



MENDOCINO RAILWAY

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December 3, 2019

Sarah McCormick
City of Fort Bragg
416 N. Franklin St.
Fort Bragg, CA 95437

Dear Ms. McCormick:

It has come to my attention that Scott Perkins, of the City of Fort Bragg's Community Development Department, has posted an Order to Stop Work on our speeder shed in Fort Bragg, apparently because of our lack of permits for the work we are conducting on that speeder shed.

However, as the City is aware, Mendocino Railway is a railroad corporation and public utility under California law. (See Pub. Util. Code §§ 211, 216, and 229-230.) As such, we are subject to jurisdiction of the Surface Transportation Board ("STB"), which jurisdiction arises from our purchase and operation of the rail assets of the former California Western Railroad which was required to be, and was, approved by the STB pursuant to 49 U.S.C. § 10901 and 49 CFR § 1150.1, *et seq.* (See Notice of Exemption, STB FD 34465, filed March 12, 2004; STB Notice of Decision, 34584, filed April 09, 2004.)

Our status as a railroad subject to STB jurisdiction exempts our company from local and state permitting regulations. Under the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101, *et seq.*, ("ICCTA"), the STB exercises jurisdiction over the operation and regulation of railroads such that state and local regulation of railroads is in many instances preempted by federal law. See, generally, *Friends of the Eel River v. North Coast Rail Authority* (2017) 3 Cal. 5th 677, 690-691, 702-713, 716-720. Summarizing the ICCTA's preemptive effect with regard to environmental regulations, the California Supreme Court observed:

More specifically, the rule seems well accepted in federal courts that the ICCTA preempts state and local environmental regulation requiring private railroad companies to acquire permits or preclearance as a condition to operating the railroad, as well as remedies that would prohibit the conduct of railroad business pending compliance with state or local environmental requirements. [*Id.* at 717 (emphasis in original).]

Although *Eel River* dealt with an effort to apply the California Environmental Quality Act ("CEQA") to railroad operations, the STB reached the same conclusion as to the City of Encinitas's effort to impose a Coastal Development Permit ("CDP") requirement on a railroad. In *North San Diego County Transit Development Board—Petition For Declaratory Order* (2002) 2002 WL

1924265 (S.T.B.), the STB held that the City of Encinitas could not, under the Coastal Act, require a CDP of a railroad which sought to construct track within a coastal zone. In rebuffing the City's attempt to impose the CDP requirement, the STB held:

We have repeatedly held that state or local laws that would impose a local penning or environmental process as a prerequisite to the railroad's maintenance, use, or upgrading of its facilities are preempted to the extent that they set up legal processes that could frustrate or defeat railroad operations because they would, of necessity, impinge upon the federal regulation of interstate commerce. [*Id.*, at *5.]

The District Court (which had dismissed the City's effort to halt construction of the same track, in *City of Encinitas v. North San Diego County Transit Development Board* (2002) 2002 WL 34681621, prior to referral of the matter to the STB) similarly held:

If the Court were to allow the City of Encinitas to impose environmental or permit regulations upon NCTD operations, NCTD might be prevented from constructing the passing track. Such action would be tantamount to economic regulation by a local government over a rail carrier. The ICCTA demonstrates Congress' intent to preempt such regulatory authority over railroad operations, and to vest jurisdiction over these claims exclusively in the STB. *City of Seattle*, 105 Wash.App. at 836-7, 22 P.3d 260. Accordingly, the Court finds that Plaintiff's claims are preempted by the ICCTA. [*Id.*, at *4.]

As these cases, and these conclusions, have previously been acknowledged by the City and by the former City Attorney, Russell Hildebrand (see, for *e.g.*, Mr. Hildebrand's January 17, 2019 letter to Cristin Kenyon of the California Coastal Commission), we are removing the City's Order to Stop Work and intend to proceed with our work.

The above being said, we value the City and its efforts on behalf of our company and the community as a whole. Without agreeing to waive federal pre-emption or any of our legal rights, we would be happy at any time to discuss any concerns the City might have with any of our work. Should the City have any such concerns, please contact Robert Jason Pinoli at 707-849-1922 so we may discuss them further.

Best regards,



Torgny Nilsson
General Counsel