks of rail". The 4,107 sticks of rail at 39' per stick is about 15 miles of built track or about 38% of the rail line. It is assumed that 115 lb. rail will be used to replace any remaining 90 lb, rail, especially in curves.

The timing of the track improvements will influence the safe growth in freight train traffic. Increasing train consists can lead to derailments on rail in poor condition. Sharp curves limit the number of cars in a consist due to the large side loading from the resultant pulling force on the rail. This larger side loading also accelerates the wear and maintenance of the track. All the above is exacerbated on steep grades due to the larger pulling force required of the locomotive.

The following cost estimate applies 2023 rates to the above-referenced quantities to "completely revitalize the Line". It is assumed that with this kind of a program, the Line would need to be regulated and surfaced with a minimum of 2" of added ballast.

Table 2 – Rail and Tie Cost Estimate

Item		UNIT	U/M	Unit Price	Total
1	Replacing Ties	59,499	EA	$275	$16,362,000
2	Replace 39' Rail (#1 Relay or New 115#) Assumes 75% Relay/25% New	4107	EA	$750	$3,080,000
3	Ballast (2")	11,733	CY	$43	$503,000
3	Place Ballast (2") and Regulate	40	DAYS	$5,000	$200,000
4	Surface Track	40	DAY	$16,000	$640,000
	Total				$20,785,000

Any track program will require other maintenance items including ditching, culvert maintenance, vegetation management, and debris removal. This is assumed to be included in MR's maintenance budgets.

4. Bridge Assessment

For MR to be part of a general railroad system of transportation they need to comply with Title 49 Bridge safety Standards Part 237. This would require the adoption of a Bridge Management Program, performance of annual bridge inspections by a qualified inspector, and having a qualified "Railroad Bridge Engineer" review the reports and determine the safe load capacity of the bridges based on condition. The safe loading would then govern the safe loading of locomotives and railcar consists.

In 2017 MR hired Koppers Railroad Structures Inc. (Koppers) to inspect their 30 bridges. Their Detailed Bridge Inspection Report is provided in the BUILD Grant Exhibit 4. Below is MR bridge inventory taken from the inspection report. These bridges include a combination of timber trestles, deck plate girders, beam spans, and a through-plate girder. In total there are 185 bridge spans for a total of 4,191 linear feet.

Table 3 – MR Bridge Inventory

Item No.	Subdivision	Bridge Type	MP	No. of Sections	No. Spans	Length Ft	Crossing
1	Fort Bragg	ODPT	2.4	1	6	90	Pudding Creek
2	Fort Bragg	ODPT	2.47	1	4	60	Pudding Creek
3	Fort Bragg	ODPT	3.17	1	8	120	Pudding Creek
4	Fort Bragg	BS	3.78	1	2	120	Creek
5	Fort Bragg	TPG/BS	4.63	2	5	221	Creek
6	Fort Bragg	ODPT/BS/ ODPT	6.97	3	8	195	Creek
7	Fort Bragg	BS	7.88	1	2	128	Creek
8	Fort Bragg	BS	9.68	1	7	147	Creek
9	Fort Bragg	BS	10.18	1	5	160	Creek
10	Fort Bragg	BS	10.26	1	3	153	Creek
11	Fort Bragg	BS	10.37	1	2	114	Creek
12	Fort Bragg	DPG/BS	11.44	2	2	110	Creek
13	Fort Bragg	BS	11.84	1	2	120	Creek
14	Fort Bragg	BS/DPG/ODFT	14.96	3	9	186	Creek
15	Fort Bragg	ODFT/DPG/ODFT	15.03	3	11	240	Creek
16	Fort Bragg	ODPT/DPG/ODPT	18.57	3	17	330	Creek
17	Fort Bragg	ODPT/DPG	19.28	2	6	145	Creek
18	Willits	BDFT/DPG/BDFT	21.31	3	8	129	Noyo River
19	Willits	ODFT/BS/ODFT	21.48	3	9	180	Noyo River
20	Willits	ODFT/BS/ODFT	21.74	3	5	118	Noyo River
21	Willits	ODFT/DPG/ODFT	22.11	3	8	157	Noyo River
22	Willits	ODFT/BS/ODFT	22.32	3	9	177	Noyo River
23	Willits	ODFT/BS/ODFT	22.51	3	7	150	Noyo River
24	Willits	ODFT/DPG/ODFT	22.68	3	8	153	Noyo River
25	Willits	DPG	35.71	1	1	32	Wash
26	Willits	ODPT	37.8	1	9	126	Broaddus Creek
27	Willits	ODPT	39.24	1	5	75	Broaddus Creek

28	Willits	ODFT	39.49	1	7	105	Baechtel Creek
29	Willits	BDPT	39.9	1	6	90	Broaddus Creek
30	Willits	BDPT	40.3	1	4	60	Broaddus Creek

ODPT = Open Deck Pile Trestle	ODFT = Open Deck Framed Trestle
BS = Beam Span	BDFT = Ballasted Deck Frames Timber
TPG = Through-plate Girder	BDPT = Ballasted Deck Pile Trestle
DPG = Deck Plate Girder	

In addition, MR is currently operating over two GRTA bridges in the Willits yard.

Table 3a – GRTA Bridge Inventory

Item No.	Bridge Type	MP	Section No.	No. Spans	Length Ft	Crossing
31	BDT	139.29	1	6	89	Broaddus Creek
32	BDT	139.73	1	4	60	Willits Creek

The Koppers detailed inspection report identifies 50 PRIORITY 2 repair recommendations. On Exhibit 4, p. 18 Koppers defines PRIORITY 2 ratings as: *"Condition is structurally unsound and could cause failure any time. Repair as soon as possible. Condition must be monitored by Railroad personnel at a frequency determined by the Railroad Bridge Engineer until repairs have been completed."*

In addition, Koppers inspection identified 103 PRIORITY 3 ratings. On Exhibit 4, p. 18 Koppers defines PRIORITY 3 ratings as: "*Condition could become structurally unsound should be monitored by Railroad personnel at a frequency determined by the Railroad Bridge Engineer. Condition may need repair in the near future.*" Since 5 years have passed since the inspection, it is highly likely that these conditions, if they were not addressed, have now progressed to PRIORITY 2 ratings.

Of the 30 bridges, 28 have a PRIORITY 2 or 3 rating with a total of 190 conditions to monitor.

The last detailed inspections on the GRTA bridges was in 2005. Since then, a cursory field inspection has been performed. The following conditions and repairs have been identified:

- Bridge 139.29: Add walkway railing on the right side and repair north end wingwall and right side decayed cap, repair ballast leaks
- Bridge 139.73: Post pile 1 of bent 1 and replace 5 deteriorated bridge ties and clear drift.

Below is a summary table of required repairs for startup of freight service. A single maintenance expense credit is provided in the Rehabilitation Costs Summary section at the end of this report.

Table 4 – Bridge Assessment Summary

Item No.	Item	UNIT	U/M	Unit Cost	Amount
1	Bridge ties	1,808	EA	$500	$904,000
2	Stringers	4	EA	$10,000	$40,000
3	Caps	22	EA	$15,000	$330,000

4	Blocks (6 on one bridge)	1	LS	$18,000	$18,000
5	Pile/Post	7	EA	$2,000	$14,000
6	Sills	15	EA	$10,000	$150,000
7	Line and Surface	2	EA	$20,000	$40,000
8	Headwall	4	EA	$30,000	$120,000
9	Drift	4	EA	$2,500	$10,000
10	2 GRTA bridges	1	LS	$110,000	$110,000
11	**Subtotal Construction**				**$1,736,000**
12	Mobilization	0.1	Pct		$173,600
13	Prepare BMP	1	LS	$7,500	$7,500
14	Detailed Bridge Inspection	42	EA	$1,500	$63,000
15	Load Capacity Ratings	42	EA	$7,500	$315,000
	Total				**$2,295,000**

5. Crossings Public & Private

Public Road Crossings

There are five public crossings in Fort Bragg and six public crossings in Willits including the three GRTA crossings at E. San Franciso Lane, E. Valley Road, and Commercial Street. Two private crossings were identified in a cursory field inspection in Willits.

The California Public Utility Commission (CPUC) has jurisdiction over safety mitigations at all public railroad crossings. A formal on-site diagnostic to finalize the required railroad crossing warning measures for public safety may be required and would be an additional cost.

Following is an inventory and repair recommendations for the known crossings in the Line segment.

Table 5 – Crossings Assessment

Item No.	Crossing	City	Condition/ Crossing Material	Cost Estimate	Repair Comments
1	E Pine St.	Fort Bragg	Good/Bituminous	$0	Assume in maintenance budget
2	Shoreline Hwy 1	Fort Bragg	Good/Bituminous	$0	Assume in maintenance budget
3	W Fir St	Fort Bragg	Good/Concrete	$0	Assume in maintenance budget
4	Franklin St	Fort Bragg	Good/Concrete	$0	Assume in maintenance budget
5	E Bush St.	Fort Bragg	Good/Bituminous	$0	Assume in maintenance budget
6	Hwy 20	Willits	Good/Bituminous	$0	Assume in maintenance budget
7	Copley Ln	Willits	Poor/Bituminous	$0	Private crossing has stop sign and crossbucks

Item No.	Crossing	City	Condition/ Crossing Material	Cost Estimate	Repair Comments
8	Blosser Ln	Willits	Poor/Bituminous	$0	Assume in maintenance budget
9	Industry	Willits	Poor/Timber	$0	Private Crossing
10	Hwy 101/Hwy 20	Willits	Fair/Concrete	$0	Assume in maintenance budget
11	E. San Francisco Ave	Willits	None	$525,000	Install complete signal warning system, may need to eliminate fair left track to enable required room to place signal and gates between Railroad Ave and tracks, perform diagnostic, install warning system including a two standard 9's and signal shelter, installation of mainline new track crossing with concrete panels, update signage and pavement markings
12	E. Valley Rd	Willits	Fair/Bituminous	$20,000	Update flashers to 12", perform diagnostic, update signage and pavement markings
13	Commercial St.	Willits	Poor/Bituminous	$375,000	Replace cantilevers and perform diagnostic, update signage and pavement markings, may need two new Standard 9' flashers and shelter, replace mainline track crossing with concrete panels
	Total			**$920,000**	

6. Maintenance

In an interview of a former train crew member that worked this segment 40 years ago, he stated, "there were daily train stops to address obstructions like fallen trees and rock." This type of activity is covered in the Operations Assessment report. Items listed below are related to preventative measures and items related to routine required safety inspections of track and structures. These include chemical spraying for weed control, routine brush cutting, tree trimming, culvert maintenance, bridge repairs based on annual inspections, and track repairs based on required routine track inspections.

With complete revitalization of the MR Line and access to the national rail network, MR becomes subject to all FRA regulations regarding track and bridge inspections and maintenance. This includes annual bridge inspections, daily track inspection (depending on traffic), timetables, and operating plans. They will be subject to regular FRA inspections and access to records.

See table below of expected annual maintenance.

Table 6 – Sample Maintenance Cost Estimate

Operating Costs	Cloverdale to Fort Bragg	MR Line	GRTA Willits to Cloverdale
MAINTENANCE OF WAY AND STRUCTURES			
Track Labor	$ 522,720	$ 224,185	$ 298,535
Fringe Benefits	182,952	$ 78,465	$ 104,487
Materials and Equipment	350,000	$ 150,109	$ 199,891
Programmed Maintenance of Roadbed	150,000	$ 64,332	$ 85,668
Grade Crossing Expenses	75,000	$ 32,166	$ 42,834
TOTAL MAINTENANCE OF WAY AND STRUCTURES	$ 1,280,672	$ 549,257	$ 731,415
MAINTENANCE OF EQUIPMENT			
Mechanical Labor	$ 116,480	$ 49,956	$ 66,524
Fringe Benefits	40,768	17,485	23,283
Locomotive Repairs	90,000	38,599	51,401
Car Repair Expenses	35,000	15,011	19,989
Track Equipment Repairs	40,000	17,155	22,845
TOTAL MAINTENANCE OF EQUIPMENT	$ 322,248	$ 138,206	$ 184,042
TRANSPORTATION			
Locomotive Lease Expense	$ 140,000	$ 60,043	$ 79,957
Car Lease Expense	57,600	24,704	32,896
Train Crew Labor	273,000	117,085	155,915
Fuel	1,688,237	724,054	964,183
Transload terminal manager	45,000	19,300	25,700
Fringe Benefits	111,300	47,735	63,565

Railroad Rehabilitation Assessment – Mendocino Railway Fort Bragg to Willits

Operating Costs	Cloverdale to Fort Bragg	MR Line	GRTA Willits to Cloverdale
Transload facility maintenance	20,000	8,578	11,422
Car Hire Costs	0	0	0
Other - PPE and Comms Equip	25,000	10,722	14,278
TOTAL TRANSPORTATION	$ 2,360,137	$ 1,012,219	$ 1,347,918
GENERAL ADMINISTRATION			
Administrative Personnel	$ 132,000	$ 56,612	$ 75,388
Fringe Benefits	46,200	19,814	26,386
Insurance – General Liability	35,000	15,011	19,989
Insurance – Fire and Auto	5,000	2,144	2,856
Information Services	4,000	1,716	2,284
Contracted marketing services	24,000	10,293	13,707
FRA compliance - Manuals, timetables, Drug & Alcohol testing	12,000	5,147	6,853
Rules, Safety & FRA training - CFR 243, RWP	10,000	4,289	5,711
Audit	12,000	5,147	6,853
Legal	8,000	3,431	4,569
Payroll Service	3,000	1,287	1,713
Telephone	7,200	3,088	4,112
Repairs and Maintenance	2,000	858	1,142
Utilities	3,000	1,287	1,713
Dues and Subscriptions	1,000	429	571
Property Taxes	5,000	2,144	2,856
Conferences	1,000	429	571
Office Supplies, Postage and Other	4,000	1,716	2,284
TOTAL GENERAL ADMINISTRATION	$ 314,400	$ 134,840	$ 179,560
GRAND TOTAL OPERATING EXPENSE	**$ 4,277,457**	**$ 1,834,523**	**$ 2,442,934**

7. Rehabilitation Costs

The following table summarizes the rehabilitation costs based on the assumptions outlined in the previous sections.

Table 7 – Rehabilitation Cost Estimate

Item No.	Item	Cost
1	Tunnel No. 1	$8,058,000
2	Rail and Tie Program	$20,785,000
3	Bridge Program	$2,295,000
4	Public Crossings[1]	$920,000
5	Subtotal	$32,058,000
6	Credit for MR Expenditures since 2019 (including escalation)	(460,000)
	Total Capital Cost	**$31,598,000**

[1] Some of the public crossing cost may be offset through Federal Section 130 funds. Once the devices are installed the railroad is responsible for all maintenance and inspections.

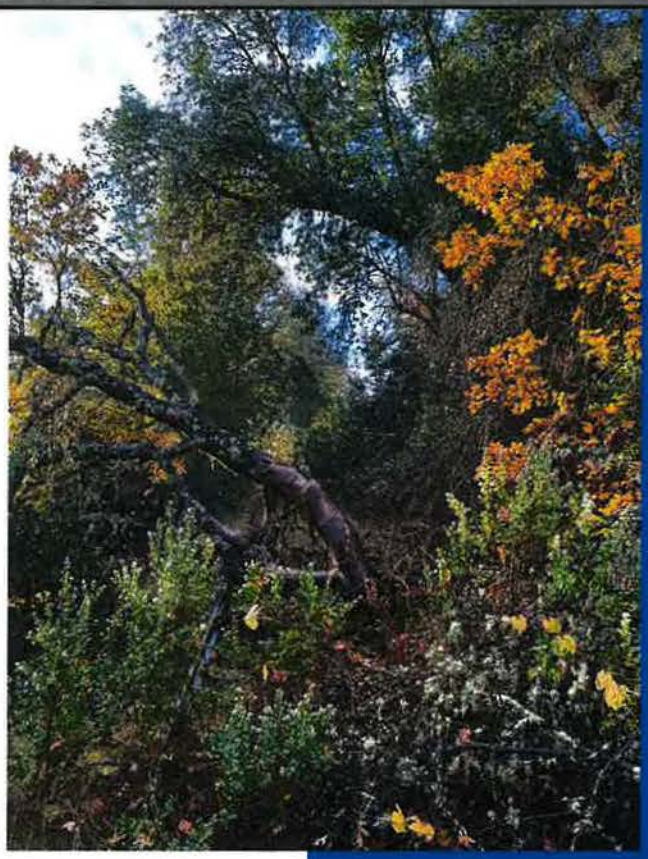
8. Contributing Authors:

- David Anderson, P.E. of American Rail Engineers Corporation (ARE) served as Project Manager and Senior Engineer in ARE's capacity as prime consultant for the project. He is licensed as a Professional Engineer in California and has worked with the state agencies overseeing the NWP corridor for over 20 years. Mr. Anderson's roles for this project included senior-level reviewer and editor of this report.
- Carl Belke, Principal Engineer of D&H Rail Consulting prepared the Operations Assessment. Carl served as President and Chief Operating Officer for the Western New York & Pennsylvania Railroad for 10 years, General Manager and Vice President of Canadian Operations for Genesee & Wyoming for 7 years and has more than 40 years' experience in railroad operations for a dozen of short line railroads with responsibility for labor management, fleet management, bankruptcy reorganizations, and mergers and acquisitions.

APPENDIX B

November 30, 2023

Railroad Rehabilitation Assessment
Cloverdale MP 85.6 to Willits MP 139.5



Great Redwood Trail Agency

D&A Enterprises LLC

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1. Introduction

This Assessment was completed to determine an estimated cost necessary to rehabilitate approximately 52.6 miles of GRTA Rail Line from Cloverdale, CA MP 85.6 at the First Street Crossing to Willits, CA MP 139.5 to FRA Class 1 track standards for freight rail service.

This segment of the railroad was last in-service 25 years ago. It was embargoed on December 9, 1998 by the FRA due to washouts and flooding events associated with El Niño storms and crossing signal disrepair rendering the track unsafe. The 52.6 miles of rail line had minimal maintenance prior to the embargo and has not been maintained since the embargo. Therefore, obtaining access was challenging given the inherent geohazards, washouts from storms since the embargo, and heavy vegetation over much of the right-of-way.

The assessment team includes several senior individuals with decades of railroad experience. The separate individual's areas of expertise include:

- Geotechnical engineering with extensive experience working with shortline and Class 1 railroads addressing slides, erosion, and tunnels.
- Roadmaster responsibilities for track maintenance and safety with extensive knowledge of FRA regulations for Class 1 track.
- Railroad Bridges and Structures experience with extensive knowledge of FRA related requirements for Bridge Management Programs, inspection requirements and load capacity determinations. Railroad CEO responsible for overall operations and profit and loss.

Bios of the team members and their roles are included at the end of this document.

The current condition of the railroad was determined by field inspection of approximately 30 miles of the line and low-level photography and LiDAR collected by helicopter in 2022. The LiDAR was helpful in areas of heavy vegetation for detection of land formations, such as outlining landslides and washouts. It, however, was not helpful for more detailed information like tie conditions in areas that were not accessible on foot. In addition, past assessments in 2002, 2005, 2007, and 2019 provided insight to railroad condition over time.

2. Geotechnical Assessment

Line Segment Description

The railroad segment generally parallels Highway 101 from Cloverdale at the First Street crossing MP 85.62 to Commercial Street crossing, Willits MP 139.5. SMART is the owner of the line from Cloverdale MP 85.62 to the Sonoma County/Mendocino County border at MP 89.00. Within this entire segment, Cloverdale to Willits, certain improvements would be required for freight traffic. The current reconnaissance found landslides, erosion around culvert outlets, rockslides, and scour at bridge abutments and piers. Landslides that were assessed by Shannon & Wilson in 2005 showed signs of accelerated side movement and erosion at several locations. In general field observations of slides found that the lengths identified in 2005 have deteriorated by an additional 25% to 100%. In addition, new washouts since that time were identified. There is over 7,200 feet of hanging track that needs to be rebuilt including roadbed varying from 4-feet to 15-feet high.

Geotechnical Work items

To re-open the rail line to freight traffic several improvements will be required to repair or restore track conditions due to geological hazards. These include surface drainage improvements, repairing or replacing culverts, installing culvert extensions, repairing erosion at culvert outlets, excavating rock and sediment slide debris, stabilizing landslide areas, repairing scour at bridges, and restoring track embankment. Table 1 is a summary of the work items and the estimated quantities.

Costs associated with these work items and projected ongoing maintenance related to these items is provided in Section 6 Maintenance and Section 7 Rehabilitation Costs. The cost recognizes that from the 2002 detailed assessment to the 2005 assessment there was a 24% increase in cost, mainly due to increased deterioration of geotechnical hazards. Since another 18 years have passed, and the reconnaissance clearly showed continuing degradation, an average deterioration of 62.5% was applied, along with current pricing for the types of improvements required.

Table 1 – Geotechnical Work Items and Quantities

MP	Geotechnical Issue	Repairs	Track Length (ft)
85.6	150' slope failure	Grade ditches to drain, add trench drains, place rip rap	150
88.7-88.8	Rock Fall and debris flow with up to 4' diameter boulders A large stockpile of past rock falls, see photo 3025, estimate 150 yds to be removed from track area over 500 '	Remove and clear ditch and track	500
88.95	Rockslides affecting 100' of track	Clear track and ditch	100
89.2-89.76	Rockslides affecting 130' +100' of track	Clear track and ditch	130
90.5	Track effected by failure of slope above and below track. Track severely affected. In last two years the area and severity and increased	There is about 1000 ft of track that need significate grading and drainage improvements	1000
91.25	Track moving out chronic track issue. About 6-7' vertical set down has occurred over time. Water ponds on wide shoulder.	Condition of culvert and ditching in area in poor condition and area of ground movement 200' track	200
92.4	Track shifted away from river embankment steep 45- to 50-degree slope to river.	400 ft of Track needs to be shifted further away from river and install erosion control	400
92.6	Slide	200-feet of track affected (300 yds)	200
92.7	Slides	1000 feet of track affected (1000 yds)	1000

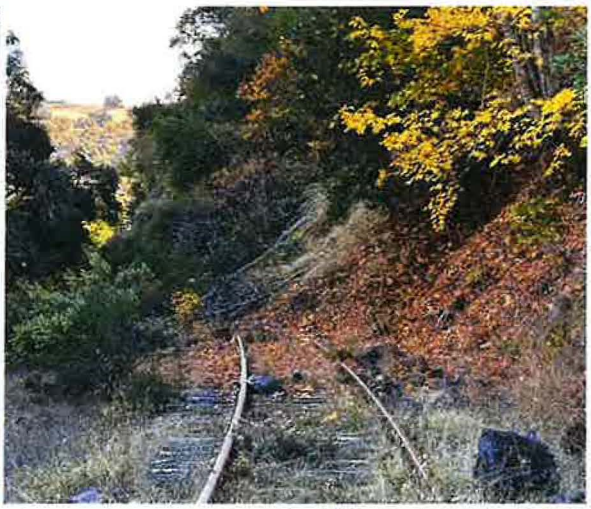
Railroad Rehabilitation Assessment – Cloverdale MP 85.6 to Willits MP 139.5

MP	Geotechnical Issue	Repairs	Track Length (ft)
92.8	Slide	100 ft impacted drainage, filled left ditch (was 20' in 2005)	100
92.9	Slide	50 feet of track impacted	50
93.3	Slide	100 ft of track affected (150yds)	100
93.5	Rotational slide affecting 1,000 feet of track (was 160' in 2005)	Replace existing culverts with larger culverts at ends of affected area and deepen ditch on uphill side of track to drain to culverts and reconstruct track bed and track requires an engineered fill	1000
94.79	Slope failure 102 feet of track affected	Remove material from slide estimated at 120yds	102
96	200 ft washout	Install culvert and reconstruct track	200
96.3	150' washout caused by Russian River flooding	Reconstruct track	150
96.33	100' mud slide	Need diching and removal and cut back slide	100
96.4	120' long hillside erosion with 2 ft boulders	Need diching and removal of boulders from track shoulder, long term maintenance issue	120
102.8	Rockslide area, shear zone in slope, slide debris fills ditch, partially undermined trees and root wads at top of slope	Excavate debris, restore ditch 100' of track	100
104.46	McNabb Creek 12'x12' Concrete Arch Culvert washout	Culvert to be replaced by 50 ft bridge.	50
104.9	Left embankment washout	Repair and install erosion protection 100'	100
107.8-107.9	Track crosses large landslide with more than 15' of vertical displacement over time, shoulder loss for another 160' in this area.	Replace shoulder loss and install culvert.	160
108.46-108.5	Track bed erosion, 100' of track affected	repair track	100
118.7	Track between steep upslope on the left and Russian River on the right left drainage very poor and track heavy with vegetation. Track not possible to walk.	1800' requires removal of heavy track vegetation, removal of fallen trees and rock, clearing track ditches & installing of culverts to maintain drainage	1800
124.98	Right ditch and track covered with slope soil erosion; ditch very wet	300' (80' in 2005) of ditching and track ballast replacement required. Right ditch needs positive drainage	300

MP	Geotechnical Issue	Repairs	Track Length (ft)
125.0	Baker Creek embankment failure	Replace with concrete arch culvert and fill (15,000 yds +/-). This assumes 160' track bed affected, 36' top to bottom & 1/1 slopes	160
126.5	Track experiences vertical and horizontal displacements, likely historic slide area. Culvert washout 250'	Install concrete box with headwall & wingwalls & rip rap and rebuild washed out track bed	250
127.48	Track misalignment & erosion & lack of proper drainage affecting 109' of track	Regrade area & reconstruct track bed and install larger concrete pipe culvert	109
127.65	Very old complex slide area 2200' long (was 1000' in 2005)	Segment has set down several feet and has moved out of alignment, reconstruct track embankment (requires engineered fill) & install trench drains, rebuild track with all new ballast	2200
128.2	Culvert washout & 250' of right shoulder erosion	Install concrete box with headwall & wingwalls & rip rap and rebuild washed out track bed & reestablish right shoulder	250
130.2	Chronic track sun kink area 180' of track effected (was 80' in 2005). Area where track bed has been built with river rock and needs to be rebuilt.	Rebuild track embankment (requires engineered fill); install larger culvert at north end of kink with 120 sheet pile wall along erosion of left track embankment; existing track bed consists of several feet of river rock	180
134.45	Embankment failure	Reconstruct 150' of embankment & track	150

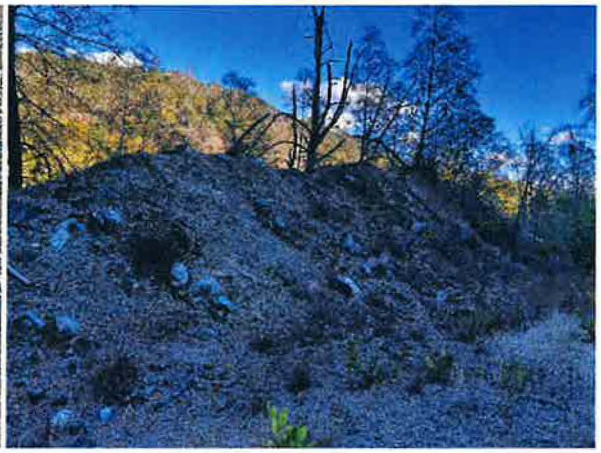
Rock and Debris Slides: There are several areas that require ditching due to rock and debris slides. The rockslides consist of fractured rock, mixed soil, and woody debris resulting in talus slopes. It is evident at several of these slide areas that they have required substantial clearing over time based on large stockpiles of material on the opposite side of the track from ditching. In areas of recurring larger rock falls present significant hazards to train movement.

