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FILED

NOV 26 2024

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA
[Signature]

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MENDOCINO

CITY OF FORT BRAGG,

Plaintiff,

v.

MENDOCINO RAILWAY,

Defendant,

CALIFORNIA COASTAL COMMISSION,

Intervenor.

Case No. 21CV00850

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

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

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

1
2 **INTRODUCTION**

3 The City of Fort Bragg (“City”) filed its initial complaint in this action more than three
4 years ago, on October 28, 2021. Since then, Defendant Mendocino Railway (“Defendant”) has
5 made multiple efforts to delay and prevent this court from hearing this case, and now has
6 seemingly convinced the City to seek a stay for purported ongoing settlement discussions that
7 have not involved Intervenor California Coastal Commission (“Commission”) in any fashion.
8 While the Commission supports and agrees with the City on the merits of the case, it believes this
9 is just another delay tactic by Defendant, perhaps to determine if the new members of the Fort
10 Bragg City Council being sworn in in 2025 are more receptive to their arguments, or to complete
11 some unpermitted development before this Court rules that their activities on the coast are subject
12 to the Coastal Act.

13 As the Commission understands it, there is no firm settlement offer on the table and the
14 Commission has intentionally not been invited to attend the settlement discussions that have
15 apparently been going on between Defendant and the City over the last five months. Additionally,
16 neither the City nor Defendant has invited representatives of the Coastal Commission to any
17 specific future settlement discussions, and the Commission has no reason to believe that will
18 change over the next 90 days. As such, the Commission requests that this court deny the joint ex
19 parte application (“Application”) for a stay and maintain the current April 8, 2025 trial date.

20 Critically, such a stay would prejudice the Commission’s enforcement efforts and mandate
21 to protect coastal resources and prevent harm to the public. The Commission is informed and
22 believes that Defendant’s unpermitted and unregulated development in the coastal zone is
23 ongoing and substantial. Staying this case would prevent the Commission from determining the
24 extent of the damage to the coast being caused by Defendant’s unregulated development
25 activities. There is nothing in the Application indicating that the Railway will cease all such
26 development during the stay, yet Defendant and the City are now seeking a stay of all litigation
27 and a continuance that will result in a new trial date more than two years after the original June
28 2023 trial date in this case. Further, the purported settlement discussions discussed in the
Application do not even mention the fundamental issue in this case—whether state or federal law

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

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

5 PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

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

28 //

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

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

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

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ARGUMENT

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

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

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

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

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

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

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

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

1 Defendant's development within the coastal zone and within the City, and prepare for trial on
2 those issues. Conversely, if granted, Defendant's motion may ultimately, and unnecessarily,
3 thwart the ability of the State to enforce its laws and regulations designed to protect coastal
4 resources and the residents living along the coast. Beyond the Commission's legitimate
5 opposition to the requested stay and continuance, there is a presumption that Defendant's ongoing
6 activities in violation of the Coastal Act and their potential harm to the public outweigh any harm
7 to Defendant, and may justify the issuance of an injunction to halt those ongoing activities. (See
8 *IT Corp. v. County of Imperial*. (1983) 35 Cal.3d 63, 72.) Without the ability to complete
9 discovery due to the requested stay, the extent of those potential harms cannot be determined and
10 the likelihood of substantial harm to the public will almost certainly increase.

11 Another delay based almost exclusively on Defendant's purported representations that it
12 will engage in good faith settlement discussions, and without including the Commission in any of
13 the initial settlement discussions, is the antithesis of speedy justice and would allow Defendant to
14 continue to postpone judgment in this case and flaunt state and local law in its use and
15 development of its property in the City and the coastal zone, potentially harming the local
16 environment and the health of the City's residents, and prejudicing the Commission in this case.

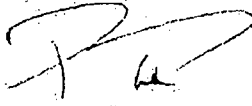
17 CONCLUSION

18 Accordingly, the Commission respectfully requests that the Court deny Defendant's and the
19 City's ex parte application requesting a stay this case, and maintain the current April 8, 2025 trial
20 date, and all related discovery deadlines.

21 Dated: November 25, 2024.

Respectfully submitted,

22 ROB BONTA
23 Attorney General of California
24 DAVID G. ALDERSON
25 Supervising Deputy Attorney General

26 
27 PATRICK TUCK
28 Deputy Attorney General
*Attorneys for Intervenor
California Coastal Commission*

OK2022303294

1 **DECLARATION OF PATRICK TUCK**

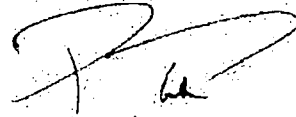
2 I, Patrick Tuck, declare:

3 1. I am an attorney at law licensed to practice before all courts of the State of
4 California. I am a Deputy Attorney General of the State of California and am counsel of record
5 for Intervenor Coastal Commission ("Commission") in this action.

6 2. I have personal knowledge of the following facts. If called upon to testify as a
7 witness, I could and would testify competently to these facts under oath.

8 3. On September 9, 2024, I returned the draft protective order with proposed revisions
9 and related comments to counsel for Defendant Mendocino Railway. Having not received a
10 substantive response for more than two months, I then emailed Defendant's counsel again on
11 November 18, 2024, following up on the protective order, and explaining that the Commission
12 was waiting on that response and the production of related documents to schedule depositions
13 in the coming weeks/months. Attached hereto as Exhibit A is a true and correct copy of the
14 email communications described in this paragraph.

15 I declare under penalty of perjury under the laws of the State of California that the above
16 facts are true and correct and that this declaration was executed on November 25, 2024, at
17 Oakland, California.

18 

19
20 _____
Patrick Tuck

EXHIBIT A

From: [Patrick Tuck](#)
To: [Paul Beard II](#)
Cc: [Krista MacNevin Jee](#)
Subject: RE: FB v. MR - Draft Protective Order
Date: Monday, November 18, 2024 11:42:25 AM
Attachments: [FB v. MR - Draft Protective Order 9.9.24 - REDLINE.docx](#)
[image001.png](#)

Paul,

I wanted to follow up on the draft protective order, the redline of which I have re-attached here. It's been more than two months since I sent it over to you and we have not received any feedback on the proposed changes. I'd like to move this along so we can determine what, if any, documents, the Railway is willing to produce under the protective order, and then move forward with scheduling depositions of Railway representatives in the coming weeks/months after we receive those documents.

Thank you.

Patrick

From: Paul Beard II <paul.beard@pierferd.com>
Sent: Monday, September 9, 2024 2:54 PM
To: Patrick Tuck <Patrick.Tuck@doj.ca.gov>
Cc: Krista MacNevin Jee <kmj@jones-mayer.com>
Subject: RE: FB v. MR - Draft Protective Order

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

OK, will review and circle back.

Paul Beard II
Partner
Direct: 818-216-3988

From: Patrick Tuck <Patrick.Tuck@doj.ca.gov>
Sent: Monday, September 9, 2024 9:48 AM
To: Paul Beard II <paul.beard@pierferd.com>
Cc: Krista MacNevin Jee <kmj@jones-mayer.com>
Subject: FB v. MR - Draft Protective Order

Paul,

Sorry for the delay on this but attached is the draft protective order with my and Krista's edits in redline and some comments/questions for your review.

The comments incorporate both my and Krista's comments/questions, even if they are all attributed

to me in the document.

Thank you. Let me know if you have any questions.

Patrick



Patrick Tuck | Deputy Attorney General
LAND USE AND CONSERVATION SECTION | PUBLIC RIGHTS DIVISION
CALIFORNIA DEPARTMENT OF JUSTICE | OFFICE OF THE ATTORNEY GENERAL
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DECLARATION OF SERVICE BY E-MAIL

Case Name: *City of Fort Bragg v. Mendocino Railway*
Case No.: **21CV00850**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1515 Clay Street, 20th Floor, P.O. Box 70550, Oakland, CA. 94612-0550.

On November 25, 2024, I served the attached **Intervenor California Coastal Commission's Opposition to Joint Ex Parte Application for Stay and Continuance of Trial Date** by transmitting a true copy via electronic mail, addressed as follows:

KRISTA MACNEVIN JEE
JONES MAYER
kmj@jones-mayer.com
Attorneys for Plaintiff City of Fort Bragg

PAUL J. BEARD II
PIERSON FERDINAND LLP
paul.beard@pierferd.com
Attorneys for Defendant Mendocino Railway

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 25, 2024, at Oakland, California.

Najaree Hayfron

Declarant

Najaree Hayfron

Signature