Ph 2999 Ditching of boulders/rock example



Ph 2894 Slide requiring removal/re-establishment of ditch

Ph 2997 Ditching Vegetation Example



Ph 3025 Stockpile of previous ditching

Erosion Repair: Erosion issues are prevalent in areas of climbing grade and in areas where culverts are undersized.

Ph 2633 MP 95 Erosion from Russian River

Ph 2478 MP 129.7 Erosion & washout undersized culvert

Aerial Ph: MP 129.67 Erosion of 3-span Timber Trestle

Aerial Ph: MP 127.65 Culvert Washout 40' long

Aerial Ph: MP 125 Baker Creek Washout & Erosion 160' long by 35' deep from unmaintained & undersized culvert

Landslide and Unstable Slope Repairs: The following pictures show areas that have historically required substantial reoccurring maintenance activity due to continual land movement. This is an example of why maintenance of way is challenging for this stretch of railroad.

Ph 2461 MP 130 Chronic Track Issue 180'

LiDAR: MP 127.65 Very old complex slide area 2200'

Aerial Ph within Complex Slide area

Aerial Ph within Complex Slide area

Ph 2960 MP 90.5 1000' Slide Area with Toe at Russian Rvr

Ph 2964 Within same 1000' Slide Area

Tunnel Work items

Five tunnels designated as Tunnels 5 through 9 are located within the assessment area. The five tunnels are among the earliest constructed for the railway, in approximately 1889. The tunnels were excavated by drill and blast methods and initially left unsupported. Over time, several types of lining were installed in less stable tunnel segments including timber sets and lagging, concrete, and later steel sets and gunite. Tunnel 8 and two segments of Tunnel 6 are situated in relatively competent rock and were left unlined. However, in June 2011 Tunnel 6 experienced substantial damage as a result of a tunnel fire. Tunnel lengths range from 267 to 1,762 feet.

Tunnel work items are shown in Table 2. Costs associated with these work items and projected ongoing maintenance are provided in Section 6 Maintenance and Section 7 Rehabilitation Costs.

Table 2 – Tunnel Work Items and Quantities

Geotechnical / Tunnel	MP	Track Length (Ft)	Repairs
Tunnel 5 – Good condition	85.62	347	Minor Maintenance
Tunnel 6 - Collapsed	87.79	1,762	Given the damage noted prior to the fire, and the damage noted during and after the fire, the tunnel is presumed to require mining to reopen the tunnel.
Tunnel 7	89.12	261	Replace 4 rotten timber sets between concrete panels w/ shotcrete, clean debris from ditches, monitor timber sets that are deteriorating
Tunnel 8	93.9	1,270	Rockfall of approx. 8 cy total in unlined segment, needs scaling, ditching and shotcrete
Tunnel 9	94.88	446	Clean ditches thru tunnel, add drainage improvements in wet zones, repair crown lagging at north portal, replace sets at north portal

Tunnel 6 inspections in 2002 and 2005 noted rockfall and deterioration of timber lining, especially in two sections that were bulging from high loads on the sidewalls. The timber sets in those locations were bowed up to 5 inches. Some sets had cracked in tension and had broken the concrete footing. Some pieces of lagging were dislodging from behind the sets. The June 2011 tunnel fire is known to have burned through the entire tunnel. Burned timber sets and bent steel sets were witnessed. To put out the fire, the tunnel was first flooded, and when that was ineffectual, both portals were sealed to smother the fire. The tunnel is unsafe to enter and has not been fully inspected since 2005.

Ph 3033 Tunnel 6 – Burned/Collapsed

Ph 429 Tunnel 6 prior to collapse from 2005 Capital Assessment Report

Other than Tunnel 6 which is highly likely to require complete restoration, the repairs include ditching, scaling of loose rock in unlined segments, and minor lagging repair. In areas where scaling is recommended, installation of rock bolts and shotcrete may be necessary. The need for bolting and shotcrete should be determined based on detailed tunnel mapping and rock mass characterization.

Ph 0110 Tunnel 5 South Portal

Ph 3042 Tunnel 5 Shotcreted Sets

Ph 3014 Tunnel 7 – So. Portal Rockfalls

Ph 3011 Tunnel 7 Deteriorated Timber Sets

Ph 2850 Tunnel 8 North Portal

Ph 2854 Tunnel 8 Rockfalls

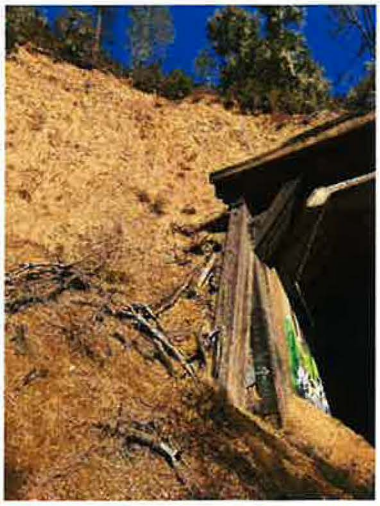
Ph 2806 Tunnel 9 North Portal failure

Ph 2809 Tunnel 9 North Portal material

Ph 2811 Tunnel 9 internal

Ph 2814 Tunnel 9 South Portal material

Ph 2816 Tunnel 9 South Portal hillside



Ph 2817 Tunnel 9 South Portal hillside

3. Track Rehabilitation

Brush Cutting and Vegetation Removal

The summary findings below are based on a November 2023 field inspection of approximately 60% of the right of way and review of aerial photography acquired in 2022:

Table 3 – Vegetation Condition

Classification	Miles	Scope of Work
Cleared	6	Brush cutting
Light	15	Brush cutting
Medium	13.4	Brush cutting
Heavy	18.2	Manual Tree/Shrub Removal and brush cutting

Cleared = Able to hi-rail; locals have cleared track for speeder use
Light = No trees; small shrubs; track 90% visible able to walk.
Medium = Trees up to 4" diameter; difficult to walk; track 50% visible
Heavy = Trees up to 6" to 8" diameter; not walkable; track 20% visible

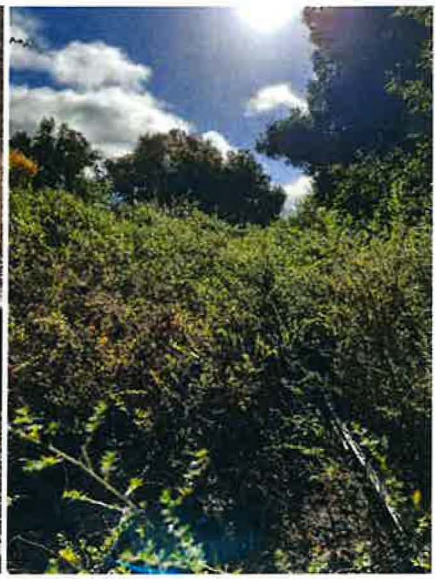
Ph 2378 Example of Heavy Vegetation Willits MP 137 (dashed line is centerline of track)

Ph 2430 Example of Heavy Vegetation MP 131

Vegetation needs to be cleared 15 feet to 20 feet horizontally from the centerline of track and 20 feet vertically to provide required site distance, safety of train crew, and to minimize fire hazard. The cost to clear vegetation assumes using an on-track mounted brush cutter to clear light vegetation and spreading the chipped debris on the right of way. Medium vegetation will require a combination of felling trees up to 4" in diameter and brush cutting. Heavy vegetation includes trees up to 12" in diameter mixed with low level shrubs, small trees and fallen trees from up slopes. For heavy vegetation areas the removal cost assumes that there would be a combination of brush cutting and manual labor falling trees and a flatbed

grapple truck to assist with the clearing. Several areas of heavy vegetation are in a narrow corridor requiring removal of material to a disposal area. The larger vegetation that is growing within the track bed will require the removal of stumps and root system. This also assumes manual labor and use of a grapple truck. This will disturb and destroy several ties. The tie program discussed below takes this into account.

Ph 2837 Example of Cleared Vegetation



Ph 2803 Example of Light Vegetation

Ph 3028 Example of Medium Vegetation

Culverts

Based on historical track inspection data, there are 425 culverts from MP 85.45 to MP 139.52. The table below summarizes the types of culverts found on the Line.

Table 4 – Culverts Cloverdale to Willits

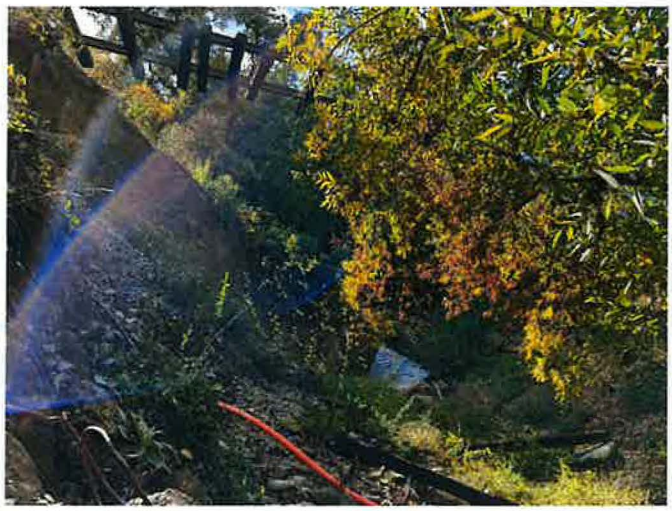
Culvert Type	No. of Culverts	Material	Dimensions	Approximate Length (ft)
Concrete Arch Culvert (CAC)	16	Concrete	Ranging from 5' x 5.5' to 16' x 12'	834
Corrugated Metal Pipe (CMP)	49	CMP	12" diameter	1,473
CMP	34	CMP	15" – 16" diameter	1,059
CMP	97	CMP	18" diameter	3,288
CMP	2	CMP	21" diameter	70
CMP	1	CMP	22" diameter	30
CMP	1	CMP	23" diameter	40
CMP	32	CMP	24" diameter	1,474
CMP	15	CMP	30" diameter	854
CMP	11	CMP	36" diameter	650
CMP	2	CMP	42" diameter	76
CMP	4	CMP	48" diameter	200
CMP	1	CMP	60" diameter	56
CMP	1	CMP	72" diameter	34
CMP Arch (CMPA)	1	CMP	30" x 52"	40
Concrete Pipe (CPC)	2	Concrete Pipe	12" diameter	44
CPC	7	Concrete Pipe	18" diameter	248
CPC	49	Concrete Pipe	24" diameter	1,926
CPC	5	Concrete Pipe	30" diameter	195
CPC	23	Concrete Pipe	36" diameter	1,122
Drop Inlet (DI)	3	Metal Pipe	12" diameter	731
Multi-plate Pipe (MPP)	1	Pipe	72" diameter	48
Rail Topper (RT)	3	Rail	8' – 11'	71
Smooth Steel Pipe (SP)	7	Steel Pipe	16" – 48" diameter	343
Vitreous Clay Pipe (VCP)	1	VCP	24" diameter	100
Wood Box Culvert (WBC)	61	Timber box	Ranging from 1' x 1' to 6' x 6'	2,564

The following culverts have failed and require replacement. These replacements are going to include track embankment that has washed out as a result, both inlet and outlet erosion correction, and will all be reinforced concrete pipe and will be double the size of the washed-out culvert. The improvements will include headwalls and wingwalls. The cost associated with the track work will be included in a special section of the track costs to incorporate cost for areas needing track reconstruction like blown out culverts and rotational slides.

Table 4a – Washed-out Culverts Cloverdale to Willits

MP	Description	Repair	Culvert Length (ft)
90.5	Five culverts destroyed slope failure	Need to reconstruct 3 larger culverts with lateral French drain	20
91.4	Culvert washout	Replace with larger culvert and erosion control reconstruct track bed	20
92	Culvert washout, Head of washout 3 ft from track	Replace with larger culvert and reconstruct track bed (estimated erosion of track embankment 150 yds), install erosion control effects 20' of track	20
121.68	Culvert with shoulder erosion	Install larger concrete pipe & rebuild track bed & add riprap	20
126.5	Track experiences vertical and horizontal displacements, likely historic slide area. Culvert washout 250'	Install concrete box with headwall & wingwalls & rip rap and rebuild washed out track bed	20
127.35	Concrete box culvert with inlet & outlet erosion	Place inlet and outlet erosion control	30
127.5	Culvert washout 50' long	Install concrete box with headwall & wingwalls & rip rap	36
127.6	Culvert washout 40' long	Install concrete box with headwall & wingwalls & rip rap and rebuild washed out track bed	100
128.2	Culvert washout & 250' of right shoulder erosion	Install concrete box with headwall & wingwalls & rip rap and rebuild washed out track bed & reestablish right shoulder	37
129.8	Culvert washout 15' long	Install concrete box with headwall & wingwalls & rip rap and rebuild washed out track bed	30
134.4	Culvert erosion	Replace culvert with larger concrete pipe culvert	30
135.63	24"CMP Culvert failure with extensive erosion	Replace culvert with larger concrete culvert extensive earthwork	100
136.79	MP 136.79, 7' rise x 8' wide concrete arch with poor floor and 6' deep erosion at outlet,	Repair concrete arch floor and slab cutoff walls & install riprap erosion protection	50

The following photos are examples of washouts found in the November 2023 site visit.



Ph 2702 McNab Creek

Ph 2701 McNab Creek

Aerial Ph: MP 92.03 culvert washout

LiDAR: MP 92.03 Showing Extent of Erosion

Aerial Ph: MP 127.50 Culvert Washouts

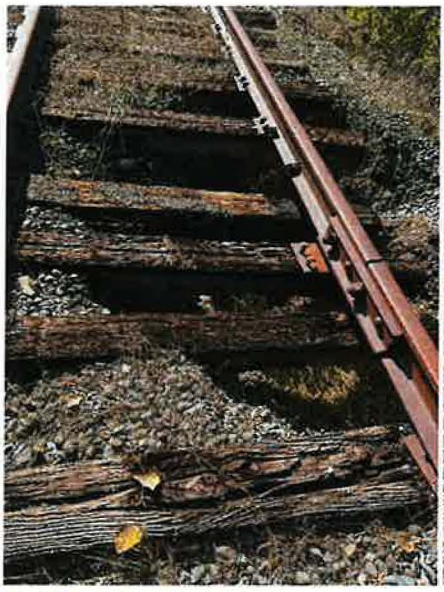
The lack of culvert maintenance since 1998 was evident in the field inspection. In general, culvert inlets need clearing of debris and sedimentation and repair of headwalls and wingwalls; and in many cases outlets require repair or installation of headwalls and wingwalls and have erosion that requires remediation, including riprap and possible tight lining down embankments. Based on the evidence of railroad track over-topping and review of drainage watersheds, many culverts are undersized, which is prevalent in railroads constructed in the early 1900's.

The determination of cost for culvert rehabilitation is based on general observation and their inherent need for debris removal. One-fifth of them are over 100 years old. The wood and steel culverts are susceptible to rot and invert corrosion. In addition, there is a long history of erosion and general knowledge that they are undersized. For the remaining 412 culverts, the following work is included in the cost estimate:

- The final program will require a detailed inspection of all culverts after removal of vegetation
- All culvert sizes need to be reviewed for capacity based on watershed hydraulics
- All culverts will need to be located and cleared of obstructions
- Replace small timber culverts (53 WBC) with 36" concrete pipe
- Replace large timber culverts (7 WBC) with 60" concrete pipe
- Replace rail toppers (3) with 36" concrete pipe
- Larger culverts (concrete arches) are assumed to have more erosion at inlets and outlets
- All CMPs and SPs greater than 36" in diameter to be replaced with concrete pipes and require headwalls and wingwalls

Ph 2826 Typical Example Outlet Erosion

Ph 2843 Typical Example Outlet Erosion



Ph 2862 Culvert Undersized

Ph 2853 Buried Culvert

Track Ditching

It is estimated that ditching will take 2-5 days per mile for the 52.6-mile segment. Track drainage is one of the most significant factors of track integrity and safety. The ditching depth is assumed to range between three- to six-feet to maintain drainage to culverts. The work will require a hi-rail backhoe with a 3-person crew with spoils side-cast on the right-of-way at appropriate locations.

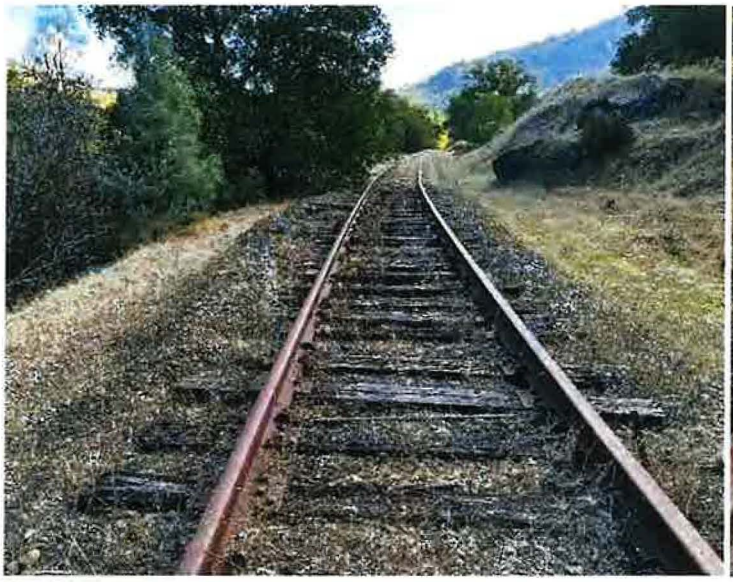
Rail and Tie program

Field inspection of the rail revealed that 90% of the rail is in fair condition with signs of wear, but sufficient for freight rail service at 10 mph. However, there are some areas impacted by the large amounts of unstable roadbed due to slides, some sun-kink issues, and the washouts mentioned in the geotechnical section.

Ph 2916 Representative ditching requirement

Ph 2890 Impact of tree removal on ballast

The ties on this segment are in very poor condition reflecting the 25 years the track has been out of service. The track bed ballast is very fouled, and vegetation growth includes trees with 6"- to 12"-diameters and mature shrubs. The fouled ballast has accelerated tie deterioration, and the vegetation removal process will destroy many ties. Before a tie program is implemented it is assumed that vegetation and ditching will be complete.



Ph 2975 Tie and ballast condition

Ph 2932 Tie and ballast condition

The estimated cost for track rehabilitation to FRA Class I standards will include a tie program of 1,000 ties per mile. A ballast program of 4" to 8" is required because of the amount of heavily fouled ballast and non-compliant river rock. The entire line will need surfacing and regulating after the installation of the tie program.

Ph 2798 Track Condition

Ph 2793 Tie and Ballast Condition

Ph 2832 Spike kill and track moving through curve

Ph 2792 Poor ballast

4. Structure Assessment

There are 43 structures within the MP 85.6 and MP 139.5 segment, however, two have been included in the Mendocino Railway (MR) Assessment Report because MR is operating over the bridges (MP 139.29 and MP 139.73) in Willits Yard through a track use agreement. The bridges and walls included in this Report are a combination of timber trestles, concrete boxes, deck plate girders, steel bridges, and pile walls as shown in the Table 5 Structure Inventory and Repair Summary below.

FRA 49 CFR Ch. II Part 237 Bridge Safety Standards requires that any railroad bridge that has been out of service for the previous 540 days must be inspected in accordance with the requirements of Part 237 prior to resumption of rail service.[1] The reinstatement of service would require an update to the existing Bridge Management Program, all bridges to have a detailed inspection including any appropriate underwater and/or scour inspection, and the determination of each bridge's safe load capacity. These activities would be required to be conducted under the review of a Railroad Bridge Engineer.

Below is a summary table of repairs for startup of freight service that will require updating after the above inspections and load ratings are completed. These repairs were noted in a detailed inspection in 2005. The cost estimate updates the 2005-noted repairs to current dollars.

Table 5 – Bridge Inventory and Repair Summary Cloverdale MP 85.6 to Willits MP 138.23

Item No.	Bridge Type	MP	Length Ft	Crossing	Repairs Summary
1	Rail Pile Wall	85.6	75	n/a	Reconstruct wall

[1] Section 237.101 (d) states, "Any railroad bridge that has not been in railroad service and has not been inspected in accordance with this section within the previous 540 days shall be inspected and the inspection report reviewed by a railroad bridge engineer prior to the resumption of railroad service."

Item No.	Bridge Type	MP	Length Ft	Crossing	Repairs Summary
2	TPG-BD	86.1	65	Oat Valley Creek	Not listed
3	BDT	89.67	14	Farm Road U/P	Repair ballast guards and ballast and repair concrete wingwalls
4	ODT	91.82	239	Cummiskey Creek	Repair deck walkway, replace 55 deteriorated bridge ties and timber guards and replace bracing on 4 bents and post 3 piles and replace 20 walkway planks
5	OD SB	97.63	36	Creek	Not listed, however field visit noted bridge tie, walkway, railing, and guard timbers replacements are required
6	BDT	98.96	15	Farm Rd & Cattle Passage	Not listed
7	ODT	99.11	28	Drainage	Clear vegetation and replace 4 deteriorated bridge ties
8	BDT	99.53	15	Rosetti Creek	Replace deteriorated deck plank and railing and deck ballast leaks
9	DPG	99.72	208	Feliz Creek	Repair walkway and repair scour and remove drift
10	BDT	102.26	15	Drainage	Replace stringers and replace capbeam bent 1
11	SB	103.03	22	Creek	Replace 2 deteriorated ties and tighten hardware
12	BD SB	104.46	50	McNabb Creek	New Bridge (replacing washed out concrete arch culvert)
13	BDT	104.5	15	Farm Rd U/P	Repair ballasted deck
14	ODT	105.34	14	Farm Rd U/P	Replace all stringers and guard timber and 2 deteriorated bridge ties and repair concrete wingwall
15	BDT	107.34	15	Farm Rd U/P	Replace ballasted guard add ballast and clear debris
16	BDT	107.71	15	None	Raise ballast guard add ballast and replace deteriorated cross ties
17	ODT	109.21	26	None	Clear veg and replace guard timber left side and repair erosion
18	BDT	110.4	180	Robinson Creek	Replace 34 walkway planks and repair and railing and replace 5 deteriorated bridge ties and extend erosion protection
19	ODT	111.32	15	None	Replace all stringers and 5 bridge ties and walkway out riggers and repair concrete wingwall
20	ODT	111.68	30	Norgard Ln	Replace guard timbers and repair concrete backwall, and replace 4 deteriorated bridge ties

Item No.	Bridge Type	MP	Length Ft	Crossing	Repairs Summary
21	ODT	113.08	30	Doolan Creek	Replace guard timbers and deteriorated walkway supports and deteriorated bridge 9 ties
22	BDT	113.36	10	None	Repair handrail and repair ballasted deck
23	ODT	114.42	72	Orr Creek	Replace backwall, frame bent 6 including cap, repair bracing bent 4, replace deteriorated walkway planks and outriggers and guard timbers
24	BDT	114.88	15	None	Clear vegetation
25	ODT	115.2	15	None	Clear Vegetation, replace abutment sill and Replace guard timbers, replace deteriorated bridge 6 ties and walkway planks
26	P/S Conc Box Girder	115.93	120	Alkerman Creek	Repair channel and remove drift and repair scour and sheath 3 bents
27	SB	116.41	50	Hensley Creek	Replace deteriorated bridge 8 ties, repair channel, replace deteriorated walkway planks and clear drift and vegetation
28	BDT	117.62	60	York Creek	Splice deteriorated piles, repair end back wall and deteriorated wingwall planks, clear vegetation
29	Steel Sheet Pile Wall	119	70	Tributary to Russian River	New steel sheet pile wall and 500 yds of fill
30	Concrete	119.02	30	None	Clear drift
31	BDT & P/S Precast Box Girder	120.49	209	Russian River	Repair scour of pier 2 and install concrete sheathing on all piers in flow of north approach on south approach repair timber bent bracing
32	ODT	121.27	45	Salt Hollow Creek	Add sash bracing bent 3 and chord bolts
33	ODT	122.18	15	None	Repair severe erosion under west end of wingwall and floor
34	ODT & Steel thru Girder	122.31	125	Russian River	Complete bent repairs to piles and bracing and replace west backwall and clear drift and Repair walkways and replace 24 deteriorated bridge ties and guard timbers
35	ODT	124.34	14	None	Replace guard timbers right side, 2 decayed outriggers, and 5 decayed ties
36	BDT	129.67	55	None	Replace bridge with 1 span steel bridge with erosion protection ($15,000 per foot)
37	Rail Pile Wall	131.95	20	None	Extend north end of rail pile wall due to erosion

Item No.	Bridge Type	MP	Length Ft	Crossing	Repairs Summary
38	Rail Pile Wall	132.1	60	None	Reconstruct failing rail pile wall, shoulder eroded & track ties skewing
39	Steel thru Girder	135.61	30	County Rd U/P	Repair ballast leak and replace left side girder anchor bolts
40	DPG	138.23	52	Haehl Creek	Replace deteriorated walkway planks left side and walkway railing and remove drift and address scour
41	ODT	138.86	105	Baechtel Creek	Repair west end back wall, replace missing walkway planks and 14 decayed ties. Field inspection noted all bridge ties need replacement and additional walkway, stringer, and bent repairs are needed.

There are two Deck Plate Girder (DPG) bridges. The bridge at MP 99.72 (208') has multiple spans and crosses Feliz Creek. The bridge at MP 138.2 (52') has multiple spans over Haehl Creek. During the November 2023 inspection, neither creek was overflowing its banks.

There are three concrete structures including a section over the Russian River at MP 120.5. Also, a P/S Concrete Box Girder at MP 115.9 over Alkerman Creek (130') with debris and scour in channel needing channel repairs and a concrete bridge at MP 119 (30') with no improvements noted in the 2005 CAR.

There is one Rail Pile wall located at the base of a cemetery. The rail and timber wall is near the south Tunnel 5 portal. The timbers are bulging because of the ground movement above the wall.

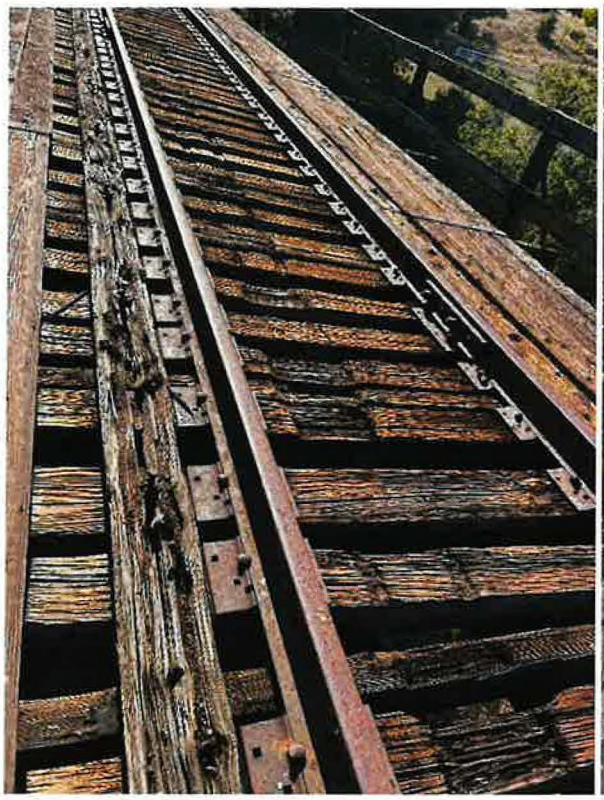
Ph 3037 Failing wall at Tunnel 5

There are 27 timber structures with a total of 81 spans. Timber spans are likely to have more deterioration than found during the 2005 inspection provided in the table above. The field inspection noted walkway, deck, stringer, bent, and tie decay on virtually every timber bridge accessed. Of the 14

ballasted deck structures, 60% need deck repair or replacement due to timber deck decay and fouled ballast and lack proper drainage of maintenance.

Ph 2662 MP 99.11 vegetation

Ph 2551 MP 122.18 Scour at concrete floor



Ph 2936 Bridge over Cummiskey Creek MP 91.82

Ph 2700 Typical Farm Bridge U/P MP 104.5

There are six steel beam and girder bridges, and all are in fair condition with minimal signs of corrosion. The main concern for some of these bridges is their timber decks that require bridge tie replacements and walkway and railing repairs.

Ph 2719 MP 97.63

Ph 2719 MP 97.63 Deck

5. Crossings Public & Private

Public Road Crossings

There are 18 public crossings as shown in Table 6 Public Crossings Assessment. The California Public Utility Commission (CPUC) has jurisdiction over safety mitigations at all public railroad crossings. The public crossings will require a formal on-site diagnostic to finalize the required railroad crossing warning measures for public safety. Implementation of the warning measures will require a formal approval process through the submittal of a GO 88B form to the CPUC. This document is required to be signed by the agency that owns the roadway (i.e., Caltrans, Counties of Mendocino and Sonoma, Cities of Willits, Ukiah, Hopland, and Cloverdale), agreeing to the safety measures to be implemented.

The cost associated with these crossings includes the submittal of GO 88B's, reconstructing each of the track roadway crossings, the installation of required signals, approach warning signs, pavement markings, and roadway traffic control.

Also, the FRA Embargo was driven by the poor condition of signals at public crossings. The FRA will require design document review and will inspect each crossing and test performance before lifting the embargo. Preparation of signal design documents is included in the cost with each crossing.

Below is a brief description of each crossing and the rehabilitation expected.

Table 6 – Public Crossings Assessment

Crossing Roadway	MP	Width	Condition / Material	Descriptions	Rehabilitation
First Street	85.40	65	Fair / Bituminous	One cantilever with one flasher on pole and 4 flashers	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install new prediction equipment, track leads,

Crossing Roadway	MP	Width	Condition / Material	Descriptions	Rehabilitation
				on cantilever 2 each way	batteries, perform diagnostic, update signage and pavement markings, may need two new Standard 9' flashers and shelter
US Highway 175	99.90	38	Fair / Bituminous	Two standard 9's with 8 flashers total	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install new prediction equipment, new batteries, perform diagnostic, update signage and pavement markings, may need new shelter
Henry Station Rd	105.80	24	Poor/Timber with bit. overlay	Two standard 9's with 8 flashers total	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install new prediction equipment, new batteries, perform diagnostic, install new track crossing with concrete panels, update signage and pavement markings, may need new shelter, replace track crossing
Norgard Lane	111.70	16	Poor / Bituminous	Two Crossbuck signs	Clear trees & vegetation 15 ft back from edge of crossing, update signage and pavement markings, install new track crossing, may need active warning signals
Commerce Lane	112.90	36	Good / Concrete	Two standard 9's with a total of 10 flashers	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install new prediction equipment, new batteries, new track leads, perform diagnostic, update signage and pavement markings, may need new shelter
Talmage Rd	113.00	43	Track removed	One cantilever with 8 flashers	Update flashers to 12", install new prediction equipment, new batteries, track leads, perform diagnostic, update signage and pavement markings, reinstall removed track (80 ft), install concrete crossing panels, may need to add west bound Standard 9 and walkway flashers,
Gobbi Street	113.60	40	Good / Concrete	Two cantilevers with 8 flashers each, GRAT	Update flashers to 12", install new prediction equipment, new batteries, new track leads, perform

Crossing Roadway	MP	Width	Condition / Material	Descriptions	Rehabilitation
				Redwood Trail crosses track on south side of crossing	diagnostic, add trail crossing warning devices, update signage and pavement markings, new shelter, new crossing arm equipment.
Perkins Street	114.00	56	Poor / Bituminous	Flashers only, total of 6 flashers, two tracks (main & siding)	Install all new active warning equipment including two standard 9's, two cantilevers, new shelter, advanced warning signs and pavement markings and install new concrete track crossings, may need sidewalk gates
Clara Ave	114.40	36	Track removed	One cantilever with 8 flashers, one standard 9 with 7 flashers	Update signage and pavement markings, update all flashers to 12", perform diagnostic, reinstall removed track (50 ft), install concrete crossing panels, may need sidewalk gates
Ford Street	114.50	36	Paved over	One cantilever with 8 flashers, one standard 9 with 4 flashers, single arm equipment east bound traffic	Update flashers to 12", install new prediction equipment, track leads, batteries, perform diagnostic, update signage and pavement markings, clear track groves, may need two new Standard 9's and shelter
Buch Street	114.60	40	Good/Concrete panels	Two standard 9's with 8 flashers total	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install new prediction equipment, track leads, batteries, perform diagnostic, update signage and pavement markings, may need two new Standard 9's and shelter
Ford Rd	115.20	20	Pour/Bituminous	Two flashers with 4 flashers each	Update flashers to 12", install new prediction equipment, track leads, batteries, perform diagnostic, update signage and pavement markings, may need two new Standard 9' flashers and shelter, replace track crossing
Lake Mendocino Drive	117.00	36	Pour/Bituminous	Two standard 9's with 8 flashers total	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install new prediction equipment, track leads, batteries, perform diagnostic,

Crossing Roadway	MP	Width	Condition / Material	Descriptions	Rehabilitation
					update signage and pavement markings, install new track crossing with concrete panels, may need two new Standard 9' flashers and shelter
Moore Street	119.80	20	Pour/Bituminous	Two standard 9's with 8 flashers total	Clear trees & vegetation 15 ft back from edge of crossing, replace complete signal warning system, perform diagnostic, update signage and pavement markings
East School Way	122.10	30	Good/Concrete panels	All new equipment (2016), batteries stored, system never activated	Add batteries, activate signal warning system
West End	123.00	24	Good/Concrete panels	One out of date standard 9 with 4 flashers and one out of date cantilever with 4 flashers	Clear trees & vegetation 15 ft back from edge of crossing, replace complete signal warning system, perform diagnostic, update signage and pavement markings
Laughlin Way	123.90	20	Poor/Timber	Two out of date cantilevers with 4 flashers each and two out of date gates	Clear trees & vegetation 15 ft back from edge of crossing, replace complete signal warning system, perform diagnostic, update signage and pavement markings, install new track crossing with concrete panels
East Hill Rd	137.80	24	Fair/Bituminous	Two cantilevers with 8 flashers and two out of date gates	Clear trees & vegetation 15 ft back from edge of crossing, update flashers to 12", install two new standard 9's, install new prediction equipment, track leads, batteries, perform diagnostic, update signage and pavement markings, may need two new cantilevers and shelter and new crossing surface

Private Road Crossings

Field inspections and aerial photography identified 50 private crossings, and it is likely that there are additional crossings unidentified. There are a variety of uncertainties regarding ownership and responsibility for repair costs at the 50 private crossings. According to the current DOT crossing Inventory, there are several private crossings that are not listed and will require DOT Inventory sheets to be

submitted and DOT Numbers assigned. Private crossing records have not been found to assist with the determination of responsibilities for maintenance.

In addition, in a diagnostic meeting with the CPUC in 2018 in Calpella, some private crossings were reviewed that were found to have sufficient public access that they would no longer be considered private crossings. The following table identifies potential crossings that would need to become public requiring active warning devices to be installed. This cost has not been included in this assessment.

The rehabilitation costs for the private crossings include effort to submit inventory sheets and obtain DOT Numbers, rehabilitation of each crossing, the installation of required private crossing signage, and the vegetation clearing for line of sight. It is expected that the crossing owner would pay for the crossing installation or upgrades. Table 7 shows the inventory for identified private crossings.

Table 7 – Private Crossings Inventory

MP	Condition / Material	Descriptions
87.32	Fair /Gravel	Vineyard
89.90	Fair /Gravel	Vineyard
97.65	Fair /Gravel	Rancher
99.10	Fair /Gravel	Vineyard
99.57	Fair /Gravel	County wastewater treatment plant
100.00	Fair /Gravel	Old Yard crossing, Hopland
100.65	Fair /Gravel	Winery
101.00	Fair /Gravel	Vineyard
101.44	Fair /Gravel	Vineyard
101.16	Fair /Gravel	Vineyard
103.18	Fair /Gravel	Vineyard
105.03	Fair /Gravel	Farm Road
106.70	Fair /Gravel	Vineyard
109.21	Fair /Gravel	Vineyard
109.40	Fair /Gravel	Vineyard
109.58	Fair /Gravel	Vineyard
109.88	Fair /Gravel	Vineyard
110.30	Fair /Gravel	Vineyard
110.80	Fair /Gravel	Vineyard
111.31	Bituminous	Plant Road
112.16	Bituminous	Airport Rd – very poor grades, possible to close
115.75	Fair /Gravel	Hollow Tree 1st
115.90	Fair /Gravel	Kunzler Ranch Rd
116.26	Bituminous	Mendocino Forest Products - Heavy traffic may require flashers
116.40	Bituminous	Hollow Tree 2nd
116.42	Bituminous	Mendocino Forest Products - Heavy traffic may require flashers
116.57	Bituminous	Hollow Tree 3rd
116.95	Bituminous	Pvt resident & industry

MP	Condition / Material	Descriptions
117.60	Bituminous	Carousel Lane - heavy truck traffic, CPUC has indicated that this should be a public crossing
117.80	Bituminous	Granite Plant - heavy truck traffic, track removed, likely to require flashers
119.20	Timber	Sanitary sewer plant Rd
119.91	Bituminous	Resident and Industry - heavy truck traffic, CPUC has indicated that this should be a public crossing
120.00	Bituminous	Industry
120.33	Bituminous	Mendocino Forest Products
120.70	Fair /Gravel	2 Vineyard crossings within 30 ft
120 .9	Poor/Gravel	Vineyard, appears to be recent
121.90	Fair /Gravel	Vineyard
121.40	Fair /Gravel	Vineyard
122.00	Fair /Gravel	2 within 40ft, Yard limits, Industry
125.10	Poor/Gravel	Used by bikers
125.80	Poor/Gravel	Rancher
126.75	Good/Bituminous	Rancher
130.70	Poor/Gravel	Rancher
131.50	Poor/Gravel	Rancher
136.80	Poor/Gravel	Resident
137.80	Good/Bituminous	Hospital Housing, flashers likely to be required
138.40	Poor/Gravel	Shell Lane
138.80	Poor/Gravel	Sparetime Supply Distribution, heavy truck traffic, track buried 3 feet, flashers likely to be required
138.90	Poor/Gravel	Sparetime Supply Distribution, heavy truck traffic, track buried 3 feet, flashers likely to be required
139.00	Good/Bituminous	Sparetime Supply Distribution, heavy truck traffic, track buried 3 feet, flashers likely to be required

6. Maintenance

The items listed below are related to preventative measures and routine required safety inspections of track and structures. These include chemical spraying for weed control, routine brush cutting, tree trimming, culvert maintenance, bridge repairs based on annual inspections, and track repairs based on required routine track inspections. See table below of expected annual maintenance.

Table 8 – Annual Maintenance Cost Estimate

Work Item	Maintenance Item	Frequency	Cost
Timber Bridges (27 bridges, 81 spans)	Examples: stringer replacements, cap replacements, bridge tie replacements, erosion mitigation	Annual	$162,000
All Bridges Inspection	Bridge inspection as required under Part 237	Annual	$41,000
Grade Crossings	Inspect and maintain per regulation	Annual	$75,000
Culverts (371-400)	Debris and sediment removal, erosion mitigation	Pre- and Post-rainy season, and any significant storm	$110,000
Weed Control	Spray pre-emergent and weed spraying	Spring and Fall	$120,000
Vegetation Management	Brush cutting and tree trimming	Annual	$75,000
Track Maintenance	Track ties, OTM – tie plates, anchors, rail joints	As required to maintain track safety	$200,000
Drainage Management	Track ditching	Annual	$375,000
		Total Annual Maintenance	$1,159,000

7. Rehabilitation Costs

The following table summarizes the rehabilitation costs based on the assumptions outlined in the previous sections.

Table 9 – Rehabilitation Cost Estimate

Scope of Work	Quantity	Unit	Unit cost	Estimated cost
Public Crossings[2]				
18 Public Crossings	1	LS	$6,875,000	$6,875,000
GO88-B	18	LS	$7,500	$135,000
			Subtotal Public Crossings	*$7,010,000*
Private Crossings[3]				
Crossing Agreements/DOT Inventory Numbers	50	LS	$1,500	$75,000
Legal for Illegal Encroachments	5	LS	$10,000	$50,000
			Subtotal Private Crossings	*$125,000*
Bridge Repairs				
41 Structures (Bridges and Walls)	1	LS	$3,650,000	$3,650,000
Detailed Inspection per FRA Part 237	41	EA	$1,500	$61,500
Bridge Rating per FRA Part 237	41	EA	$7,500	$307,500
			Subtotal Bridge Repairs	*$4,019,000*
Geotechnical Hazards				
Tunnel 6	1	LS	$14,291,000	$14,291,000
Tunnel 7	1	LS	$30,000	$30,000
Tunnel 8	1	LS	$20,000	$20,000
Tunnel 9	1	LS	$300,000	$300,000
Slides/Embankment Failure/Washouts	1	LS	$6,250,000	$6,250,000
Geotechnical Support During Tunnel Construction	1	LS	$890,000	$890,000
			Subtotal Geotechnical	*$21,781,000*
Track - Rehabilitation to Class 1 – 52.6 miles				
Ditching	200	DAYS	$7,500	$1,500,000
Debris Removal	5	MI	$15,000	$75,000
Tie Marking Days/Paint	30	DAYS	$750	$23,000
Ties (Class 1) 52.6 miles at 1000 tie per mile	52600	EA	$275	$14,465,000
Tie Disposal	52600	EA	$15	$789,000
Ballast	23144	CY	$42.85	$992,000
Place Ballast & Regulate	60	DAYS	$5,000	$300,000
Surface Track	60	DAYS	$16,000	$960,000
			Subtotal Track Rehab to Class 1 (52.6 miles)	*$19,104,000*

[2] The cost for public crossings may be offset by through Federal Section 130 funds. Once the devices are installed the railroad is responsible for all maintenance and inspections.

[3] Work on private crossings should be required to be paid by users. New crossing agreements will be required. It is the responsibility of the railroad to obtain the DOT numbers.

Scope of Work	Quantity	Unit	Unit cost	Estimated cost
Track Vegetation & Signing & Testing- 52.6 miles				
Vegetation Removal	1	LS	$2,355,000	$2,355,000
Milepost and Whistle Signs/Posts	82	EA	$250	$21,000
Rail testing	52.6	MI	$2,000	$105,000
			Subtotal Track Rehabilitation – 52.6 miles	*$2,481,000*
Culvert Rehabilitation				
Clear and Repair	1	LS	$185,000	$185,000
Culvert Replacement	1	LS	$1,856,000	$1,856,000
			Subtotal Culvert Rehabilitation	*$2,041,000*
			Rehabilitation Cost	**$ 56,561,000**

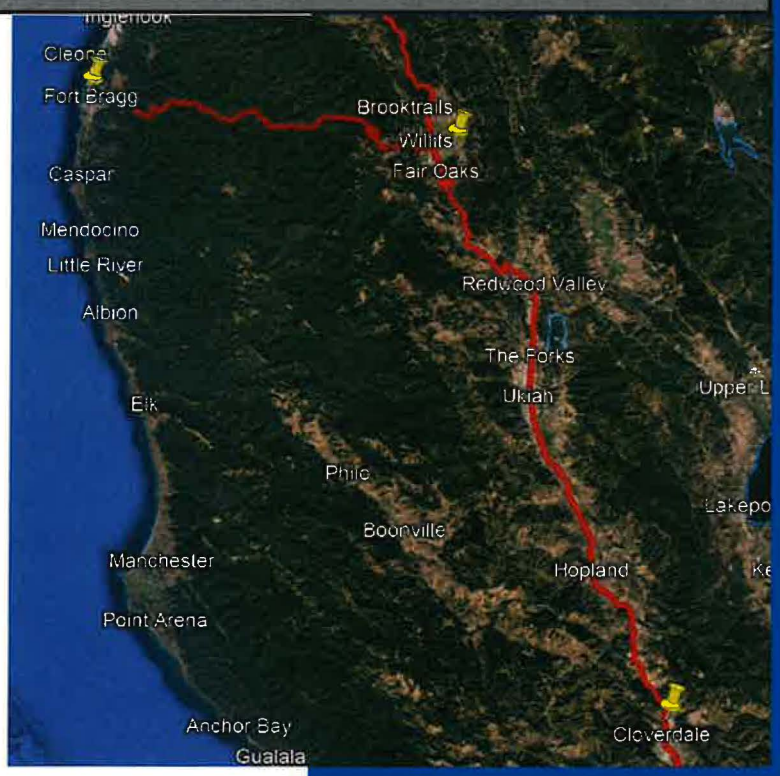
8. Contributing Authors:

- David Anderson, P.E. of American Rail Engineers Corporation (ARE) served as Project Manager and Senior Engineer in ARE's capacity as prime consultant for the project. He is licensed as a Professional Engineer in California and has worked with the state agencies overseeing the NWP corridor for over 20 years. Mr. Anderson's roles for this project included senior-level reviewer and editor of this report.
- Carl Belke, Principal Engineer of D&H Rail Consulting prepared the Operations Assessment. Carl served as President and Chief Operating Officer for the Western New York & Pennsylvania Railroad for 10 years, General Manager and Vice President of Canadian Operations for Genesee & Wyoming for 7 years and has more than 40 years' experience in railroad operations for a dozen of short line railroads with responsibility for labor management, fleet management, bankruptcy reorganizations, and mergers and acquisitions.
- Steve McMullen served as S&W's project manager and primary author of the report. He has been part of S&W's railroad services group for 29 years. Mr. McMullen is licensed as a Professional Civil Engineer in Washington, Idaho, Montana, North Dakota, and South Dakota. He is also a Licensed Engineering Geologist in Washington. Mr. McMullen has over 20 years of experience with the Northwestern Pacific Railroad corridor, having performed geotechnical and geological evaluations of corridor segments in 1999, 2002, 2005, 2007, and 2021.

APPENDIX C

December 27, 2023

Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale



Great Redwood Trail Agency

D&A Enterprises LLC

Contact: Dave Anderson, (714) 943-4068

Introduction

D&A Enterprise's subconsultant Carl Belke assembled operating requirements and costs based on his 40 years' experience with responsibility for shortline railroad operations. Key factors used to establish operations costs include:

- Track geometry and grades for the 54-mile segment from Willits to Cloverdale and the 39-mile segment from Fort Bragg to Willits.
- Tonnage based on the *City of Fort Bragg California's BUILD 2020 Grant Application to Rebuild Mendocino Railway's ("MR") Tunnel, Rehabilitate and Improve Safety Over Its Rural Rail Line, and Reinvigorate the Economy Exhibit 6 Benefit Cost Analysis, dated May 2020*, prepared by Michael Rodriguez, AICP, ("Benefit Cost Analysis").
- Crew size and operations base
- Equipment requirements

The operating expenses are derived from the traffic assumptions provided in the Benefit Cost Analysis for the Fort Bragg to Willits segment and assume the same level of traffic will be available for shipment on the rail segment from Willits to Fort Bragg except for 1 car of river gravel aggregate. This is not an admission that such amounts in fact will be made available for shipment. It is simply an effort to compose a scenario maximally favorable to Mendocino Railway should it initiate freight service.

For simplicity of presentation, the analysis assumes the shipments are all aggregate, but this assumption is not critical to the analysis. Service cannot currently take place because the line from Willits to Cloverdale is embargoed. To lift the embargo substantial rehabilitation is required as outlined in the *Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5* report dated November 30, 2023. In addition, the Skunk Line requires track repairs and tunnel reconstruction as outlined in the *Railroad Rehabilitation Assessment Mendocino Railway Fort Bragg to Willits* report dated November 30, 2023.

Carl Belke, Principal Engineer of D&H Rail Consulting prepared the following Operations Assessment. Carl served as President and Chief Operating Officer for the Western New York & Pennsylvania Railroad for 10 years, General Manager and Vice President of Canadian Operations for Genesee & Wyoming for 7 years and has more than 40 years' experience in railroad operations for a dozen of short line railroads with responsibility for labor management, fleet management, bankruptcy reorganizations, and mergers and acquisitions.

Summary

Traffic Assumptions

Fort Bragg to Willits:

- 24 new cars of business per train, 3 days per week
- 1 car of river gravel aggregate hauled from Willits to Fort Bragg

Willits to Cloverdale:

- 24 new cars of business per train, 3 days per week

Freight Car Assumption

- Lease 12 -56 Cu. Yd., 80-ton capacity, 24 ft. ore jennies to handle Willits to Fort Bragg and Cloverdale to Fort Bragg aggregates

Train Crew Labor

- All crews based at Willits
- 3 days per week (M,W,F), 2-person turn crew from Willits to Cloverdale
- 3 days per week, (T,Th,Sa) 2-person turn crew from Willits to Fort Bragg
- Total of 2 regular train crew members plus 1 relief person to cover 6th day, sickness, vacations

Fuel/Locomotives/Physical Characteristics

- Based upon 3 units per train of model EMD GP-9
- Based on the effort to be exerted (throttle setting) for the grades encountered and curve compensation
- Based on 4 units on property, 3 working daily and 1 spare

Mechanical Labor

- Based on 2-person crew to maintain locomotives and freight cars
- Expectation that they will also spend time with Maintenance-of-way (MOW) crew

Track Labor

- Based on 8-person crew to maintain track, drainage structures, ditches, brush, bridges, tunnels
- Assisted by mechanical crew

Traffic

Willits - Fort Bragg - by Weight

Commodity	Cu.Yd./ year	Approx. weight - c.y. (tons)	Total product weight (tons)	Total car loads at 80 tons p.c.	Total weight of cars @ 28 tons each	Total wght of traffic in cars (tons)	Tonnage per day at 250 train days	Average cars per day	Comments
Aggregates - other	10,000	1.5	15,000	188	5,250	20,250	81	1	Willits to Fort Bragg
			3 day/wk train - Willits to Fort Bragg				81	1	
			3 day/wk train - Fort Bragg to Willits					24	
							Total	25	

Projected new business - Fort Bragg to Cloverdale

Carloads/year	Shipper	Commodity
150	North Coast Brewing	Hops, malt, glass
157	North Coast Brewing	Beer
8	FloBeds	Latex
857	Lyme/Redwood Timber	Timber
1,429	City of Fort Bragg	Municipal Solid Waste
1,143	Geo Aggregates	Aggregates
3,744	**Total**	**Avg Cars/Train 3days/week service = 24**

Train Crew Labor

Zone	Staff	Weeks	Days	Working Days	Working hours		Number		rate	
		Per year	Per week	Per year	Per day	Total hrs	Persons	Total hrs	per hour	Yearly cost
Cloverdale - Willits (M,W,F) Willits-Fort Bragg (T,Th,Sa)	Engineer	52	5	260	12	3120	1	3120	$35.00	$109,200
Cloverdale - Willits (M,W,F) Willits-Fort Bragg (T,Th,Sa)	Conductor	52	5	260	12	3120	1	3120	$35.00	$109,200
Relief/spare	Eng/Cond	26	5	130	12	1560	1	1560	$35.00	$54,600
									Total	$273,000

Fuel Usage

Zone	Milepost Start	Milepost End	Miles	Weeks per year	Ops days per week	Trips per year	Gallons per trip	Total gallons	Cost per gallon $	Annual fuel cost
Cloverdale - Willits	85.2	139.5	54.3	52	3	156	1,062	165,672	5.64	$934,390
Fort Bragg - Willits	0	39.5	39.5	52	3	156	857	133,661	5.64	$753,847
								Total		$1,688,237

Cloverdale - Willits		EMD GP-9			
hours	throttle position	burn per	fuel use gallons	No. Units	fuel per round-
2	0	6.5	13.0		
4	3	24.2	96.8		
4	5	51.3	205.2		
2	8	108.0	216.0		
			531.0	2	1,062

Fort Bragg - Willits		EMD GP-9			
hours	throttle position	burn per	fuel use gallons	No. Units	fuel per round-
2	0	6.5	13.0		
3	3	24.2	72.6		
5	5	51.3	256.5		
1	7	86.3	86.3		
			428.4	2	857

Locomotive Capabilities

Model	HP	Weight	STE	CTE	Annual Rental	Max Loads Cloverdale to Willits	Units required per train	Max Loads Willits to Ft. Bragg	Units required per train	Spare/ repair units required	Total units required	Total locomotive expense
SW1500	1500	248,000	62,000	38,000	$40,000	5	3	7	3	1	4	$160,000
GP-9	1750	249,000	62,750	44,600	$35,000	8	3	9	3	1	4	$140,000

Physical Characteristics

Location	Milepost	Location	Milepost	Distance between miles	Max % grade	Max degree of curvature	Historical Operating Speed - MPH
Willits	139.5	Cloverdale	85.2	54.3	3.0	15	25
Willits	39.5	Fort Bragg	0	39.5	4.6	24	15

Operating Expenses

MAINTENANCE OF WAY AND STRUCTURES		
Track Labor	$	382,720
Fringe Benefits		133,952
Materials and Equipment		200,000
Programmed Maintenance of Roadbed		150,000
Grade Crossing Expenses		75,000
TOTAL MAINTENANCE OF WAY AND STRUCTURES	$	941,672
MAINTENANCE OF EQUIPMENT		
Mechanical Labor	$	116,480
Fringe Benefits		40,768
Locomotive Repairs		90,000
Car Repair Expenses		35,000
Track Equipment Repairs		40,000
TOTAL MAINTENANCE OF EQUIPMENT	$	322,248
TRANSPORTATION		
Locomotive Lease Expense	$	140,000
Car Lease Expense		57,600
Train Crew Labor		273,000
Fuel		1,688,237
Transload terminal manager		45,000
Fringe Benefits		111,300
Transload facility maintenance		20,000
Car Hire Costs		0
Other - PPE and Comms Equip		25,000
TOTAL TRANSPORTATION	$	2,360,137
GENERAL ADMINISTRATION		
Administrative Personnel	$	132,000
Fringe Benefits		46,200
Insurance – General Liability		35,000
Insurance – Fire and Auto		5,000
Information Services		4,000
Contracted marketing services		24,000
FRA compliance - Manuals, timetables, D&A testing		12,000
Rules, Safety & FRA training - CFR 243, RWP		10,000
Audit		12,000
Legal		8,000

Payroll Service		3,000
Telephone		7,200
Repairs and Maintenance		2,000
Utilities		3,000
Dues and Subscriptions		1,000
Property Taxes		5,000
Conferences		1,000
Office Supplies, Postage and Other		4,000
TOTAL GENERAL ADMINISTRATION	$	314,400
GRAND TOTAL OPERATING EXPENSE	**$**	**3,938,457**

VERIFIED STATEMENT 2

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

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

VERIFIED STATEMENT OF ELAINE HOGAN

1. I, Elaine Hogan, state that serve as Executive Director of the Great Redwood Trail Agency ("GRTA"), and have been in this role from January 2, 2024 to the present.
2. GRTA, formerly named North Coast Railroad Authority ("NCRA"), is a public agency formed by the State of California. GRTA is a common carrier by railroad.
3. In 2018, legislation (Senate Bill 1029) provided that "the North Coast Rail Authority's (NCRA) railroad tracks, rights-of-way ("ROW"), and other properties provide an opportunity to create a Great Redwood Trail for hiking, biking, and riding, that may be in the public and economic best interests of the north coast." The legislation sought to assess the feasibility of turning the 316-mile historic rail line, known as the Northwestern Pacific Railroad ("NWP") corridor ("GRTA Line"), into a long-distance recreational trail to be known as the Great Redwood Trail ("Trail").
4. The Great Redwood Trail Agency Act ("Act"),[1] passed in 2022 to complete the transition from NCRA to GRTA provided GRTA with various tasks and duties. Under Cal. Gov. Code § 93022, the California Legislature tasked GRTA with the establishment of a world class trail spanning hundreds of miles of the North Coast, including express direction to railbank

[1] Cal. Gov. Code § 93000 et seq. (2022 Senate Bill 69).

the GRTA Line in accordance with STB rules and the National Trails System Act ("Trails Act"), 16 U.S.C. § 1247(d), plan for construction of a trail on the GRTA Line in accordance with applicable law, and conduct community engagement regarding the Trail. In addition, under Cal. Gov. Code § 93024, GRTA has the powers, expressed or implied, necessary to carry out the purposes and intent of the Act, including, but not limited to, acquisition of property, management of rail rights-of-way, and adoption and enforcement of rules and regulations for the administration, operation, use, and maintenance of trails, excursion rail service, and other recreational facilities and programs. Specifically, for purposes of this proceeding, GRTA must file for abandonment of the GRTA Line and seek to railbank it as part of GRTA's statutory mandate. The transition from NCRA to GRTA and to the creation of the Trail arose out of the efforts of California lawmakers to protect the environmental and scenic resources along the proposed trail, while invigorating the North Coast economy with additional outdoor recreation opportunities. Outdoor recreation is an over $9 billion dollar a year industry in California, and the Great Redwood Trail has been projected to provide a multi-million-dollar annual augmentation of local revenue from tourism and related economic activity, in a region already heavily shifting toward a tourist economy, of which the MR Line is currently a part.

5. GRTA, as the reorganized continuation of the same legal entity NCRA, continues to hold the property rights to the GRTA Line under its new name. Those rights include the interests NCRA acquired through a series of transactions authorized by the STB or Interstate Commerce Commission in the 1990s, which extended between milepost 295.5 near Arcata, California, and milepost 63.4 between Schellville and Napa Junction, California, as well as several branch lines. Rail operations on the GRTA Line were ordered shut down by the

Federal Railroad Administration ("FRA") via Emergency Order No 21. Notice No. 1, issued November 25, 1998. 63 Fed. Reg. 67976 (Dec. 9, 1998). The GRTA Line has not been restored to serviceable condition since the embargo because of the overwhelming expense to rehabilitate it, the lack of any need for rail service on it, and the instability and flooding of the land in the right-of-way. In the meantime, with the exception of a short stretch of line upon which MR currently operates excursion trains, the FRA's embargo order remains in effect, and no interstate freight or passenger rail operations have been conducted on the GRTA Line in the last 25 years.

6. GRTA has begun to implement the changes that the California Legislature envisioned in the Act to the 316-mile GRTA Line, starting its transformation from a long unused rail line to a scenic public trail. First, in accordance with the Act, SMART, a Class III rail carrier, filed a verified notice of exemption, which became effective shortly thereafter, under 49 C.F.R. § 1150.41 to acquire from NCRA, now GRTA, and operate approximately 87.65 miles of the southern portion of the GRTA Line (the part of rail corridor in Sonoma and Marin Counties), consisting of: (1) the line of railroad and right-of-way in fee between the Sonoma/Mendocino County, California, border at NWP milepost 89 and Healdsburg, California, at NWP milepost 68.2; and (2) the freight rail operating easement between Healdsburg, at NWP milepost 68.2 and Lombard, California, at SP milepost 63.4. SMART will be responsible for rail-with-trail development for the southern segment of the Trail.
7. GRTA also filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F — Exempt Abandonments to abandon 175.84 miles of the GRTA Line from milepost 139.5 at Commercial Street in Willits to milepost 284.1 near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, milepost

300.5 near Samoa, and milepost 301.8 near Korbel, in Mendocino, Trinity and Humboldt Counties, California. Concurrently with the filing of its verified notice, GRTA filed a request for issuance of a notice of interim trail use or abandonment (NITU) to establish interim trail use/rail banking on this rail line under the Trails Act and 49 C.F.R § 1152.29. In this proceeding, MR filed an offer of financial assistance to purchase a 13-mile portion of the line extending from milepost 139.5 in Willits to milepost 152.5, which was denied by the Board for failure to demonstrate financial responsibility on October 24, 2022. On October 26, 2022, GRTA gave notice that GRTA consummated the interim trail/use railbanking authority as authorized by the Board.

8. Consequently, GRTA now owns and has residual common carrier responsibility for this approximately 175.84 miles of the GRTA Line north of Willits railbanked in AB-1305X, and SMART now owns the portion of the GRTA Line in Sonoma and Marin Counties on the southern end. The remainder of the GRTA Line from Willits at milepost 139.5 to NWP milepost 89 is still owned by GRTA and is subject to the jurisdiction of the STB. This is the portion of the GRTA Line where MR can connect to the interstate rail network by running south, via segments owned and operated by other carriers, eventually connecting to an interchange point with the Union Pacific Railroad in Fairfield, California. However, as noted, this part of the GRTA Line remains subject to the 1998 FRA embargo; consequently, it has not had any freight traffic on it in 25 years, and there is no realistic prospect for such use in the foreseeable future as shown in AB-1305X and herein.
9. The GRTA Line, MR's only possible access to the interstate rail network, has been embargoed by the FRA for public safety reasons since 1998. As a result of this embargo, MR has absolutely no physical access to the interstate rail network. No freight traffic of

any kind has passed along the relevant section of the GRTA Line in 25 years, and the State of California, after a thorough analysis by California's transportation agency, has directed the transition away from rail to trail uses.

10. However, GRTA cannot seek abandonment of this remaining portion of the GRTA Line and railbank it in accordance with the Act based on STB precedent if it is attached to the MR Line in Willits; otherwise, it would leave the MR Line stranded from the interstate network. Therefore, GRTA cannot satisfy its statutory mandate to railbank the GRTA Line and continue with its plans to develop the Great Redwood Trail in the most efficient and effective manner until this matter is resolved. As a practical matter, the freight traffic along both the MR Line and the GRTA Line have long been relegated to history. However, the continued status of the MR Line as under the jurisdiction of the STB prevents GRTA from effectuating its statutory mandate under the Act, consistent with the current and future needs of the State of California.

11. As a result of the facts stated in Paragraph 10, GRTA seeks a determination by the Board that, under these facts and circumstances, the public convenience and necessity require and permit abandonment of the MR Line, thereby extinguishing the federal interest in the MR Line.

12. The right of way currently used by MR potentially could be appropriate for other public purposes. First, it is presently used for intrastate tourist excursion rail services called the Skunk Train. These intrastate operations could continue upon abandonment. Second, it could also be converted into a pedestrian and bike trail that could connect to the GRTA trail in Willits which would be in line with the State of California's present plans for this area as demonstrated by the Great Redwood Trail Agency Act. Finally, the Save the

Redwood League now has a conservation easement on the right-of-way, thereby allowing this land to revert to its natural state as private parkland in this environmentally sensitive area.

13. The public interest strongly supports removal of the unused MR Line from the federal interest. First, abandonment will support the area's transition to ecotourism from a timber-based economy. Second, removal of the MR Line from the shield of federal rail protection will put an end to ongoing tactics by MR of improperly using its status as a common carrier to avoid state and local regulation and to acquire land improperly through eminent domain. Overall, abandonment will put to rest ongoing confusion about the MR Line's status and help the economy blossom as a tourist destination.

Verification

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

Elaine Hogan, Executive Director
Great Redwood Trail Agency
419 Talmage Road, Suite M
Ukiah, CA 95482

Dated: April 10, 2024

VERIFIED STATEMENT 3

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

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

VERIFIED STATEMENT OF MARIE JONES

1. I, Marie Jones, make the following Verified Statement within the scope my expertise, outlined below, in economic and market analysis, and other subject matter, in connection with the rail need/rail feasibility on the Mendocino Railway ("MR") rail line between Fort Bragg and Willits in Mendocino County, California ("MR Line"). Statement of Qualifications. Over the past 35 years, as a consultant I have served numerous communities, businesses, and non-profits in the areas of economic and market analysis, development feasibility analysis, land use planning, economic development, and environmental review. I also served as Community Development Director for the City of Fort Bragg for 13 years where I had the pleasure of submitting two BUILD grants on behalf of the Skunk Train, the tourist excursion train operation on the MR Line, and prepared an economic impact report for these same grants, so I have some familiarity with the MR/Skunk Train owners and operators. Recently, I prepared the 2022 Comprehensive Economic Development Strategy for Sonoma and Mendocino Counties, and the MOVE2030 economic recovery strategy for Mendocino County. I have also worked for the San Francisco Partnership, Bay Area Economics, the Michigan Manufacturing Technology Institute, the Center for Economic Conversion, and Ithaca Neighborhood Housing Services. I hold a Masters in Regional Planning from Cornell University and a BS from the University of California at Santa Cruz. For a complete review of recent projects and clients, please see my website at www.mariejonesconsuting.com

2. In 2023 and 2024, I prepared a comprehensive market and feasibility analysis of rail freight service in the Fort Bragg, Willits & Cloverdale Corridor in California, last update in March 2024 ("*Feasibility & Market Analysis*"). This *Feasibility & Market Analysis* included identification of likely shippers and their competitors and contacting these shippers directly to obtain quotes for the delivery of a variety of goods from Willits to Fort Bragg and from Willits to Cloverdale. *Feasibility & Market Analysis* is attached to this Verified Statement as Appendix A. This Verified Statement utilizes: 1) market data from my report; 2) the acquisition and rehabilitation cost data from Mendocino Railroad's OFA in STB AB 1305X; and 3) appraisal and rehabilitation numbers provided by GRTA's consultants, including D&A Enterprises, LLC. This Verified Statement includes two feasibility analyses: 1. The first feasibility analysis scenario (Table 6 of *Feasibility & Market Analysis*) calculates the minimum cost/ton that MR would need to charge to cover all annual cost given likely demand (Table 2) if private investors financed rehabilitation of the MR Line, and 2. The second feasibility analysis (Table 8) calculates the minimum cost/ton that MR would need to charge to cover all annual cost given likely demand (Table 2) and the award of a $31 million low interest federal loan.

3. The methodology for the *Feasibility & Market Analysis*, includes the following steps: 1) a demand analysis of rail freight; 2) market analysis of competitive truck pricing, delivery scheduling and delivery locations; and 3) a feasibility of required railway freight pricing and volume given capitalization costs, operating costs, maintenance costs, and debt service. The methodology for each step is described further below. The *Feasibility & Market Analysis* analyzes the potential demand for rail freight throughout the transportation corridor using three methodologies. First, the report analyzes potential rail freight demand based on population. The report estimates the maximum likely rail freight demand given the area's total population by

utilizing per-capita (nationwide) rail freight demand for short haul rail trips. This approach overestimates demand because the population in this corridor is low density, making rail delivery less competitive. Next the report analyzes potential freight demand based on area GDP/capita. This methodology accounts for any potential rail freight demand if Mendocino County had a particularly high GDP/capita, which it does not have. Finally, the Demand Analysis also included the collection of primary demand data. I directly contacted major manufacturers in Mendocino County to determine how much freight demand they might have if the MR Line was refurbished and re-established. However, during these calls no information was provided about potential pricing or transport time. Potential shippers were simply asked if a rail connection between Fort Bragg and Cloverdale could potentially be useful to them. This analysis is included in the appendix of my report. The *Feasibility & Market Analysis* includes a market study to determine the freight rates, delivery time, and service reliability required for rail freight to be competitive with truck freight. The market analysis describes the existing freight market with which rail service must compete to attract customers. The truck freight market was analyzed with market research by Truckstop.com, which is a truck freight consolidator that collects thousands of truck freight orders each day and allows individual trucks and companies to bid on those freight orders. The market analysis includes daily freight rates to and from Fort Bragg, Willits, and Cloverdale, paid by real shippers to real truckers. A list of the truck freight providers indicates that there are many trucking companies that serve this route which results in price competition to keep rates low. The rail freight market was analyzed by looking at advertised freight rates on MR's website, although MR does not provide any rail service at this time due to a tunnel collapse and rail lines that are not rated for freight service. The market analysis also compares the competitive difference between rail and truck freight on the following metrics: point-to-point service, shipping times, scheduling

frequency, and reliability. The feasibility analysis identifies all costs (capitalization, operating, maintenance, interest), and based on likely demand identifies the breakeven price/ton for rail freight. Rail's break-even freight cost is compared with existing truck shipping rates for each destination. The feasibility analysis includes the following steps:

1. **Calculate Capitalization Costs**. The Capitalization Cost is the return that an investor would need to receive per the Surface Transportation Board ("STB") for a capital investment in rail. The annual capitalization cost for this project is determined by multiplying the required rehabilitation costs by the cost of capital (set by the STB) to determine the annual "profit" that an investor would need to earn for a rail investment, and therefore what a rail business must pay to access that capital.

2. **Calculate Operating Costs.** Project costs include annual operating costs, maintenance and repair costs, and interest costs. Operating costs and maintenance and repair costs were developed for both segments of this rail line by Dave Anderson of D&A Enterprises LLC (see report *Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale* attached to Verified Statement, Appendix C, of Dave Anderson attached to Application). Interest costs for the loan were calculated based on a 35-year term at 4.29% interest, which are the currently advertised interest rate and terms on the RRIF loan webpage.

3. **Break Even Price Feasibility Analysis**. Given the capitalization amount and operating costs, and estimate demand for rail traffic, the analysis calculates the breakeven point for cost/railcar and cost/ton to determine if the rail line can offer competitive pricing compared with truck transportation. This analysis was also completed assuming that MR obtains a $31 million low interest government loan.

4. **Break Even Volume Feasibility Analysis.** Given the capitalization amount and operating costs, and existing trucking rates, this analysis calculates the breakeven demand required for the rail line to cover all of its costs and compete with existing truck rates.

4. In conclusion and based on the *Feasibility & Market Analysis,* due to the short haul distances and competition from trucks, there is insufficient actual demand for rail freight transport to fund the significant capital investment required to improve the rail line segments necessary for the rail freight, let alone maintain and operate them. The rail lines, if rehabilitated for freight, would not be able to recover their capitalization costs with earned income. They would presumably go bankrupt, as California Western Railroad did before its assets were acquired by MR in bankruptcy.

Verification

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

Marie Jones, Principal
Marie Jones Consulting
16312 Old Caspar Railroad Rd.
Fort Bragg CA 95437

Dated: April 4, 2024

Appendix A – *Feasibility & Market Analysis*

APPENDIX A

FEASIBILITY & MARKET ANALYSIS OF RAIL FREIGHT SERVICE IN THE FORT BRAGG, WILLITS & CLOVERDALE CORRIDOR

March 6, 2023

Prepared by: Marie Jones Consulting

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1. Executive Summary

This report explores freight options for moving goods and commodities between Cloverdale, Willits and Fort Bragg. It also explores if the cost to upgrade the tracks from Cloverdale to Fort Bragg (e.g. capitalization) can be supported by estimated revenues from operating a freight line in the corridor given realistic demand for rail freight and competitive truck freight pricing.

Table 1 summarizes the relative competitive advantage of truck freight versus rail freight for this transportation market. The remainder of the report provides the detailed analysis and backup data and documentation that form the basis for the conclusions.

Table 1: Relative Competitive Advantage of Truck Versus Rail Freight, Cloverdale to Fort Bragg, 2024

Competitive Issue	Truck Freight	Rail Freight
Service Availability	Service is currently provided.	No service provided.
Price/ton from Cloverdale to Willits.	The current delivery price is $29.14/ton (Table 4).	If service were re-established, the minimum cost/ton (annual capitalization/maximum demand) would be $458/ton (Table 6).
Price/ton from Willits to Fort Bragg.	The current average delivery price for this short haul is $38.35/ton. (Table 4)	If service were re-established, the minimum cost/ton (annual capitalization/maximum demand) would be $608/ton (Table 6).
Total Annual Freight Demand Cloverdale to Willits Corridor (Tons)	641,000 tons (Table 2)	24,000 tons (Table 2)
Total Annual Freight Demand Cloverdale to Willits (Loads)	23,737 Truck Loads (Table 2)	303 railcar loads (Table 2)
Door to Door Service	Provided as part of freight cost, through extensive highway and road system (see Figure 3)	Not provided by rail freight service. This would be an additional cost to the customer that would be provided by a local truck at an additional cost.
Schedule Frequency & Flexibility	Freight services are provided by 20+ local trucking companies, which haul 7 days a week and 52 weeks per year (see Table 5).	No current schedule. Estimated demand might result in one freight train of 30 cars per month. This will not meet most potential customer shipping schedules.
Trip Time	The truck drive time from Cloverdale to Fort Bragg is 1 hour and 50 minutes.	Estimated rail travel time from Cloverdale to Fort Bragg is 10 hours. Estimated rail time from Willits to Fort Bragg is 6 hours due

	The truck drive time from Cloverdale to Willits is an hour and from Willits to Fort Bragg is 50 minutes.	to the steep grade and hairpin turns, while rail travel time from Willits to Cloverdale would be an estimated 4 hours.
Trip Risk	Very limited trip risk, as trucks can predictably traverse Highway 101 and 20. When mud slides or a tree falls on these highways, Caltrans quickly removes them.	Trains often run late, and travel time is unpredictable. Additionally, the length of time and bumpiness of a freight train do not lend themselves well to many potential large customers (breweries, wine grapes, etc.).

Freight Options

Fort Bragg to Willits

- **Rail.** There is currently no operating rail freight service between Fort Bragg and Willits. Mendocino Railway advertises freight services on the Skunk Train website at a rate of ($1,440/railcar) + ($400/day for a rail car rental) + ($800/day for the crew) for a total of $2,640/80-ton-railcar or $33/ton. However, this service is either a fiction or subcontracted to a trucking company as the rail line is blocked by a tunnel collapse and rail line is not currently rated for freight. Additionally, the advertised pricing is purely hypothetical, as the Skunk Train would need to charge a higher rate of $608/ton (as illustrated below and in Table 6) to capitalize rail line repairs and recover operating costs.
  - The total capital costs to repair the rail line between Fort Bragg and Willits is $30,982,000, which would be capitalized at 10.58% for an annal payment of $3,277,896.[1]
  - Operating costs for this line would be $2,442,934/year.[2]
  - Total annual operating and capitalized rail repair costs would be $5,720,830 per year.
  - With a maximum annual demand of 118 rail cars (Table 4), the break-even cost would be $48,626/rail car or $608/ton.
  - If Mendocino Railway is awarded a $31 million federal loan to fund the repair of the line between Fort Bragg and Willits, the break-even cost would be $35,227/railcar or $441/ton.
- **Truck.** The truck freight business is very competitive as follows:
  - Highway 20 has many tight curves and can accommodate only shorter trucks, additionally as the average speed of Highway 20 is low, truck freight from Willits to Fort Bragg is currently provided by independent operators and small trucking companies, which provide freight service at $38/ton for delivered freight, which is considerably less than the railcar rate of $608/ton.

[1] D&A Enterprises LLC, Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale, Dec 27, 2023, Page 5

[2] D&A Enterprises LLC, Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale, Dec 27, 2023

Cloverdale to Willits

Highway 101 stretches between Cloverdale and Willits providing freight access to a number of small communities including: Cloverdale, Hopland, Ukiah and Willits.

- **Rail.** The rail line requires extensive repairs which must be financed to re-establish rail service (see Table 6).
  - The total capitalization cost for repairing the rail line between Willits and Cloverdale is $56,561,000, which would be capitalized at 10.58% for a loan payment of $5,984,154 per year.[3]
  - Operating costs for this line would be $5,097,457/year.[4]
  - Total operating and capitalized rail repair costs would be $11,081,611 per year.
  - With a maximum annual demand of 303 rail cars (Table 6), the break-even cost would be $36,618/rail car or $458/ton.
- **Truck.** This area has 30+ low-cost competitive trucking companies that provide trucking transportation services in a price-competitive market with a fleet of more than 200 trucks.
  - Truckstop.com is a web-based truck freight channel that serves as a master broker for brokers, truckers and shippers throughout the US with extensive data on real time load and rate information. According to Truckstop.com the Cloverdale to Willits lane (highway 101 corridor) averages $786.67/load and $29.14/ton.

Fully capitalized rail freight rates for Cloverdale to Willits would be $458/ton, while the current (January 2024) truck freight rate from Cloverdale to Willits is $29.14/Ton.

Rail freight is not price competitive.

Conclusion

Overall, there is little market demand for rail freight between Cloverdale, Willits and Fort Bragg. Rail freight is not an economically viable business as transportation costs would be prohibitively high given rail rehabilitation costs and annual operating costs. Mendocino Railroad (d/b/a) Skunk Train benefits from the fiction that it is a freight railroad in the flow of interstate commerce and subject to STB jurisdiction as such on three accounts.

[3] Dave Anderson, Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5, American Rail Engineers, 2023, Page 33

[4] Dave Anderson, Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5, American Rail Engineers, 2023,

1. Pursuant to the pretense (legal fiction) that it is a freight railroad, the Skunk Train maintains that it is exempt from local land use controls (zoning and building regulation) over their 300-acre vacant coastal property in Fort Bragg. They are in court with the City of Fort Bragg and the California Coastal Commission over their claimed land use regulation exemption and maintain their exemption either as a "public utility" or pursuant to federal preemption under the ICC Termination Act.
2. The legal fiction is also presumably the basis on which Mendocino Railway has applied to the US Department of Transportation for Federal funds on three occasions to fix the collapsed tunnel on its Fort Bragg to Willits line and otherwise to repair the rail line for tourist excursion purposes.
3. Moreover, Mendocino Railway will likely contract with itself (or sister companies) to accomplish reconstruction work with a primary goal of making a profit from the federally funded construction effort. In the end, the chief freight that would be moved on Mendocino/Skunk Train's line would be material for the reconstruction of the line, and not for freight customers of the line, because trucks are much cheaper and more flexible than rail for this short-haul low demand route.
4. Mendocino Railway has used the threat of eminent domain to acquire the former Georgia-Pacific Mill Site (300 acres of coast property) from Georgia Pacific for significantly less than its fair market value. Likewise, it used the threat of eminent domain and a subsequent lawsuit to acquire 16 acres of property along the Willits line.

In conclusion, there is not sufficient demand for short haul rail freight to defray operating costs, the cost of the capital improvements, or to attract the capital investment required to make this rail line operational.

2. Methodology

The methodology for this feasibility analysis, includes the following steps: 1) a demand analysis of rail freight; 2) market analysis of competitive truck pricing, delivery scheduling and delivery locations; and 3) a feasibility of required railway freight pricing and volume given capitalization costs, operating costs, maintenance costs, and debt service. The methodology for each step is described further below.

Demand Analysis

This report analyzes the potential demand for rail freight throughout the transportation corridor using three methodologies.

1. First the report analyzes potential rail freight demand based on population. The report estimates the maximum likely rail freight demand given the area's total population by utilizing per-capita (nationwide) rail freight demand for short haul rail trips. This approach overestimates demand because the population in this corridor is low density, making rail delivery less competitive.
2. Next the report analyzes potential freight demand based on area GDP/capita. This methodology accounts for any potential rail freight demand if Mendocino County had a particularly high GDP/capita, which it does not have.
3. Finally, the Demand Analysis also included the collection of primary demand data. MJC directly contacted major manufacturers in Mendocino County to determine how much freight demand they might have if this rail line was refurbished and re-established. However, during these calls no information was provided about potential pricing or transport time. Potential shippers were simply asked if a rail connection between Fort Bragg and Cloverdale could potentially be useful to them. This analysis is included in the appendix.

Market Analysis

This report includes a market study to determine the freight rates, delivery time, and service reliability required for rail freight to be competitive with truck freight. The market analysis characterizes the existing freight market with which rail service must compete to attract customers.

1. The truck freight market was analyzed with market research by Truckstop.com, which is a truck freight consolidator that collects thousands of truck freight orders each day and allows individual trucks and companies to bid on those freight orders. The market analysis includes daily freight rates to and from Fort Bragg, Willits and Cloverdale, paid by real shippers to real truckers.
2. A list of the truck freight providers indicates that there are many trucking companies that serve this route which results in price competition to keep rates low.
3. The rail freight market was analyzed by looking at advertised freight rates on Mendocino Railway's website, although they do not provide any rail service at this time due to a tunnel collapse and rail lines that are not rated for freight service.
4. The market analysis also compares the competitive difference between rail and truck freight on the following metrics: point-to-point service, shipping times, scheduling frequency, and reliability.

Feasibility Analysis

The feasibility analysis identifies all costs (capitalization, operating, maintenance, interest), and based on likely demand, identifies the breakeven price/ton for rail freight. Rail's break-even freight cost is compared with existing truck shipping rates for each destination. The feasibility analysis includes the following steps:

1. **Calculate Capitalization Costs**. The Capitalization Cost is the return that an investor would need to receive per the STB (Surface Transportation Board) for a capital investment in rail. The annual capitalization cost for this project is determined by multiplying the required rehabilitation costs by the cost of capital (set by the STB) to determine the annual "profit" that an investor would need to earn for a rail investment, and therefore what a rail business must pay to access that capital.
2. **Calculate Operating Costs.** Project costs include annual operating costs, maintenance and repair costs, and interest costs. Operating costs and maintenance and repair costs were developed for both segments of this rail line by Dave Anderson of American Rail Engineers (see his report *Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5). I*nterest costs for the loan were calculated based on a 35-year term at 4.29% interest, which are the currently advertised interest rate and terms on the RRIF loan webpage.
3. **Break Even Price Feasibility Analysis.** Given the capitalization amount and operating costs, and estimated demand for rail traffic, the analysis calculates the breakeven point for cost/railcar and cost/ton to determine if the rail line can offer competitive pricing compared with truck transportation. This analysis was also completed assuming that Mendocino Railway obtains a $31 million low interest government loan.
4. **Break Even Volume Feasibility Analysis.** Given the capitalization amount and operating costs, and existing trucking rates, this analysis calculates the breakeven demand required for the rail line to cover all of its costs and compete with existing truck rates.

3. Freight Demand of Cloverdale, Willits& Fort Bragg

Area Freight Demand – Based on Population

The US Department of Transportation provides detailed data regarding total freight moved per year by truck and rail. Table 2 analyzes maximum freight demand by both modes (rail and truck) in the market areas for the Highway 101/20 corridor between Cloverdale and Fort Bragg. The exact freight demand is not available from published data for this small market area. This table was created by determining the total tons of freight delivered on a per capita basis nationwide on short haul trips (less than 100 miles) and then using that ratio with the area population to determine proportional local short-haul freight tonnage.

All trips from Cloverdale to Fort Bragg are defined as short haul of less than 100 miles. Thirty-six percent of all freight in the United States is hauled for less than 100 miles. Of the freight that is hauled less than 100 miles, only 4.3% is hauled by rail (see Table 13 Appendix B). However, this is a maximum estimate because the market area does not have large manufacturing or distribution warehouses or ports which together account for most rail freight.[5] Even though the analysis below likely overestimates potential rail freight demand, these numbers form the basis of the feasibility analysis (section 4).

Table 2: Maximum Potential Freight Demand, Truck and Rail, Cloverdale to Fort Bragg

Maximum Potential Freight Demand as a Ratio of Population, 2023					
		Maximum Truck Freight Per Year		Maximum Rail Freight Per Year	
	Population	Truck Loads	Tons (thousands)	Carloads	Tons (thousands)
Short Haul Freight (<100 miles), United States	331,900,000	209,333,333	5,652,000	3,275,000	262,000
Potential Market Area					
Cloverdale	8,912	5,621	152	88	7
Mendocino County	91,603	57,775	1,560	904	72
Ukiah	16,800	10,596	286	166	13
Willits	4,957	3,126	84	49	4
Fort Bragg	6966	4,394	119	69	5
Total Mendocino County & Cloverdale	**100,515**	**63,396**	**1,712**	**992**	**79**
Total - Cloverdale to Willits	**37,635**	**23,737**	**641**	**303**	**24**
Total - Fort Bragg to Willits	**11,923**	**7,520**	**203**	**118**	**9**

1) All trips from Cloverdale to Willits to Fort Bragg are defined as short haul less than 100 miles. Thirty-six percent of all freight is hauled for less than 100 miles. Of the freight that is hauled less than 100 miles, only 4.3% is hauled by rail. For more information, see the link below.

Source: MJC, 2023; https://data.bts.gov/stories/s/Moving-Goods-in-the-United-States/bcyt-rqmu/#:~:text=Total%20freight%20moved%20by%20distance,origin%20and%20destination%20in%202023.

[5] DOT, Bureau of Transportation Statistics, *Fact and Figures Moving Goods in the United States*, 2023 https://data.bts.gov/stories/s/Moving-Goods-in-the-United-States/bcyt-rqmu/#:~:text=Total%20freight%20moved%20by%20distance,origin%20and%20destination%20in%202023.

Based on this conservative analysis, the area could support an annual maximum demand for 303 rail carloads of rail freight per year. Actual real demand would be less than this maximum potential demand due to: 1) a lack of manufacturing companies and warehouse distributing facilities in the region; 2) no major concentration of raw materials (such as coal, copper or other deposits); 3) no large port for international freight shipments, which is the source of most rail freight (Appendix B).

Area Freight Demand – Based on GDP

Table 3 analyzes freight demand using relative Gross Domestic Product for the United States, Sonoma County and Mendocino County. The analysis (Table 3) found a comparable total maximum demand for rail freight throughout the entirety of Mendocino County (much of which would not be well served by the proposed rail line running along Highway 101) of 579 rail cars/year or 46,000 tons. As Cloverdale is on the very northern border of Sonoma County, it would not be accurate to include the potential rail demand from Sonoma County for this analysis, because this demand would travel south towards population centers not north into rural Mendocino County.

Table 3: Maximum Potential Freight Demand as a Ratio of GDP

Maximum Potential Freight Demand as a Ratio of GDP, 2023						
			Maximum Truck Freight Per Year		Maximum Rail Freight Per Year	
	GDP in (1,000$)	% GDP	Truck Loads	Tons (1000s)	Carloads	Tons (1000s)
Short Haul Freight (<100 miles), United States	23,315,081,000	100%	209,333,333	5,652,000	3,275,000	262,000
Potential Market Area						
Sonoma County	34,450,901	0.1478%	309,316	8,352	4,839	387
Mendocino County	4,123,820	0.0177%	37,026	1,000	579	46

Sources: MJC, 2023

US Department of Transportation, *Transportation as an Economic Indicator: Seasonally-adjusted transportation data, 2023*
https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/

California REAP: GDP Analysis for Mendocino County, Sonoma County and United States
https://california.reaproject.org/analysis/comparative-trends-analysis/gross_domestic_product/tools/0/60045/

Cloverdale Economic Overview & Potential Rail Demand

This section provides a brief overview of the economy and includes results from direct interviews with larger companies in the region that have been identified by Mendocino Railway as potential rail shippers. It shows that MR consistently overestimated interest in short haul rail shipments in their DOT Build Applications (See Appendix A), such that the over-estimates can fairly be characterized as deceptions.

Cloverdale is a small middle-class community with a significant Latino population and many commuters that work in Santa Rosa and Windsor. As a small community with a small economy, it is not a significant source of freight. Cloverdale has a population of 8,996 people, with a median annual household income and earnings of $96,894 per year, which is slightly lower than California as a whole. Its 4,357 residents have full or part-time work primarily in the education, manufacturing, agriculture, construction and retail trade sector.

Major Cloverdale Employers. Of the top 25 employers in Sonoma County, none are located in Cloverdale. However, according to Dun & Bradstreet, Cloverdale is home to the following large companies.[6]

- Bear Republic Brewing Company has $23 million in sales of specialty beer products. They are not interested in shipping their products by rail due to the cost, limited service, lack of predictability and potential damage to a vibration sensitive product.
- Nu Forest Products provides sawn lumber products and employes 80 people. They are not interested in using Rail to serve their customers due to cost, limited service, lack of flexibility and predictability of deliveries.
- MGM Brakes has $4.5 million in sales and manufactures electronic brake systems for trucks and buses. They are not interested in using rail to ship orders due to limited service.

Mendocino County Economic Overview & Potential Rail Demand

Appendix C of this analysis includes a brief overview of the Mendocino Economy to identify if current or future economic or population growth could support the re-establishment of rail freight along the Fort Bragg Willits corridor. Here are some of the top-level findings of this summary:

- Mendocino's population growth is constrained by its remote location, low housing production numbers and very slow job growth. In 2022 Mendocino's population was 91,603, which is just 0.2% of the State population. Mendocino County's population has remained relatively flat for the past 70 years.
- Mendocino's economy is very small and stagnant. Mendocino GDP ranks 38th from the top of California's 58 counties. Since 2010, Gross Domestic Product has grown only 0.78%/year in Mendocino (ranked 38 out of 58 counties). Ranked #46 out of 57 Counties, Mendocino County total employment shrank by -0.35% from 2010 to 2020.
- Of the 45,293 jobs in Mendocino County, only a very small portion might result in freight trips as follows.
    - Mining is a small component of the economy at 0.3% and experienced a significant job contraction from 121 jobs in 2010 to 71 jobs in 2020, a decline of 41.32%. Mining in Mendocino County is almost exclusively related to aggregate extraction, and as noted in Appendix A, rail freight is not price competitive with truck delivery prices for aggregate.
    - Forestry and Fishing experienced a slight increase of 170 jobs (+12.36%) in the ten-year timeframe. Fishing products are not a suitable product for rail transport due to perishability. Forestry is a difficult item to transport via rail because timber harvests are geographically dispersed and transport by rail would require a truck, rail and truck transfer scenario with very large logs for an average short-haul 40-mile transport distance.

[6] https://www.dnb.com/business-directory/company-information.manufacturing.us.california.cloverdale.html

- Manufacturing is a relatively small sector of the Mendocino Coast economy. It represents just 6% of all jobs and experienced a nominal growth or 1.86% during this timeframe, most of the manufacturing jobs are located along the Highway 101 corridor in and around Ukiah.
- Housing production averages 148 units/year or 0.36% annual growth rate, which represents a very slow increase in housing units and a small market for building materials freight.

Major Mendocino County Employers. Of the top 25 employers in Mendocino County, five are healthcare providers, eight are governmental agencies, two are schools, two are grocery stores, and only two qualify as manufacturing companies with significant freight needs.

- Fetzer Vineyards located in Hopland, is a large Winery that is not interested in shipping by rail as grapes must be transported by truck immediately from the vines to the processing facility and rail does not have the flexibility to do this. Further they expressed concern about damage to finished wines due to transport delays and bumpiness.
- Mendocino Redwood Co LLC, located in Calpella is a sawmill for which rail would not work because the forest of Mendocino County is distributed over a vast territory and rail cannot service that territory (see Appendix B).

Contrary to claims repeatedly made by the Mendocino Railway in various unsuccessful DOT Build grant applications, there is little to no actual demand for rail freight between Fort Bragg and Willits (Appendix A).

- North Coast Brewery has no interest in rail freight for either the delivery of hops or the transport of finished beer, due to high transportation costs, potential product damage, and the unreliability of and time for transport.
- If shipping rates were competitive, Flow Beds could ship three railcars of latex per year, but only if Mendocino Railway was connected to the interstate rail network. Due to an embargo imposed by the federal government as well as a tunnel collapse south of Willits, it is not.
- Timber is not a good customer for rail transport. It is easier, more efficient, and less expensive to continue transporting timber via truck from dispersed harvest areas to area lumber mills.
- All solid waste generated on the coast would fit in 1 railcar/day. However, rail freight is not a good fit because State law requires removal of all solid waste from a transfer station within 24 hours and the Waste Operator has a company fleet and a transfer station which is a half mile from the Railhead, making utilization of rail unfeasible.

MR consistently overestimates interest in short haul rail shipments in their TOT Build Applications (see Appendix A). These over-estimates are fabrications.

4. Freight Rates

Truck Freight Rates & Supply

Trucking is the only existing transportation option between Willits and Cloverdale. Trucking is truly a commodity transportation service with very little difference in rates between operators in a given market area.

- Highway 101, the primary north to south highway through Mendocino County (see figure 3) is a two-lane highway which easily accommodates 53-ft trucks which can carry up to 54,000 lbs. (27 tons).
- Highway 20, which runs east to west from Sacramento to Fort Bragg, is a winding two-lane highway, which due to curves can only accommodate 48' tractor trailers. Forty-eight-foot tractor trailers are permitted to carry up to 44,000 lbs. (22 tons) on this route.

Table 4, below, illustrates transportation costs per ton for truck freight between Cloverdale, Willits and Fort Bragg. The average truck freight delivery cost is $29.14/ton between Cloverdale and Willits and $38.35/ton between Willits and Fort Bragg. The cost from Cloverdale to Fort Bragg is also $38.35/ton, because most trucking companies come from Santa Rosa and cover the same distance for both trips. Table 4 also shows that a railcar of 80 tons must charge less than $3,067/railcar to be price competitive with truck freight from Cloverdale to Fort Bragg.

Table 4: Trucking Costs/Ton, Cloverdale to Fort Bragg

Trucking Costs Ton Cloverdale to Willits to Fort Bragg						
	Average Trucking Rate/Mile	One Way Haul Cost	Haul Weight (lbs.)	Haul Weight (Tons)/ Truck load	Truck Haul Price per Ton	Truck Haul Price per 80 Tons (1 Railcar Equivalent)
Cloverdale to Willits -51.2 miles						
Van Freight Rates	$ 14.57	$ 746.00	54,000	27	$ 27.63	$ 2,210.37
Refer Freight rates	$ 18.16	$ 930.00	54,000	27	$ 34.44	$ 2,755.56
Flat bed rates	$ 13.36	$ 684.00	54,000	27	$ 25.33	$ 2,026.67
Average	$ 15.36	$ 786.67			$ 29.14	$ 2,330.86
Willits to Fort Bragg -34.9 miles						
Van Freight Rates	$ 21.78	$ 760.00	44,000	22	$ 34.55	$ 2,763.64
Refer Freight rates	$ 27.22	$ 950.00	44,000	22	$ 43.18	$ 3,454.55
Flat bed rates	$ 23.52	$ 821.00	44,000	22	$ 37.32	$ 2,985.45
Average	$ 24.17	$ 843.67			$ 38.35	$ 3,067.88
Cloverdale to Fort Bragg - 86.1 miles						
Van Freight Rates	$ 8.83	$ 760.00	44,000	22	$ 34.55	$ 2,763.64
Refer Freight rates	$ 11.03	$ 950.00	44,000	22	$ 43.18	$ 3,454.55
Flat bed rates	$ 9.54	$ 821.00	44,000	22	$ 37.32	$ 2,985.45
Average	$ 9.80	$ 843.67			$ 38.35	$ 3,067.88

Source: MJC, 2024; Google, 2024; TruckStop.com Rate Insight Tool; 2024

Truck Freight Providers

Table 5 identifies 21 trucking companies located between Cloverdale and Fort Bragg with an estimated total fleet of 207 trucks.

Table 5: Area Trucking Companies, by Location & Size

Area Trucking Companies by Location & Size		
Name of Company	**Primary Products Hauled**	**Estimated Fleet Size**
Cloverdale		
All Coast Forest Products	Logs, Poles, Beams, Lumber Building Materials	5
Kinsey Trucking	Building Materials	1
Regie Construction Inc.	General Freight Building Materials Construction	4
Garibaldi & Sons LLC	General Freight	7
Denbest Trucking Company	General Freight	2
Willits, Ukiah & Fort Bragg Trucking Companies		
Shuster's Transportation Inc. Willits Ca	General Freight	5
Jim Maciel Trucking	General Freight	1
KVS Trucking Inc, Ukiah CA	General Freight	1
Sterling Transport, Albion Ca	General Freight	1
Mendocino Coast Express	General Freight	5
Santa Rosa		
Atech Logistics and Distribution	General Freight	50
Doss Flatbed Freight	General Freight	10
Strategic Integrated Transportation	General Freight Broker	10
Colton Transport	Flat Deck, LTL and FTL	5
R & S Transport	General Freight	5
Valdivia Trucking	Construction Freight	25
Moga Logistics	Construction Freight	5
Doss Logistics	Flat Deck, LTL and FTL	25
Hansen Transport	Agricultural, Vineyard	10
Butch Cameron Trucking	Bulk Wine and Case Goods	5
Marathon Express	Same Day Freight	25
Total		207

Sources: MJC, 2024; Google, 2024; Clutch.co, 2024

A railcar of 80 tons must charge less than $38.25/ton to be price competitive with truck freight from Cloverdale to Fort Bragg.

Rail Freight Rates & Supply

Currently there is no freight service in Mendocino County. Mendocino Railway (aka the Skunk Train) provides pricing for freight service on their website, but they do not provide rail freight service between Fort Bragg and Willits due to a tunnel collapse and tracks unrated for freight. This means that the advertised freight price is hypothetical. It is advertised as $1,440 per car for a one-way trip from Willits to Fort Bragg (see Figure 1). Additionally, Mendocino Railway charges $400/railcar/day and an $800 labor fee. Together this hypothetical rate structure amounts to $2,640/railcar which is less than existing trucking rates. However, it would have been about the same rate in 2022 when this rate sheet was published.

Figure 1: Mendocino Railway Freight Rates. Source: www.Skunktrain.com

MENDOCINO RAILWAY
CWR 9500

SECTION 2
Switching charges
(Charges in dollars and cents per car, except as otherwise noted

LINEHAUL CHARGES (Rule 11)

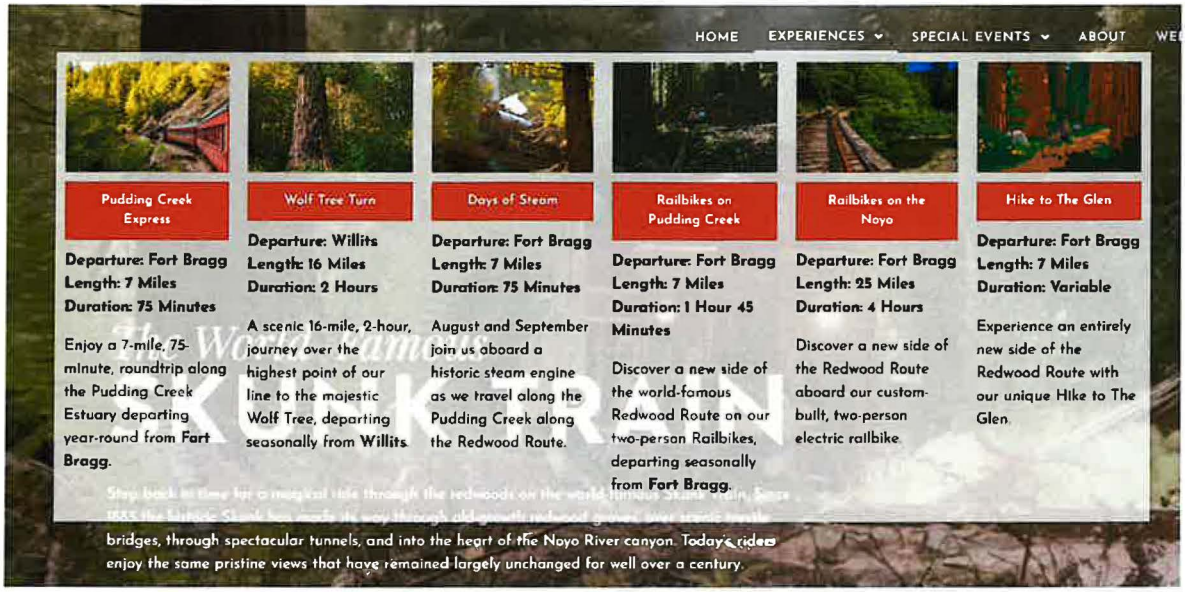
ITEM 2000			
BETWEEN	AND	COMMODITY	CHARGE
Willits CA.	Northspur, CA (Willits Subdivision)	All Other, FAK (Note 1)	$1080.00 per car
Willits CA.	Fort Bragg, CA (Fort Bragg Subdivision)	All Other, FAK (Note 1)	$1440.00 per car
ITEM 2010			
BETWEEN	AND	COMMODITY	CHARGE
Willits CA.	Northspur, CA (Willits Subdivision)	Empty rail cars for dismantling or furtherance to off rail points (Note 1)	$480.00 per car
Willits CA.	Fort Bragg, CA (Fort Bragg Subdivision)	Empty rail cars for dismantling or furtherance to off rail points (Note 1)	$720.00 per car
ITEM 2020			
BETWEEN	AND	COMMODITY	CHARGE
Willits CA.	Northspur, CA (Willits Subdivision)	Hazardous Materials, STCC 28,29,48,49	$1320.00 per car
Willits CA.	Fort Bragg, CA (Fort Bragg Subdivision)	Hazardous Materials, STCC 28,29,48,49	$1680.00 per car

One could speculate that Mendocino Railway either: 1) provides "rail" freight via a subcontract with a trucking company and/or 2) provides this website information to mislead regulators and State and Federal agencies that provide low interest loans and grants for freight rail reconstruction. Indeed, Mendocino Railways has submitted three unsuccessful Build grants to DOT for tens of millions in grant funding to reconstruct their collapsed tunnel and rail line, while there is no evidence that they actually ship freight for anything other than making repairs to its line.

The Skunk Train currently only provides tourist excursion services (no commuter service or freight). The tourist excursion from Fort Bragg extends roughly 3 miles up the tracks where it is stopped by a tunnel collapse. The tourist excursion from Willits extends 7 miles up the tracks to "wolf tree" (Crowley) before it returns to Willits. Crowley is no longer a town, and there are no other towns along either excursion route. See website ad below illustrating current tourism excursions for the Skunk train. The tourism train (Pudding Creek Express) is a slow

ride, traveling roughly 7 miles round trip in 75 minutes. They also provide rail bikes for longer excursions past the collapsed tunnel.

Figure 2: Skunk Train Tourism Services



Source: https://www.Skunktrain.com/

The graph below illustrates Skunk Train recreational ridership, which Mendocino Railway used in unsuccessful applications for government grants for freight rail improvements.

Figure 3: Skunk Train Ridership 2002-2020

Source: Skunk Train 2020 Build Grant

Point to Point Service

Trucks currently provide point to point freight service. The railroad would not. This is a significant competitive disadvantage for rail service as it adds transport time, logistics and transfers to any trip, which are especially burdensome for short haul trips in this market area.

Truck Freight. Figure 4, below, illustrates the state highway system that is currently available for use by freight trucks, along with a myriad number of secondary roads (not shown) which connect the entire County for point-to-point freight delivery by truck. This allows for easy and fast service without transfers and associated wait time and logistics.

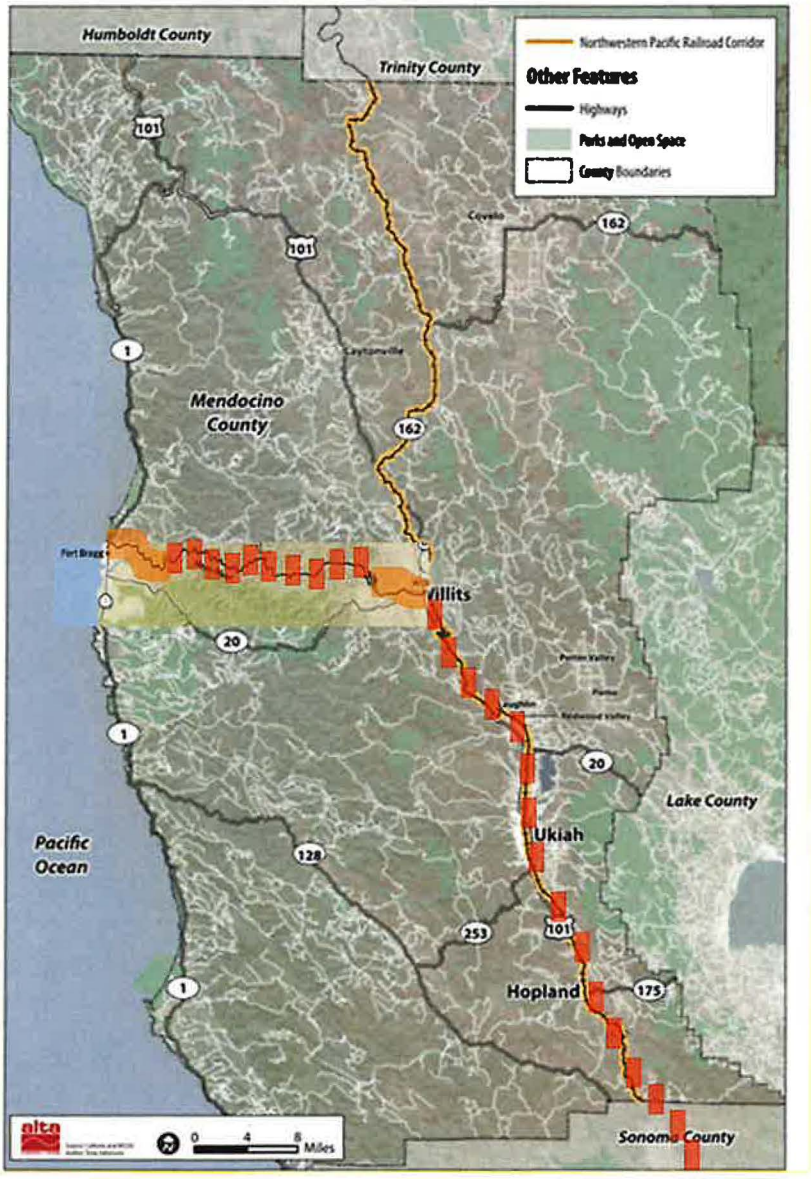
Figure 3: Primary Highways in Mendocino County

Rail Freight. By contrast Figure 2 illustrates the proposed rail freight line connection between Cloverdale in Northern Sonoma County and Willits and then out to the coast. Most of this rail line would need to be significantly rehabilitated in order to provide service. This rail line route does not provide direct connectivity to most of Mendocino County and any rail customers would have to transport their goods to the rail terminal by truck.

Figure 4: Rail Lines in Mendocino County

Rail line requires substantial rehabilitation, currently non-operational.

Rail Line used for recreational excursions must be upgraded for freight.



5. Feasibility Analysis

METHODOLOGY

Cost of Capital

To understand any railroad capital project feasibility analysis, first one must understand what the STB's cost of capital figure is and how it is used to determine feasibility.

> "The STB's cost-of-capital figure (10.58%) represents the Board's estimate of the average rate of return needed to persuade investors to provide capital to the freight rail industry. The Board uses this figure in a variety of regulatory proceedings, including railroad revenue adequacy determinations, rate reasonableness cases, feeder-line applications, rail line abandonments, trackage rights cases, and rail merger reviews. The annual cost of capital figure is also used as an input in the Uniform Railroad Costing System. The cost-of-capital finding may also be used in other regulatory proceedings, including (but not limited to) those involving the prescription of maximum reasonable rate levels, the proposed abandonment of rail lines, and the setting of compensation for use of another carrier's lines."[7]

In other words, the Cost of Capital is used to define the anticipated rate of return for a private sector investor who might invest in a railroad enterprise/capital improvement. It does not include operating costs, maintenance cost or interest costs for a loan, which also must be considered to determine feasibility.

The feasibility analysis includes the following:

1. **Calculation of all Costs**
   - The annual dollar amount return that an investor would expect to receive from a capital investment, which is calculated by multiplying the investment amount by the cost of capital to determine the annual "profit" that an investor would anticipate earning from such an investment.
   - Annual operating costs;
   - Annual maintenance and repair costs; and
   - Annual interest costs.
2. **Calculation of Break-Even Pricing given Costs and Demand**
   - Given all project costs, and estimate demand for rail traffic, the breakeven point for cost/railcar and cost/ton is calculated to determine if the rail line can offer competitive pricing compared with truck transportation.
3. **Calculation of Required Demand Given Costs and Competitive Truck Pricing**
   - Given all project costs and competitive truck pricing, the analysis also looks at how much demand would be required to break even if the rail freight service was priced at the same rate/ton as truck fright.

[7] See the Surface Transportation Board's Economic Data Website under Data Issued in Regulatory Proceedings: cost of Capital Tab. https://www.stb.gov/reports-data/economic-data/

The following feasibility analysis includes these three steps for two different capitalization scenarios:

- **Scenario 1: Private investor financing funds all improvements.**
- **Scenario 2: A mix of private investor financing and a $31 million RRIF loan at 4.29% for a 35-year term. Mendocino Railway has applied for a $31 million loan, which has been processed but not finalized pending completion of environmental review. But this analysis is utilized to determine the potential feasibility, if the loan is awarded.**

SCENARIO 1 FEASIBILITY ANALYSIS – PRIVATE INVESTORS ONLY

This feasibility analysis (Table 6) calculates the minimum cost/ton that Mendocino Railway would need to charge to cover all annual cost given likely demand (Table 2), which include:

- The rehabilitation cost for the Willits to Cloverdale line annualized at the 2022 Surface Transportation Board capitalization 10.58% (e.g. $56 million in rehabilitation costs times 10.58% is $5.98 million in annual capitalization costs).
- The rehabilitation cost for the Willits to Fort Bragg Skunk Train line, which is $31 million in rehabilitation costs times 10.58% is $3.27 million in annual capitalization costs.
- Annual operating costs for both legs of the railroad which are estimated at a little over $5 million for the Cloverdale to Willits rail line and $2.4 million for the for the Fort Bragg to Willits rail line.

The annual capitalization for each rail line is then divided by the maximum annual rail car demand (Table 2) to calculate the minimum breakeven price/railcar and price/ton. Which as illustrated in the table is:

- $36,618 per railcar or $458/ton from Cloverdale to Willits:
- $48,626 per rail car or $608/ton from Willits to Fort Bragg; and
- $85,244 per rail car or $1,066/ton from Cloverdale to Fort Bragg.

Table 6: Rail Freight Cost/Ton and Cost/Railcar - Cloverdale to Fort Bragg

Rail Transport Cost Per Ton including Capitalization and Operating Costs (Cloverdale to Willits to Fort Bragg)	Rehabilitation Cost (1 & 2)	Capitalization Rate	Annual Capitalization	Annual Rail Car Demand (3)	Annual Cost/ Rail Car	Cost Per Ton
Total Acquisition and Rehabilitation Costs						
Cloverdale to Willits Acquisition	unknown	10.58%	unknown	303	unknown	Unknown
Cloverdale to Willits Rail Line Rehabilitation Cost (1)	$ 56,561,000	10.58%	$ 5,984,154	303	$ 19,774	$ 247
Willits to Fort Bragg Rail Line Rehabilitation Costs (2)	$ 30,982,000	10.58%	$ 3,277,896	118	$ 27,862	$ 348
Total Rehabilitation Costs	**$ 87,543,000**		**$ 9,262,049**		**$ 47,636**	**$ 595**
Annual Operating & Maintenance Costs						
Cloverdale to Willits (1 & 2)			$ 5,097,457	303	$ 16,844	$ 211
Willits to Fort Bragg (2)			$ 2,442,934	118	$ 20,765	$ 260
Total Annual Operating Costs			$ 7,540,391		**$ 37,609**	
Total Annual Operating Costs and Annual Capitalization Cloverdale to Willits			$ 11,081,611	303	$ 36,618	$ 458
Total Annual Operating Costs and Annual Capitalization Willits to Fort Bragg			$ 5,720,830	118	**$ 48,626**	**$ 608**
Total Annual Operating Costs and Annual Capitalization			$ 16,802,440		**$ 85,244**	**$ 1,066**

Source: 1) Dave Anderson, *Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5*, American Rail Engineers, 2023, Page 33

2) D&A Enterprises LLC, *Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale*, Dec 27, 2023, Page 5

3) MJC, 2023; US Census; US DOT; https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/

To be competitive with trucking prices, a railcar from Cloverdale to Willits would need to cost less than $2,220 for an 80-ton railcar excluding material loading and unloading costs (see table 4). Clearly, rail freight is not competitive at a price of $85,244/railcar, which is 2,700% more expensive than trucking.

The rail line extension is infeasible based on cost alone once capitalization and operating costs are included. This is the standard methodology to evaluate all private sector development projects. Rail freight is 2,700% more expensive than trucking.

Additionally, this analysis does not include the cost of property acquisition for the line from Willits to Cloverdale which would require an additional $10-$25 million.

Scenario 1 - Breakeven Demand Analysis

Table 7 below calculates the number of railcars Mendocino Railway would need to haul per year at the current trucking rate to break even. Mendocino Railway would need to move more than 4,700 freight cars of demand per year on the Cloverdale to Willits line to capitalize the railway sufficiently at a trucking price competitive rate of $2,331/railcar (annual capitalization/competitive trucking railcar rate = number of required railcars per

year, e.g. $11,081,611/$2,331=4,754 railcars). Likewise, they would need to run 1,865 railcars on the Fort Bragg to Willits line to break even. Clearly, there is insufficient demand for this volume of freight, given that the best-case scenario results in an estimate of 303 railcars per year (see Table 2). There is insufficient demand, even under Mendocino Railway's unprovable claim of 1,028 Railcars/year (Build 2018 Grant Application) or 1,528 railcars/year (2020 Build Grant Application) to make this project economically feasible.

Table 7: Required Annual Railcar Volume to Compete with Truck Freight Costs

Required Annual Railcar Volume for Competitive Freight Cost			
Cloverdale to Willits	**Amount**	**Willits to Fort Bragg**	**Amount**
Annualized Capitalization of Cloverdale to Willits Rail Line Rehabilitation (1)	$ 5,984,154	Annualized Capitalization of Willits to Fort Bragg Rail line Rehabilitation (2)	$ 3,277,896
Annual Operating Costs (1)	$ 5,097,457	Annual Operating Costs (2)	$2,442,934
Total	$ 11,081,611	Total	$5,720,830
Competitive Trucking Rate/Rail Car from Cloverdale to Willits (see Table 4 of this report)	$ 2,331	Competitive Trucking Rate/Rail Car from Willits to Fort Bragg (see Table 4 of this report)	$ 3,068
Annual Rail Cars to Break Even	**4,754**	Annual Rail Cars to Break Even	**1,865**

Source: 1) Dave Anderson, *Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5*, American Rail Engineers, 2023, Page 33

2) D&A Enterprises LLC, *Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale*, Dec 27, 2023, Page 5

3) MJC, 2023; US Census; US DOT; https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/

SCENARIO 2 FEASIBILITY ANALYSIS – INVESTORS PLUS RRIF LOAN

This analysis (Table 8) calculates the minimum cost/ton that Mendocino Railway would need to charge to cover all annual cost given likely demand (Table 2) and the award of a $31 million low interest federal loan.

The annual cost for each rail segment is divided by the maximum annual rail car demand (Table 2) to calculate the minimum breakeven price/railcar and price/ton. Which as illustrated in the table is:

- $36,618 per railcar or $458/ton from Cloverdale to Willits,
- $35,345 per railcar or $441/ton from Willits to Fort Bragg, and
- $57,450 per rai car or $899/ton from Cloverdale to Fort Bragg.

Table 8 Rail Freight Cost/Ton and Cost/Railcar with $31 Million Loan - Cloverdale to Fort Bragg

Rail Transport Cost Per Ton including Capitalization, Operating and Loan Costs (Cloverdale to Willits to Fort Bragg)	Rehabilitation Cost (1 & 2)	Capitalization Rate	Annual Capitalization	Annual Rail Car Demand (3)	Annual Cost/ Rail Car	Cost Per Ton
Total Acquisition and Rehabilitation Costs						
Cloverdale to Willits Acquisition	unknown	10.58%	unknown	303	unknown	Unknown
Cloverdale to Willits Rail Line Rehabilitation Cost (1)	$ 56,561,000	10.58%	$ 5,984,154	303	$ 19,774	$ 247
Willits to Fort Bragg Rail Line Rehabilitation Costs (2)	$ 30,982,000	0.00%	$ -	118	$ -	$ -
Total Rehabilitation Costs	**$ 87,543,000**		**$ 5,984,154**		**$ 19,774**	**$ 247**
Annual Operating & Maintenance Costs			**Annual Cost**			
Cloverdale to Willits (1 & 2)			$ 5,097,457	303	$ 16,844	$ 211
Willits to Fort Bragg (2)			$ 2,442,934	118	$ 20,765	$ 260
RRIF Loan $31,000,000 @4.29% for 35 years to Finance Willits to Fort Bragg Rail Line Rehabilitation Costs	$ 31,000,000		$ 1,712,450	118	$ 14,512	$ 181
Total Annual Operating Costs			$ 7,540,391		**$ 37,609**	**$ 652**
Total Annual Operating Costs and Annual Capitalization Cloverdale to Willits (rows 2 & 5)			$ 11,081,611	303	$ 36,618	$ 458
Total Annual Operating Costs Willits to Fort Bragg (Rows 6,& 7)			$ 4,155,384	118	**$ 35,277**	**$ 441**
Total Annual Operating Costs and Annual Capitalization			$ 13,524,545		**$ 57,383**	**$ 899**

Source: 1) Dave Anderson, *Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5*, American Rail Engineers, 2023, Page 33

2) D&A Enterprises LLC, *Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale*, Dec 27, 2023, Page 5

3) MJC, 2023; US Census; US DOT; https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/

To be competitive with trucking prices, a railcar from Cloverdale to Willits would need to cost less than $2,220 for an 80-ton railcar excluding material loading and unloading costs (see table 4). Even with the award of a $31 million low interest federal loan, rail freight is still not competitive at a price of $57,450/railcar or $900/ton, which is 2,346% more expensive than trucking.

The rail line extension is again infeasible, even if a significant portion of the rail line is financed with a $31 million low interest federal loan. Even with the loan, rail freight is 2,346% more expensive than trucking.

Again, this analysis does not include the cost of property acquisition for the line from Willits to Cloverdale, which would be a significant additional expense.

Scenario 2 - Breakeven Demand Analysis

Table 9 provides an equivalent Breakeven Damen Analysis as Table 7, but it assumes that Mendocino Railway does receive a $31 million low interest loan and does not use private capital to finance the rehabilitation of the Fort Bragg to Willits line. Mendocino Railway would still need to move more than 4,700 freight cars/year on the Cloverdale to Willits line to capitalize the railway sufficiently at a trucking price competitive rate of $2,331/railcar. Even with the low interest loan they would need to run 1,354 railcars on the Fort Bragg to Willits line to break even. Clearly there is insufficient demand for this volume of freight, given that the best case scenario results in an estimate of 303 railcars per year (see Table 2).

Table 9: Required Annual Railcar Volume to Compete with Truck Freight Costs, with possible $31 million loan.

Required Annual Railcar Volume for Competitive Freight Cost			
Cloverdale to Willits	**Amount**	**Willits to Fort Bragg**	**Amount**
Annualized Capitalization of Cloverdale to Willits Rail Line Rehabilitation (1)	$ 5,984,154	RRIF Loan $31,000,000 @4.29% for 35 years to Finance Willits to Fort Bragg Rail Line Rehabilitation Costs	$ 1,712,450
Annual Operating Costs (1)	$ 5,097,457	Annual Operating Costs (2)	$2,442,934
Total	$ 11,081,611	Total	$4,155,384
Competitive Trucking Rate/Rail Car from Cloverdale to Willits (see Table 4 of this report)	$ 2,331	Competitive Trucking Rate/Rail Car from Willits to Fort Bragg (see Table 4 of this report)	$ 3,067.88
Annual Rail Cars to Break Even	**4,754**	Annual Rail Cars to Break Even	**1,354**

Source: 1) Dave Anderson, *Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5*, American Rail Engineers, 2023, Page 33

2) D&A Enterprises LLC, *Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale*, Dec 27, 2023, Page 5

3) MJC, 2023; US Census; US DOT; https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/

6. National Truck vs Train Trends

Appendix B of this report, which examines general transportation trends Nationwide, finds that the results of this feasibility analysis also hold true throughout the country, as follows:

- Nationwide truck shipments accounts for $12,578 billion dollars of shipment value while rail ships $837 billion worth of goods per year. Indeed 69% of the value of all freight shipments is by truck, while 5% of the value of all shipments is by rail nationwide.
- Trucks also ship more by weight. In 2016 the total weight of truck shipments was 11,619 million tons, while all goods shipped by rail weighed in at 1,835 million tons. By weight, trucks ship 66% of all goods, while railroads ship 10% of all goods.
- Rail is not even competitive with truck freight in "ton miles traveled." Trucks move 40% of all freight by ton miles traveled (2,023 billion) while rail moves 28% (1,527 billion) of all freight by ton miles traveled.
- Rail as a freight mode is in decline. Overall rail carloads declined from 1.5 million in 2000 to less than a million in 2022. Truck freight on the other hand increased by 50% from 2002 through 2022.

- Finally, there is no rail freight activity on the Northern California coast or 101 corridor and very little rail freight activity through the Central Valley. Most rail freight activity is from major shipping ports on the west coast to population centers in the Midwest and east coast.
- Nationwide trends indicate that rail service is not competitive with truck transport, it is prohibitive for short haul distances such as Cloverdale to Willits (51 miles) and Willits to Fort Bragg (40 miles).

7. Mendocino Railway: Why ask for an OFA if Freight is not Viable?

Mendocino Railway faces unresolvable hurdles in their efforts to re-establish freight service between Cloverdale, Ukiah, Willits and Fort Bragg, including:

1. **Much Higher Cost.** Truck freight is **three orders of magnitude (2700%) less expensive** than the lowest rates that Mendocino Railway can possibly charge to break even.
2. **Discontinuity.** The railroad tracks are currently discontinuous (due to tunnel failures) and therefore it cannot provide any freight services. Even if collapsed tunnels and the railroad tracks are upgraded to handle freight, the rail line end is discontinuous with the rest of the intercontinental rail system. Even if these hurdles are overcome, there are significant upgrades necessary to reach American Canyon (actual interconnection with the national rail network). The line north of Windsor is embargoed. The line from Cloverdale to American Canyon is owned by a commuter rail service (SMART). There is no evidence of sufficient rail traffic to justify the substantial rehabilitation costs necessary to restore the line south of Willits. And even if the line could be physically restored, the number of operators with whom interchange must be made to reach the national rail system is non-trivial and would make for even higher operating costs and freight delivery costs.
3. **Longer Transport Time.** If the rail line is renovated to a condition that supports freight transport, transport time across the 40-mile distance from Fort Bragg to Willits would be approximately six hours as the train speed would be limited to eight miles/hour. Trucks take 45 minutes to an hour to traverse this same distance, making rail freight haul time inconvenient for all potential customers and uncompetitive. Train speed from Willits to Cloverdale would result in a 4-hour trip for that leg of the journey. The result is a ten-hour trip by rail from Cloverdale to Fort Bragg versus a 1 hour and fifty-minute trip by truck.
4. **More Transfers & Material Handling.** Commodities shipped via rail will have to be shipped via truck to the rail line, transferred to the rail line and upon arrival, transferred again to a truck for transportation to the final destination. While this is typical for most rail transport, the very short distance of this line (86 miles) makes the extra material handling especially prohibitive.
5. **Long-Term Reliability Concerns.**
   a. The Skunk Train is a very old railroad, built between 1885 and 1911, with a track that is technically challenging. The track extends up the Noyo River headwall with a 3.3 percent grade and has five 33-degree horseshoe curves and climbs 932 feet (284 m) in its initial railway distance of 6.5 miles (which is only 1.5 miles as the crow flies). The very steep mountains coupled with significant track curves, means that the train must travel very slowly.

b. The tracks cross 30 single bridges and trestles and pass through two deep tunnels (one of which is closed due to tunnel collapses in 2013 and 2016). Mendocino Railway has attempted to fix the tunnel with no success. Mendocino Railway has repeatedly sought and been denied government subsidies to fix the tunnel and the tracks.

6. **Scheduling Conflict.** The Skunk Train business model is currently entirely focused on short tourist excursions. Tourist excursions run daily from both Fort Bragg and Willits through the summer months and on the weekends in the off season. It is likely that the Skunk Train would need to run freight trips at night to avoid track conflicts with the tourist trains. However, night train trips are more likely to face difficulties and would further delay transport and result in night-time loading and unloading. All of these issues add to unreliability over the short term.
7. **Historic Freight Operations and Current Legal Limitations.** From 1921 into the late 1980s, the railroad's freight consisted almost entirely of raw and finished redwood lumber. By the 1980s Georgia-Pacific started to shift lumber shipments to the more flexible highway truck system. By the 1990s, Skunk Train lumber shipments numbered fewer than 500 railcars/year and tourist entertainment became the line's main source of revenue. All freight service was discontinued in 2001, and the Federal Railroad Administration's emergency order in 1998 effectively cut the rail line off from the national rail network.
8. **Charm.** The railroad offers historic charm; however, this historic charm is mostly a selling point for tourism operations and would not be important to freight operations.

8. Conclusion

Due to the short haul distances and competition from trucks, there is insufficient actual demand for rail freight transport to fund the significant capital investment required to improve the rail line segments necessary for the rail freight, let alone maintain and operate them. The rail lines, if rehabilitated for freight, would not be able to recover their capitalization costs with earned income. They would presumably go bankrupt, as California Western did before its assets were acquired by Mendocino Railway in bankruptcy, and as Eureka Southern did before its assets were acquired by NCRA in bankruptcy. Mendocino Railway has three more likely economic rationales for filing trying to pass as a viable freight railway.

1. **Unregulated Land Development.** The Skunk Train (Mendocino Railway) is currently engaged in a lawsuit with the City of Fort Bragg to determine if the Skunk Train is exempt from local land use regulations due to the Interstate Commerce Act. The Skunk Train has recently acquired 300 acres of coastal property, located within the City of Fort Bragg, from the Georgia-Pacific corporation. This site is vacant and awaiting rezoning and redevelopment. The Skunk Train owners have asserted their exemption from local and State regulatory control based on federal preemption of local regulation of railroads. However, local and State authorities (California Coastal Commission) regard Mendocino Railway as a tourist excursion operation whose plans for residential and mixed-use development are regulated by local government. The Skunk Train may be making its freight claims to buttress its claim of exemption from local and State land use regulations. The eventual redevelopment of these 300 acres of prime coastal real estate has significant potential economic value, especially if the developer can evade the local regulatory process, the State regulatory process (the entire parcel is in the Coastal

Zone) and the significant environmental cleanup mandated for the Mill Site by the Department of Toxics and Substance Control (DTSC).

2. **Access to Federal Funding.** The Skunk Train has been seeking funds to repair its tourist train tunnel and tracks for many years. Mendocino Railway has repeatedly submitted grant and loan applications with highly inflated potential freight business to get funding to fix a line which is currently used only for tourist excursions and will continue to be used only for tourist excursions given the feasibility analysis in this report. There is no Federal funding source for rail line improvements for tourist trains. By inflating its potential freight business, the Skunk Train makes an economic argument for Federal funding to repair a tourist excursion line. Claims of the freight operations may bolster Mendocino Railways efforts to portray itself as a bona fide freight carrier rather than a rail bike and excursion train operation. Mendocino and an affiliated company **are currently under consideration** for a $31.3 million low-interest loan from the U.S. Department of Transportation.
3. **Self-Dealing.** In past applications for government assistance, Skunk Train proposed using its own or affiliated equipment and work force to do work. This may allow Mendocino Railway to profit from managing and undertaking the construction itself.
4. **Eminent Domain Powers to Acquire Land.** The Skunk Train has used the threat of eminent domain to purchase, at a below market price of $1 million, a 300+ acre ocean front property in the City of Fort Bragg and a 16 acre site in Willits.

In conclusion, the Skunk Train benefits from the fiction that they are a freight railroad on many fronts:

1) It may be viewed as support for their federal preemption of state and local regulation for their real estate development activities in Fort Bragg and Willits;
2) It may support their efforts to access Federal funding which would otherwise not be available to fix the collapsed tunnel and repair the old rail line for their tourism excursion train; and
3) It may provide opportunities to profit from the rail repair project itself.

Appendix A: Demand For Rail Freight Between Fort Bragg and Willits

This section provides an overview of potential freight demand for the transport of raw materials and products which are currently produced or consumed on the Coast. It explores the following specific commodities: aggregates, hops, beer, latex, solid waste, and timber. All these commodities have been suggested by Mendocino Railway as viable freight customers in past grant applications to the Federal Government or in conversation with Fort Bragg City Staff. In a 2018 Build Application, Mendocino Railway identified demand for 514 rail car service/year for a $16,893,231 project that included a BUILD grant request for $8,510,222 (Table 8). This grant application was denied. Mendocino Railway prepared another grant application to BUILD in 2019 for a $24,849,950 project which was also denied (Table 9). And Mendocino Railway prepared another grant application to Build in 2020 for $18,779,790, which was also denied. In each of these applications Mendocino Railway makes various claims about the amount of potential freight business that would open up if the railroad could operate a freight line, for example: "Various industries are eagerly awaiting the reopening of MR's rail line for freight services, including Flowbeds, North Coast Brewing Company ("NCBC"), Willits Redwood Company, Geo Aggregates, Mendocino Land Trust, Lyme Redwood Forest Company, ER Energy (propane), the City for transportation of water and municipal solid waste ("MSW")." The specific tons of freight claimed in these BUILD applications is noted in Tables 8 and 9 below.

Table 10: Mendocino Railway 2018 Build Application: Claimed Freight Amount

Commodity	Truck Loads	Railcars	Tons
Hops	450	225	22,500
Beer	550	275	27,500
Latex	28	14	1,400
Total	**1,028**	**514**	**51,400**

Source: Mendocino Railway Build Grant 2018

Table 11: Mendocino Railway 2020 Build Application: Claimed Freight Amount

Commodity	Truck Loads	Railcars	Tons
Hops	450	225	22,500
Beer	550	275	27,500
Latex	28	14	1,400
Solid Waste	5,000	2,500	250,000
Total	**6,028**	**3,014**	**301,400**

Source: Mendocino Railway Build Grant 2020

The author of this feasibility study also submitted these grant applications by the City of Fort Bragg on behalf of Mendocino Railway in 2018 and 2019. At that time, as Community Development Director for the City of Fort Bragg, she also completed an economic impact analysis for the proposed project. However, the estimated freight demand, which formed the basis for that economic analysis was provided by the Harts (Skunk Train owners) and was not independently verified. In the sections that follow, MJC has tried to independently verify these numbers by speaking directly with the business owners and candidly have found the Harts' numbers to

be fabrications and certainly no longer valid. Actual potential rail demand, based on recent interviews with potential shippers is only 300 tons, or 3 railcars, per year as illustrated in Table 10 below.

Table 12: Mendocino Railway Actual Annual Potential Freight Demand

Commodity	Truck Loads	Railcars	Tons
Hops	-	-	-
Beer	-	-	-
Latex	12	3	300
Solid Waste	-	-	-
Total	**12**	**3**	**300**

Source: MJC, 2022: interviews with business owners

There is little market support for freight rail service from Willits to Fort Bragg, amounting to less than 300 tons or 3 railcars per year in Latex products.

Beer & Hops

This study finds no demand for rail freight for beer or hops. Fort Bragg is home to the North Coast Brewing Company, which is located immediately adjacent to the Skunk Train's parking lot.

- In 2018/19 the Mendocino Railway submitted Federal BUILD grant applications which indicated market support for rail transportation of 22,500 tons of hops (225 train cars) and 27,500 tons of beer (275 train cars). However, the North Coast Brewing Company has a maximum brewing capacity of 90,000 barrels of beer per year due to a use permit limitation. Ninety thousand barrels of beer weighs 5,895 tons (58 railcars), significantly less than the railcars submitted in the 2018/19 BUILD grant applications.
- MJC spoke with Brewery CEO, Jennifer Owen, who indicated that train freight is not a viable freight solution for the Brewery. The Brewery requires immediate and highly reliable service for delivery of hops to the brewery and the transportation of finished product to customers. Train freight service is not feasible because it is too expensive, unreliable, unavailable, takes too long and does not provide immediate service for the highly perishable products. The brewery CEO indicated that the Skunk Train would never be a viable option for freight services for these reasons.

Latex

There is very limited demand for Rail Freight for latex and no compatibility at this time. Fort Bragg is home to a relatively small latex bed manufacturer called Flowbeds.

- In 2018/19/20 the Mendocino Railway submitted Federal BUILD grant applications which indicated market support for rail transportation of 1,400 tons of latex (14 train cars) per year. However, the owner of Flow Beds, Dave Turner, told MJC that they use only 6 truckloads of latex per year (3 railcars), again significantly less than the tonnage submitted in the 2018/19 BUILD grant applications.
- The owner is interested in a competitively priced railroad-based shipping for his latex raw materials, only if the Skunk Train becomes connected to the interstate system, as latex is a delicate product and

suffers from multiple handling. Currently he ships one truck load of latex to his manufacturing facility in Fort Bragg from Texas for $4,000 per load every two months. Rail service would have to be comparably priced to be considered. Additionally, they order one truck load every two months, and would have to be able to similarly ship the equivalent amount (a half railcar) via rail every two months for rail service to be a viable solution.

Solid Waste

- As the Mendocino community has a relatively small population it also produces a relatively small amount of Solid Waste. According to C&S Waste Solution, the franchise operator for all solid waste collection in Fort Bragg and the unincorporated areas of Mendocino County, the coast produces two to three truckloads of solid waste a day (about 1 railcar/day or 300 railcars/year). C & S Waste solution is prohibited by its State License from hauling more than 99 tons of solid waste and recyclables per day. This is much less than the amount identified in the Mendocino Railway's 2022 build application, which claimed 2,500 rail cars/year.[8]
- By State law, solid waste must be transferred to a solid waste processing facility within 24 hours of collection. The solid waste processing facility for C&S waste solution is in Ukiah, CA.
- Rail transportation is unrealistic for solid waste because it would require extra handling (two truck trips for each train trip), would take too long (8 hours by train plus handling time for transfers to truck in Ukiah), would not likely provide the State mandated required daily service (insufficient other freight business to justify a daily train trip for one railcar of solid waste) and would be too expensive at over $809/ton.
- Finally, C&S Waste has an existing company fleet which provides this freight transportation.

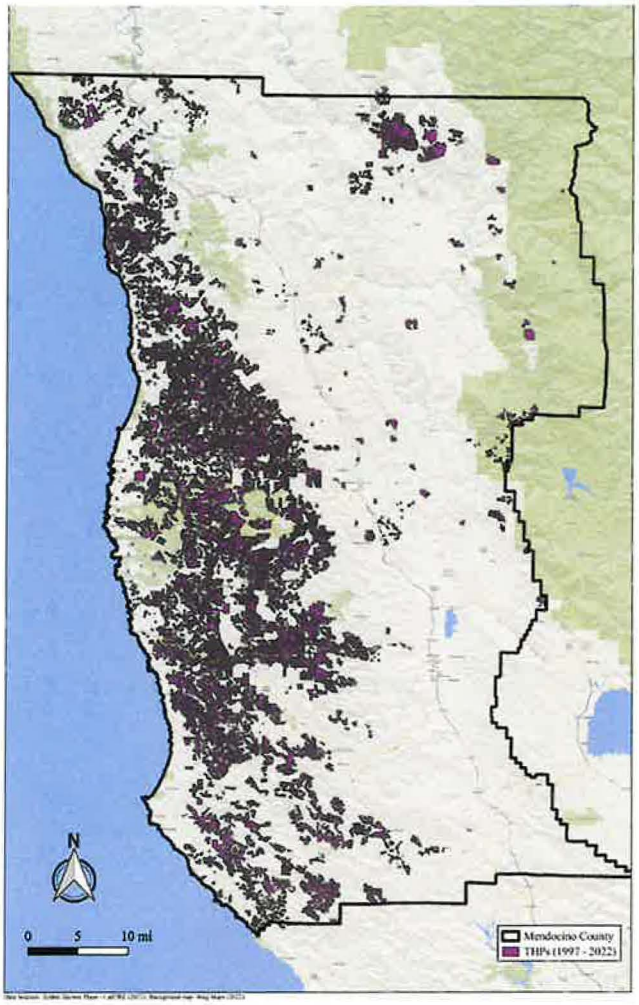
Timber

In the 2020 Build Application, Mendocino Railway made the claim that 3,000 annual truckloads of timber commodities could be diverted from freight trucking to rail freight. However, they provide no evidence for this assertion. More importantly, it is operationally infeasible to ship timber by rail. As noted in Figure 9, which maps all approved timber harvests between 1997 and 2022, the timber harvests covered 422,915 acres and are distributed over a wide geographical range throughout the County, many are very remote to the rail line.

- Felled timber is currently loaded into short haul trucks at the timber harvest site and then brought to a mill where it is offloaded and sawn into trim, beams, decking and fencing. There are no active lumber mills on the Mendocino Coast. Lumber mills are located in Willits (east), Calpella (east), Ukiah (east), and Philo (southeast).
- The current process includes loading timber onto trucks and driving from 1 to 1.5 hours to one of the mills located in the inland part of the County.

[8] 2020 Build Application, footnote 7 on page 2; Michael Rodriguez, City of Fort Bragg California's BUILD 2020 Grant Application to Rebuild Mendocino Railway's ("MR") Tunnel, Rehabilitate and Improve Safety Over Its Rural Rail Line, and Reinvigorate the Economy. Benefit Cost Analysis, Page 6.

Figure 5: Timber Harvests, Mendocino County 1997-2022



- To ship by rail the process would include: 1) load timber into trucks and drive to the rail line; 2) unload the timber from the trucks onto the train; 3) transit on the train for 6-8 hours to a mill; 4) unload timber from the train onto trucks; 5) transit on trucks to a mill.
- Rail freight is impractical for the transport of timber on such short hauls to local mills. Mill Operators will continue to utilize trucks because the travel distance, time and cost are less than by rail.

Aggregates

Aggregates are not a good freight component for Mendocino Railway, due to a variety of issues including: the high cost of rail transport, competitive pricing of truck delivery, and the diverse locations for more than sufficient aggregate supply. It should be noted that as recently as 2020, Mendocino Railway did not consider aggregates a likely freight customer as it was not listed in any BUILD grant applications. Transportation is a major part of the cost of aggregate to the consumer. Aggregate is a low-unit-value, high-bulk-weight commodity, and it must be obtained from nearby sources to minimize both the dollar cost to the aggregate consumer and other environmental and economic costs associated with transportation. This makes the mining of aggregate much more competitive than most other mined commodities. The location, distance to market, and access to major transportation routes greatly influence the economic feasibility of an aggregate mine. Most aggregate in California moves to its final point of use by truck. Trucking is typically charged at an hourly rate and rates vary in different regions of the state. Transportation cost is the principal constraint defining the market area for an aggregate mining operation and the cost of transporting aggregate over long distances can equal or exceed the base cost of the aggregate. The cost of construction aggregate – a low-unit-value, high-bulk-weight commodity – is heavily dependent on the distance it must be hauled from its source.[9]

Cost of Transport Truck Versus Train.

Truck. In Mendocino County the cost to transport aggregate via truck varies from $145 to $175/hour and averages $154/hour (Table 11). Delivery costs include the time to load the truck, drive to the delivery location,

[9] John P. Clinkenbeard and Fred W. Gius, Aggregate Sustainability In California: Fifty-Year Aggregate Demand Compared to Permitted Aggregate Reserves, 2018

unload the truck and return the truck to the gravel supplier's yard. Table 11 illustrates delivery costs to the Coastal market in 2022.

Table 13: Aggregate Price & Delivery Cost, Fort Bragg CA 2022

Mendocino County: Aggregate Suppliers, Price and Delivery Costs To Fort Bragg (2022)										
Company	Products	Service Area	Price/ Ton Drain Rock	Price/ Ton Road Base	Truck Size (tons)	Delivery Cost/ Hour	Delivery Time (minutes)	Delivery Cost to Fort Bragg	Delivery Cost/Ton	Cost/Ton Delivered to Fort Bragg
GeoAggregates	Sand & Gravel, Concrete	Mendocino County	$ 51.00	$ 20.50	24	$ 145.00	30	$ 72.50	$ 3.02	$ 54.02
Kibesillah Rock Co	Sand & Gravel	Coast	$ 25.00	$ 19.50	24	$ 145.00	64	$ 154.67	$ 6.44	$ 31.44
Greenwood Aggregates Inc	Sand & Gravel, Concrete	Mendocino County	$ 26.99	$ 17.99	24	$ 155.00	129	$ 333.25	$ 13.89	$ 40.88
Nor-Cal Recycled Rock & Aggregates	Sand & Gravel, Ready Mixed Concrete	Inland	$ 34.50	$ 20.00	no delivery					
Grist Creek Wylotti	Sand & Gravel	Inland	$ 30.00	$ 20.00	24	$ 155.00	164	$ 423.67	$ 17.65	$ 47.65
Northern Aggregates Inc	Sand & Gravel Concrete Contractors General	Mendocino County	$ 21.50	$ 19.50	24	$ 155.00	128	$ 330.67	$ 13.78	$ 35.28
Granite Construction Co	Sand & Gravel Concrete	Mendocino County	$ 30.00	$ 15.00	24	$ 170.00	180	$ 510.00	$ 21.25	$ 51.25
Average Cost all Sources to Fort Bragg			**$ 31.28**	**$ 18.93**		**$ 154.17**		**$ 304.13**	**$ 12.67**	**$ 43.42**
Average Cost from Inland Sources to Fort Bragg			$ 29.00	$ 18.63	24	$ 160.00	125	$ 333.33	**$ 13.89**	$ 42.89
Average cost from Fort Bragg Sources to Fort Bragg			$ 38.00	$ 20.00	24	$ 145.00	47	$ 113.58	**$ 4.73**	$ 42.73

Source: MJC, 2022: data collected via phone interview with company sales people

- On average, truck transport costs are based on a 125-minute delivery from Willits to Fort Bragg including loading, delivery, unloading and return time. By comparison a local delivery is just 47 minutes from a Fort Bragg supplier, when it includes loading, delivery, unloading and return time.
- Total truck delivery costs for 24 tons of aggregate to Fort Bragg range from a low of $72.50 for GeoAggregates (which is owned by Grist Creek/Wylotti) to a high of $510 for Granite Construction, which is located the furthest from Fort Bragg. However, Northern Aggregates and Kibasilah Rock are the cheapest overall sources of gravel in Fort Bragg at $34.73/ton and $31.44/ton respectively, when the total cost of the gravel and delivery is considered together.
- All six aggregate suppliers provide competitive pricing for gravel delivery to Fort Bragg. The average cost amongst all suppliers for a delivered ton of drain rock is $43.42.
- The average cost of delivery is $12.67/ton although the cost of delivery for local suppliers is much lower at $4.73/ton.
- Rock from Kibesilah Rock Co is quarried less than 15 miles from Fort Bragg, for an average delivery cost of $6.44/ton to Fort Bragg, which is 6% of the cost of delivery via train at $110/ton ($8,090/railcar @ 80 tons/ railcar).

This is a very competitive market for aggregate pricing. There is no space in this market to support the extra handling and delivery costs that would be required for rail freight as detailed in the section below.

Train. Aggregate delivery by train would be significantly more expensive than delivery by truck to Fort Bragg as previously analyzed in table 6.

Conclusion

There is a no market for rail-based freight transportation services between Fort Bragg and Willits. There is not sufficient market demand to support the operation cost or the capitalization costs of repairing the existing rail line. Through actual contact with potential rail freight customers, MJC identified exactly one potential customer with an annual demand for 3 rail cars and with the caveat that service would only be workable if the line was connected to the interstate railroad system. Mendocino Railway has no connection to the interstate rail system.

Appendix B: Rail Vs Truck Freight Market Share and Trends in the US

This Appendix examines general transportation trends Nationwide, which indicate that rail service is generally not competitive with truck transport. This is especially true for short haul distances such as Longvale to Willits (15 miles) and Willits to Fort Bragg (40 miles).

Freight Modes Overview

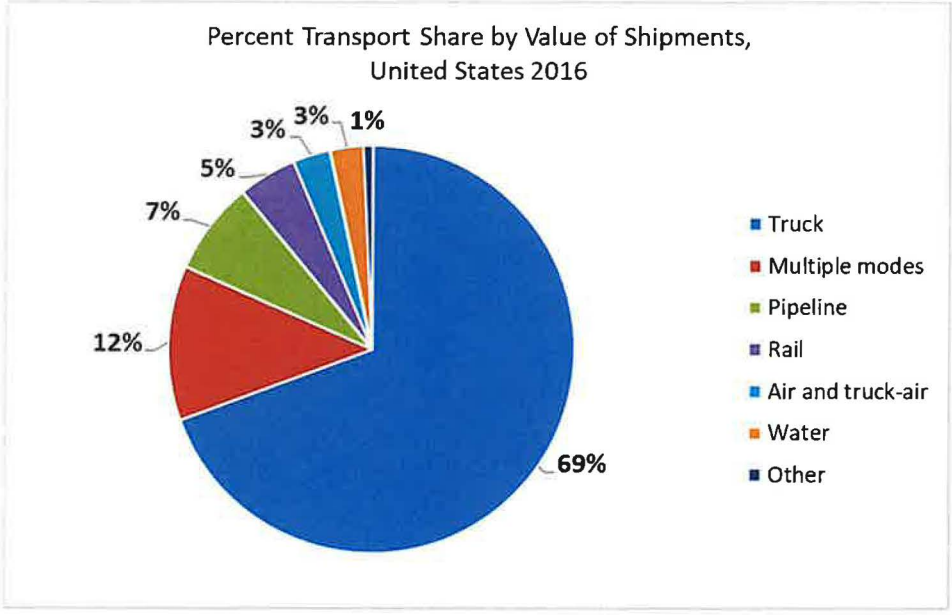
Freight is moved by rail, waterways, pipeline, truck, and air throughout the United States.

According to the US Department of Transportation, more freight is shipped by Truck within the United States than any other mode. As noted in Table 1, truck shipments accounted for $12,578 billion dollars of shipment value while rail shipped $837 billion worth of goods in 2016.[10]

Value of Shipments by Freight Mode ($billions)

Value of shipments (billions of constant 2012 dollars)

Mode	2012	2016	2045
Truck	12,216	12,579	24,001
Rail	721	837	1,629
Water	431	477	872
Air and truck-air	674	539	3,208
Pipeline	1,325	1,339	1,901
Multiple modes[a]	2,122	2,230	4,970
Other[b]	241	141	484
Total	**17,729**	**18,142**	**37,064**



Another way to think about these numbers is illustrated in Chart 1, which indicates that 69% of the value of all freight shipments is by truck, while 5% of the value of all shipments is by rail.

[10] *U.S. Department of Transportation, 2019 Pocket Guide to Transportation, Page 19*

Trucks also ship more by weight. In 2016 the total weight of truck shipments was 11,619 million tons, while all goods shipped by rail weighed in at 1,835 million tons. By weight Trucks ship 66% of all goods, while railroads ship 10% of all goods. Rail is twice as likely to ship heavy commodities than other items within the US. However, by weight trucks still ship significantly more than rail overall.

Weight of Shipments by Freight Mode (million tons)

Mode	2012	2016	2045
Truck	10,711	11,619	16,435
Rail	1,828	1,835	2,277
Water	658	740	945
Air and truck-air	7	5	26
Pipeline	3,031	2,904	4,766
Multiple modes[a]	418	486	800
Other[b]	342	97	273
Total	**16,996**	**17,686**	**25,521**

Rail is competitive with truck freight only in "ton miles traveled." Trucks ship 40% of all ton miles traveled (2,023 billion) while trains ship 28% (1,527 Billion) of all ton miles. This illustrates that rail is slightly more competitive for long haul interstate travel of heavy bulk items. Heavy freight such as coal, lumber, ore that are going long distances are slightly more likely to travel by rail, or some combination of truck, rail, and water. Trucks with more flexible routes and scheduling are much more competitive for shorter-haul and medium-haul goods, although many interstate trucks also ship significant goods around the county.

Ton-miles of Shipments by Freight Mode

Mode	2012	2016	2045
Truck	1,891	2,023	3,282
Rail	1,481	1,427	1,776
Water	323	354	419
Air and truck-air	6	6	21
Pipeline	857	896	1,414
Multiple modes[a]	339	398	765
Other[b]	7	3	16
Total	**4,903**	**5,108**	**7,692**

[a]Includes mail. [b]Includes other, unknown, and imported crude oil with no domestic mode.

Notes: Details may not add to totals due to rounding. Includes domestic trade and the domestic portion of imports and exports.

Source: U.S. Department of Transportation, Bureau of Transportation Statistics and Federal Highway Administration, Freight Analysis Framework, Version 4.4.1, available at www.bts.gov as of November 2018.

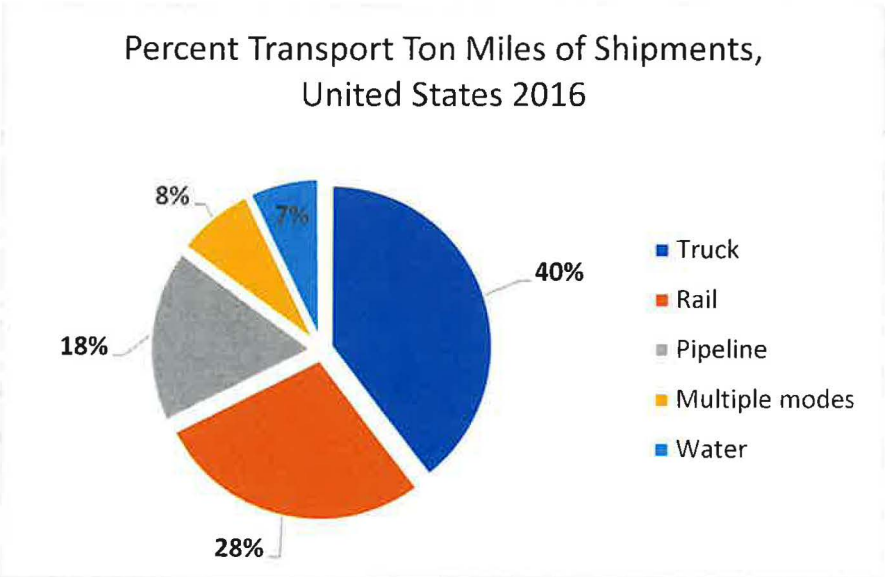


Table 14: Freight Tons Moved by Mode and Distance, United States, 2023

Weight of freight by mode and distance

Chart | Data

Weight of freight by mode and distance

Year: 2023

Year	Distance band (miles)	Tons (millions) Pipeline	Rail	Truck	Water	Air (includes truck-air)	Multiple Dms Modes and Mail
2023	1,000 - 1,499	137	267	221	83	0.1%	14.6%
	1,500 - 2,000	4	104	92	19	0.2%	16.3%
	100 - 240	1,555	305	5,395	174	0.0%	1.3%
	250 - 499	842	222	1,178	195	0.1%	5.7%
	500 - 749	162	146	302	61	0.1%	11.9%
	750 - 999	166	133	201	44	0.1%	14.2%
	Below 100	942	262	5,652	298	0.0%	0.9%
	Over 2,000	0	51	96	39	0.6%	24.7%

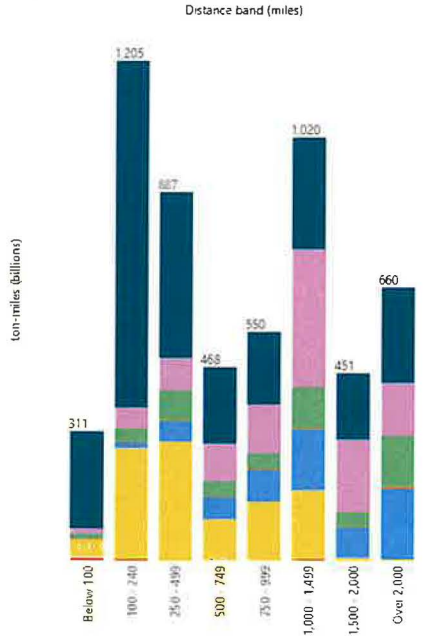
Notes: Multiple modes and mail includes freight that is transferred between two or more modes on the journey between an origin and destination.
Source: U.S. Department of Transportation, Bureau of Transportation Statistics and Federal Highway Administration, Freight Analysis Framework, version 5.5, 2023, https://www.bts.gov/faf

Ton-miles of freight by mode and distance

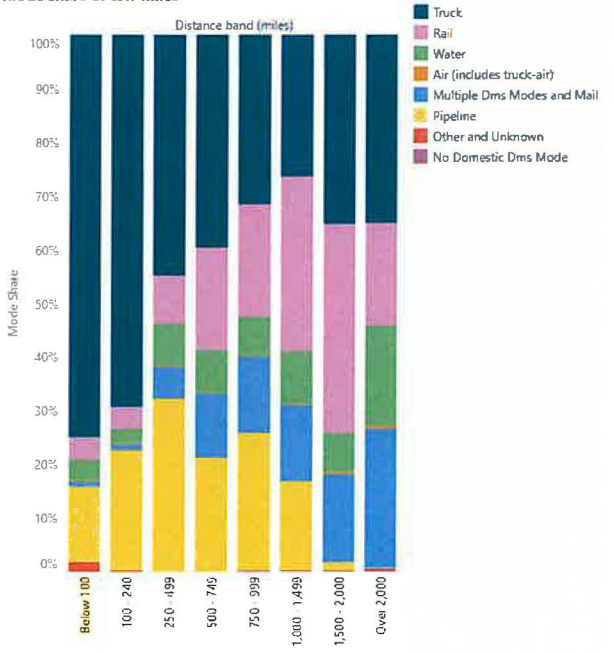
Chart | Data

Year: 2023

Total ton-miles



Mode share of ton-miles



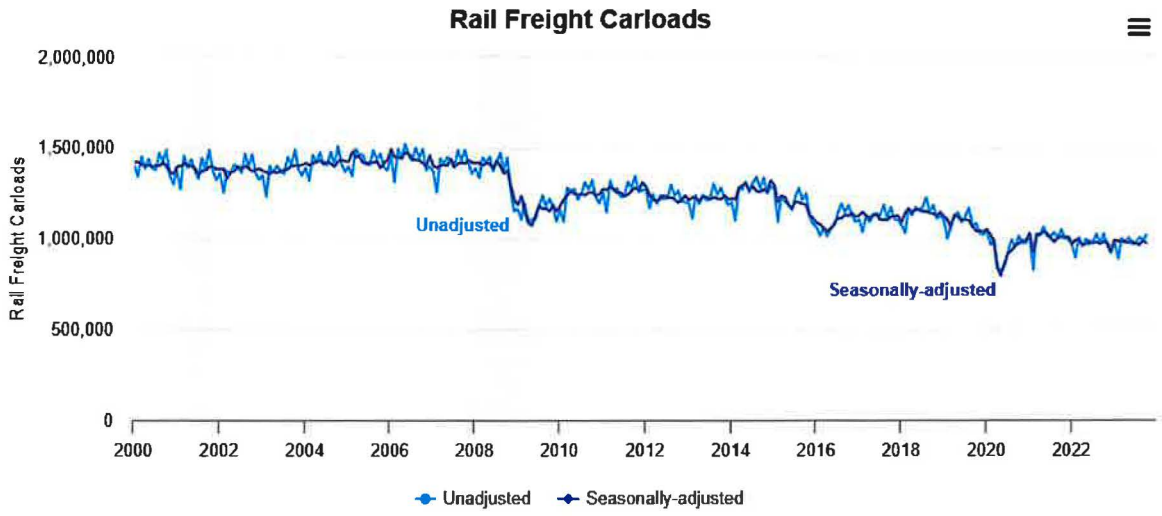
Mode

- Truck
- Rail
- Water
- Air (includes truck-air)
- Multiple Dms Modes and Mail
- Pipeline
- Other and Unknown
- No Domestic Dms Mode

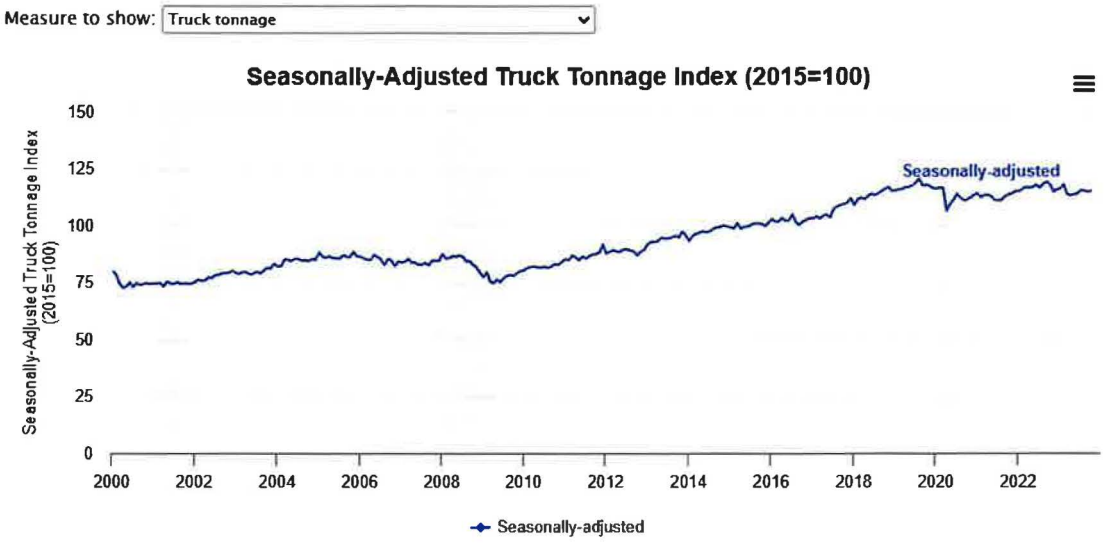
Notes: Multiple modes and mail includes freight that is transferred between two or more modes on the journey between an origin and destination.
Source: U.S. Department of Transportation, Bureau of Transportation Statistics and Federal Highway Administration, Freight Analysis Framework, version 5.5, 2023, https://www.bts.gov/faf

Freight Trends

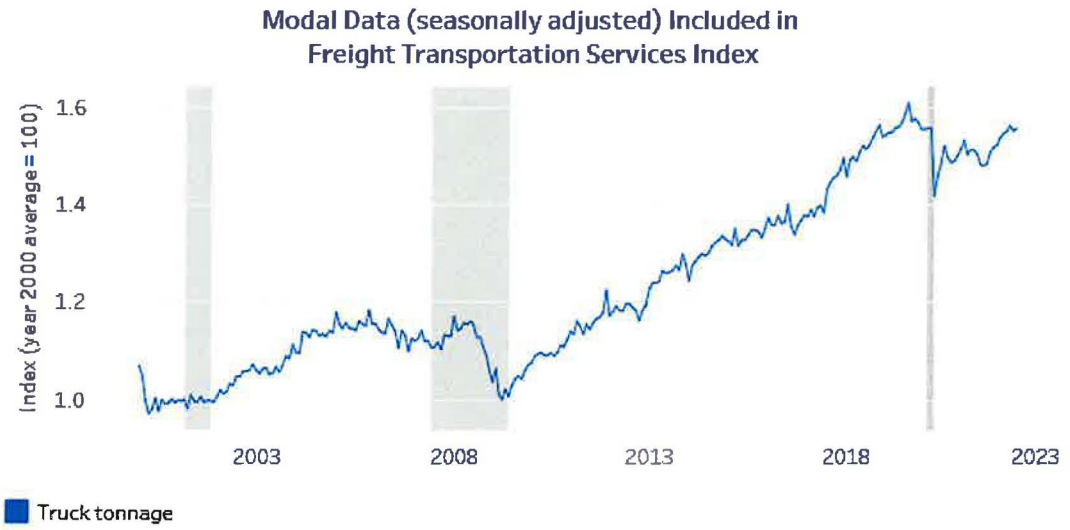
The charts below, excerpted from the U.S. Department of Transportation report *Transportation-as-an-Economic-Indicator*, illustrate a steady decline in the use of rail carloads for freight: overall carloads declined from 1.4 million in 2000 to 970,000 in 2022.



Conversely, there was a significant increase in the tonnage index for freight delivered by trucks: from 80 to 115 million during this same period for a total of 50% growth over the past 20 years.[11]



11 https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator/9czv-tjte

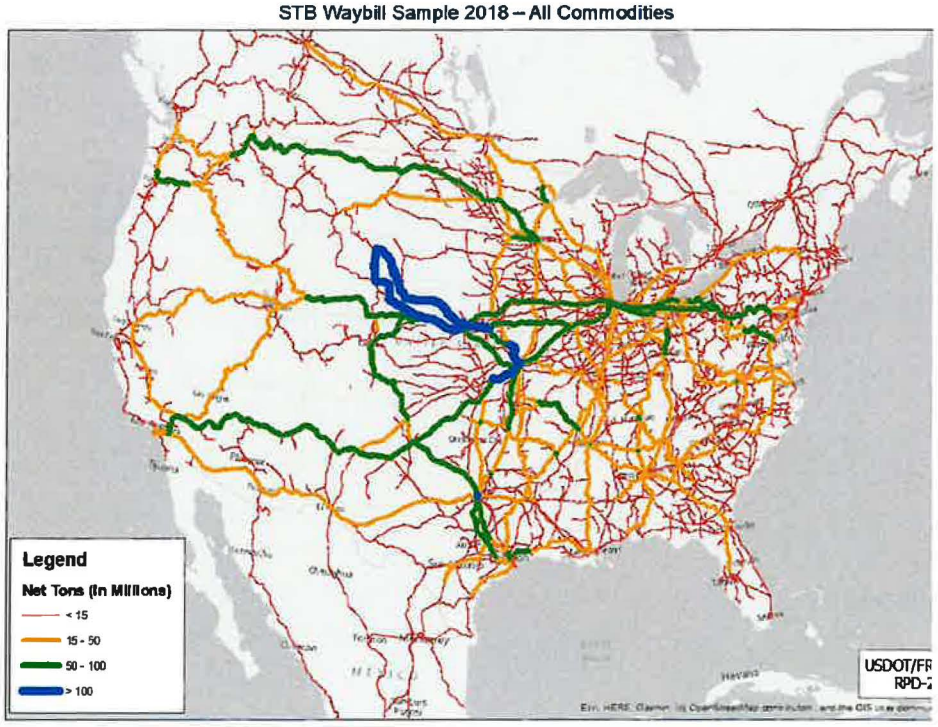


To conclude, overall rail transport continues to decline as a freight delivery method, while truck transport continues to increase.

Rail Freight Activity by Area

This Waybill Sample map shows U.S. rail routes by tonnage of the commodities they carry. As illustrated in the map, rail coverage and use are more common on the East coast and Midwest than it is in the Western United States. Rail coverage in California is relatively sparce, with most rail transport from the western United States, occurring between the major Ports of LA, Oakland and Seattle to the Midwest and east coast.

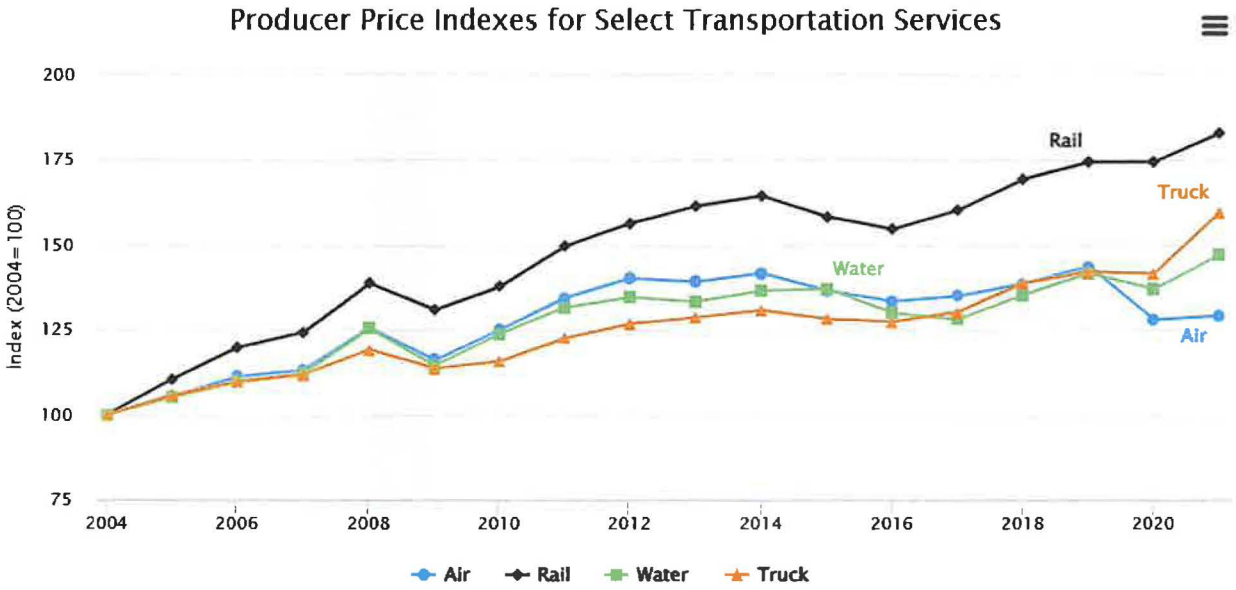
Other than some limited rail freight on SMART's passenger rail system in southern Sonoma and Marin Counties, there is currently no rail freight service through the Highway 101 corridor of northern California.



The Waybill is a stratified sample of carload waybills for all U.S. rail traffic submitted by those rail carriers terminating 4,500 or more revenue carloads annually. Image created by Federal Railroad Administration, Office of Railroad Policy and Development (Office of Policy), based on Surface Transportation Board's 2018 Carload Waybill Sample.

Truck Vs Rail Pricing

The chart illustrates price trends relative to the 2001 index for each mode of transport. The overall price of all transport options has increased between 2004 and 2020; however, it has increased fastest for rail.[12]



Click on item in legend to remove/add to graph.
Mouse over to view value and percent change from preceeding year.

Show notes and source

[12] Bureau of Transportation Statistics. *Cost of Transportation: Costs Faced by Businesses Purchasing Transportation Services; https://data.bts.gov/stories/s/2yqq-baqd/*

Appendix C: Mendocino County Demographic, Economic & Housing Trends

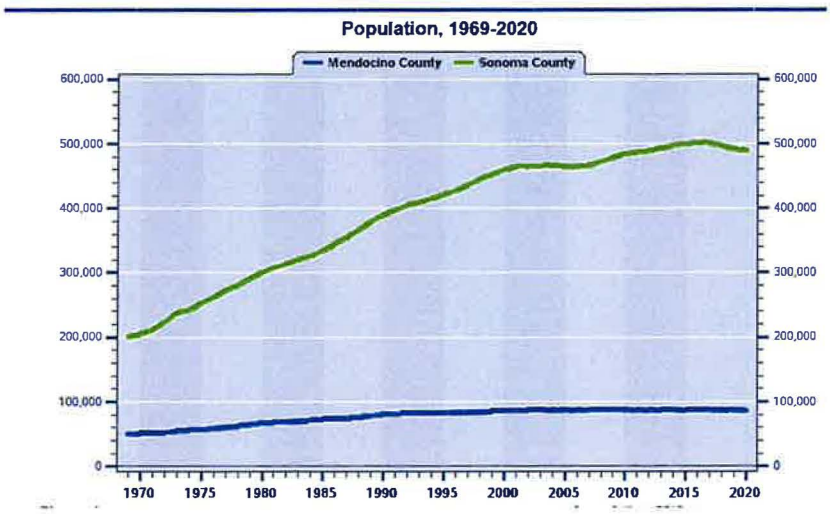
Purpose & Findings

This appendix provides an overview of the Mendocino economy. It includes an overview of demographic, economic and housing trends which have the potential to shape freight business to and from the Mendocino coast.

Demographic Trends

Population

Figure 6 Population Growth 1969-2020



- Overall, Mendocino's population growth is constrained by its remote location, low housing production numbers, and very slow job growth. In 2020, Mendocino's population was 86,061, which is just 0.2% of the State population. Mendocino County's population has remained relatively flat for the past 70 years (Figure 3, blue line).
- By contrast, Sonoma County, which has the closest economic ties to Mendocino County has a total population of 489,819, or 1.2% of the State's population. Sonoma County's population has doubled from 200,920 residents in 1969 to 489,819 in 2020.
- Both counties have large, low-density, unincorporated areas.
- The Mendocino Coast is relatively isolated from inland Mendocino due to the Coast Mountain Range. The Mendocino Coast has a population of around 18,000 residents.

Economy Overview

Gross Regional Product for the two-county region was $35 billion, with Sonoma contributing 87% and Mendocino County contributing just 12% of GDP.

- ✓ Overall Mendocino GDP ranks 38th from the top of California's 58 counties, while Sonoma County's Gross Domestic Product (GDP) ranks 17th.
- ✓ Since 2010, Gross Domestic Product has grown only 0.78%/year in Mendocino (ranked 38 out of 58 counties) while it has grown by 2.59%/year in Sonoma (ranked 17). See Figure 4.

Local Government, Education and Hospitals are the biggest economic sectors of the region in terms of GDP, which is not atypical, as these sectors serve the needs of existing communities. Other large regional economic sectors include Wineries, Crop Production, Instrument Manufacturing, Breweries, Tourism, Insurance, and Electric Power Distribution, while the state as a whole specializes in the tech sector, commercial banking, agriculture and tourism.

Figure 7 Gross Domestic Product, Sonoma & Mendocino County

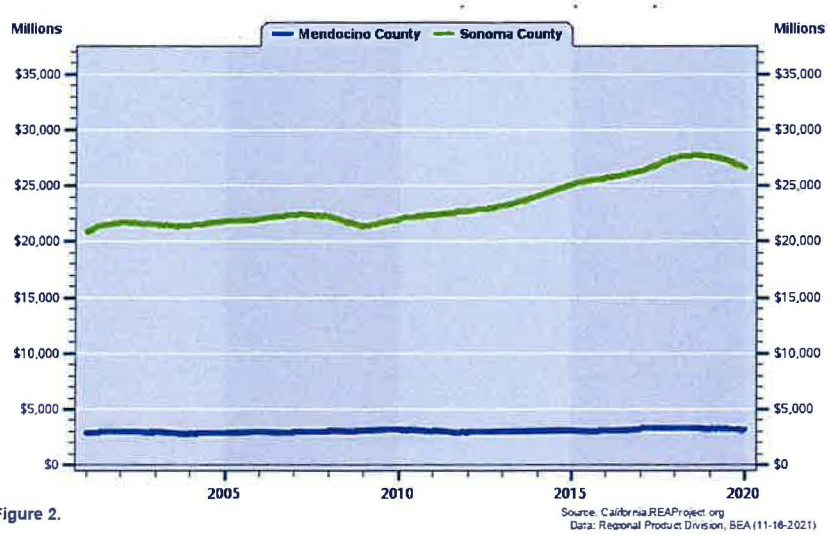


Figure 2.

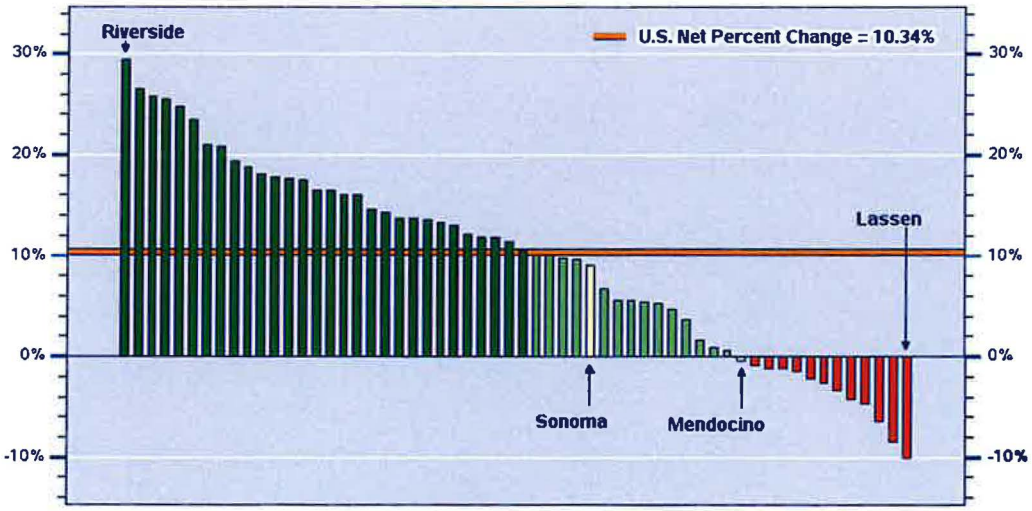
Conclusion: Mendocino's economy is very small and has experienced minor growth in the past 20 years. It provides a small, localized, and somewhat stagnant market for freight services. Currently, all freight services are provided by trucks.

Jobs Analysis

This section explores Mendocino County's job growth in a relative context. The bar chart below portrays all 57 California Counties' job growth over the interval 2010-2020. Some of the most salient highlights include:

- Ranked #46, Mendocino's employment growth (-0.35%) surpassed that of 12 counties and trailed 45.
- Ranked #35, Sonoma's employment growth (9.00%) surpassed that of 23 counties and trailed 34.

Figure 5: Employment Growth by County, 2010 vs 2020, Net Percent Change



Mendocino County's employment change over 2010-2020 of **-0.35%** trailed the **10.34%** growth of employment nationally by **-10.68%**. Accounting for this difference was a local industry mix that included more industries that experienced slower growth (-1.8% or -814 jobs) nationwide, coupled with a large share (-8.89% or -4,026 jobs) of local industries that underperformed their counterparts nationally.

Actual Growth		National Growth		Industry Mix		Regional Shift
-0.35%*	=	10.34%	+	-1.80%	+	-8.89%
(-157)		(4,683)		(-814)		(-4,026)

*Percent growth figures may not add due to rounding by a factor of ± 0.01%.

Table 5 contains the details of shift-share analysis for Mendocino County. It illustrates that Mendocino County underperformed the nation in almost all economic sectors, except for Forestry and Fishing, Utilities, Health Care and Social Assistance, and state government (blue). Declines in Mendocino County employment were particularly stark in Mining, Construction, Finance and Insurance, Professional Scientific and Technical services, Accommodations and Local Government **(red).** These data illustrate that Mendocino's economy is in a period of stagnation with small economic shifts up and down. **The following sectors are particularly of interest for rail freight as they are likely the only sectors that would participate in rail freight from or to the Coast via the Skunk Train (Table 5).**

- **Mining is a very small component of the economy at 0.3% and experienced a significant contraction from 121 jobs in 2010 to 71 jobs in 2020, a decline of 41.32%. Mining in Mendocino County is almost exclusively related to aggregate extraction.**
- Forestry and Fishing experienced a slight increase of 170 jobs (+12.36%) in the ten-year timeframe. Fishing products are not a suitable product for rail transport due to perishability. Forestry is a difficult item to transport via rail because timber harvests are geographically dispersed and transport by rail would require a truck, rail and truck transfer scenario with very large logs. The average transport distance for logs is approximately 40 miles. It is more efficient and less expensive to truck the logs directly to a lumber mill, rather than to truck them to a railhead (Skunk), then load them on a freight car, and then unload them at the other end.
- Manufacturing is a relatively small sector of the Mendocino Coast economy. It represents just 6% of all jobs and experienced a nominal growth of 1.86% during this timeframe.

Table 5: Mendocino County Employment Growth, 2010-2020

Major Industry	Employment 2010 Level	Share[1]	2020 Level	Share[1]	Actual Growth Percent	Net	Standardized Growth[2] Percent	Net	Employment[3] 2020
Farm Employment	**1,967**	**4.3**	**1,581**	**3.5**	**-19.62**	**-386**	**-1.71**	**-34**	**1,933**
Forestry, Fishing, and Related Activities	**1,375**	**3.0**	**1,545**	**3.4**	**12.36**	**170**	**8.46**	**116**	**1,491**
Mining	**121**	**0.3**	**71**	**0.2**	**-41.32**	**-50**	**-25.76**	**-31**	**90**
Utilities	161	0.4	189	0.4	17.39	28	0.67	1	162
Construction	**2,948**	**6.5**	**2,894**	**6.4**	**-1.83**	**-54**	**23.71**	**699**	**3,647**
Manufacturing	2,736	6.0	2,787	6.2	1.86	51	5.91	162	2,898
Wholesale Trade	906	2.0	910	2.0	0.44	4	2.81	25	931
Retail Trade	5,641	12.5	5,429	12.0	-3.76	-212	2.15	121	5,762
Transportation and Warehousing	690	1.5	1,025	2.3	48.55	335	65.85	454	1,144
Information	488	1.1	280	0.6	-42.62	-208	0.68	3	491
Finance and Insurance	**1,369**	**3.0**	**989**	**2.2**	**-27.76**	**-380**	**14.39**	**197**	**1,566**
Real Estate and Rental and Leasing	1,872	4.1	1,842	4.1	-1.60	-30	16.01	300	2,172
Professional, Scientific, and Technical Services	**2,711**	**6.0**	**2,263**	**5.0**	**-16.53**	**-448**	**21.89**	**593**	**3,304**
Management of Companies and Enterprises	224	0.5	242	0.5	8.04	18	31.99	72	296
Administrative and Waste Services	**1,987**	**4.4**	**2,408**	**5.3**	**21.19**	**421**	**12.89**	**256**	**2,243**
Educational Services	490	1.1	447	1.0	-8.78	-43	12.45	61	551
Health Care and Social Assistance	**4,629**	**10.2**	**6,298**	**14.0**	**36.06**	**1,669**	**17.68**	**818**	**5,447**
Arts, Entertainment, and Recreation	1,108	2.4	967	2.1	-12.73	-141	-5.39	-60	1,048
Accommodation and Food Services	**4,009**	**8.9**	**3,665**	**8.1**	**-8.58**	**-344**	**1.62**	**65**	**4,074**
Other Services (except Public Administration)	2,714	6.0	2,769	6.1	2.03	55	7.85	213	2,927
Federal Civilian	333	0.7	290	0.6	-12.91	-43	-1.75	-6	327
Military	173	0.4	156	0.3	-9.83	-17	-9.00	-16	157
State Government	406	0.9	480	1.1	18.23	74	0.56	2	408
Local Government	**6,235**	**13.8**	**5,609**	**12.4**	**-10.04**	**-626**	**-2.33**	**-145**	**6,090**
Total Employment	**45,293**	**100.0**	**45,136**	**100.0**	**-0.35**	**-157**	**8.54**	**3,869**	**49,162**

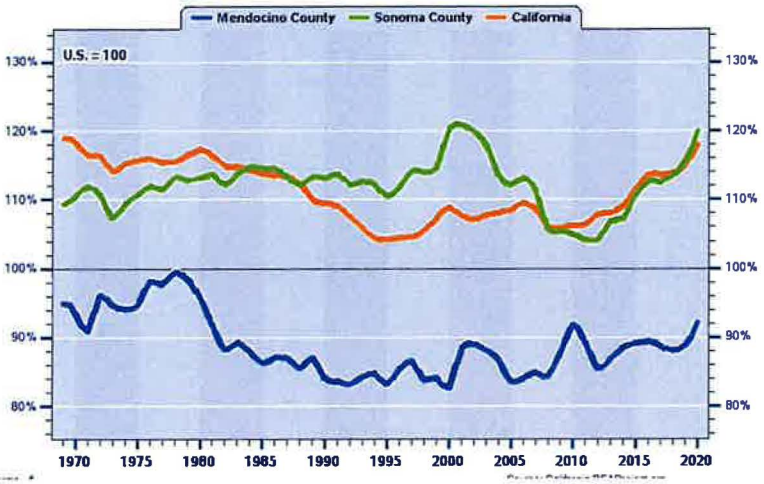
1Share: The percentage share of total employment by industry.
2Standardized Growth: at the same rate as its counterpart at the national level had each industry grown.
3Standardized Employment, 2020: The 2020 level of employment in each industry had it grown at the same rate as its counterparts at the national level since 2010. Note: Percent growth figures may not add due to rounding by a factor of ± 0.01%

Employment, Income & Poverty

Employment growth in Sonoma County averaged 1.52% per year between 2010 and 2020, ranking 28th in California, while employment growth in Mendocino was just 0.51% per year earning Mendocino County a rank of 47th among 57 counties in California. Mendocino County also consistently has higher unemployment rates (6.3% in 2022) than Sonoma (3.5%).

- Mendocino County per capita income has ranged between 85 and 100% of the US average per capita income from 1970-2020, illustrating that the area has struggled economically for decades (blue Lines). By comparison Sonoma per capita income is consistently 110 to 120% of the US average per capita income (Figure 6).
- Median Household Income for Mendocino ($46, 528) ranks 13th from the bottom among California counties, while Sonoma Household Income ($71,386) ranks 13th from the top, again illustrating the divergent nature of these two economies.
- In 2020, the Mendocino County poverty rate was 19.1% (or 1 of every 5 households), while Sonoma's poverty rate was 7.8%.

Figure 6: Per Capita Personal Income as a Percent of the US Average



Housing

Overall, housing production has not kept pace with demand. As illustrated in Table 6, Mendocino housing production averages 148 units/year or a 0.36% annual growth rate. Sonoma County by contrast averages 1,702 new units/year, or 0.83% annual growth.

Implications: New housing production is unlikely to be a significant source of demand for rail freight of products such as aggregates and finished lumber. The population of the Mendocino Coast offers a very small market for such products and grows at a slow pace.

Table 6: Housing Permits and Production, Mendocino & Sonoma County 2014-2023

	Mendocino County	Sonoma County
Timeframe	**6/30/2014 - 6/30/2019**	**1/31/2015 - 1/31/2023**
	Permits	**Permits**
Very Low Income	123	476
Low Income	49	628
Moderate Income	192	765
Above Moderate Income	377	4941
Total Building Permits	**741**	**6810**
Building Permits /year	148.2	1702.5
Total Housing Units	41,055	206,362
% growth Units/year	**0.36%**	**0.83%**

Source: California Housing and Community Development (HCD).