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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO
UKIAH BRANCH

- - -

MENDOCINO RAILWAY,)
)
 PETITIONER,)
)
 VS.)
)
 JOHN MEYER,)
)
 RESPONDENT.)

**CERTIFIED
TRANSCRIPT**

CASE NO.
SCUK-CVED-2020-74939
PAGES 1 TO 172
VOLUME 1

REPORTER'S TRANSCRIPT OF PROCEEDINGS
AUGUST 24, 2022
BEFORE HONORABLE JEANINE B. NADEL, JUDGE

- - -

APPEARANCES OF COUNSEL

FOR THE PETITIONER:
CALIFORNIA EMINENT DOMAIN LAW GROUP
BY: GLENN L. BLOCK
ATTORNEY AT LAW
3429 OCEAN VIEW BOULEVARD SUITE L
GLENDALE, CALIFORNIA 91208

FOR THE RESPONDENT:
MANNON, KING, JOHNSON, AND WIPF, LLP
BY: STEPHEN F. JOHNSON
ATTORNEY AT LAW
P.O. BOX 419
UKIAH, CALIFORNIA 95482

CAROL J. DEUCHAR, CSR NO. 13877
OFFICIAL COURT REPORTER
MENDOCINO COUNTY COURTHOUSE
100 NORTH STATE STREET UKIAH, CALIFORNIA 95482

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1 AUGUST 24, 2022

2 P R O C E E D I N G S

3 - - -

4 THE COURT: Let's go on the record. And we have
5 Mr. Pinoli back on the witness stand. And you are still
6 understood oath, sir.

7 THE WITNESS: Thank you. Good morning.

8 THE COURT: Good morning. Off the record.

9 (Discussion held off the record.)

10 DIRECT EXAMINATION:

11 BY MR. BLOCK:

12 Q. Good morning, Mr. Pinoli.

13 Mr. Pinoli, yesterday during your direct testimony, we
14 were talking about the CPUC December 2018 letter describing
15 Mendocino Railway's public utility status.

16 You testified that the city of Fort Bragg had also sent a
17 letter or was -- the CPUC letter was needed for the city of
18 Fort Bragg.

19 Do you recall that?

20 A. I do.

21 Q. Okay. And you said that the city of Fort Bragg's
22 attorney, Mr. Hildebrand, had prepared a letter affirming
23 Mendocino Railway's status as a public utility?

24 A. That is correct.

25 Q. And did you search for that letter?

26 A. I did.

27 Q. And did you find it?

28 A. I did.

1 Q. And did you provide me copies of that letter?

2 A. I printed it out, and provided you three copies.

3 Q. And this is the January 17, 2019, letter from Will
4 Hildebrand of Jones Meyer to the California Coastal
5 Commission?

6 A. That is correct.

7 MR. BLOCK: I'd like to mark this, Your Honor, as
8 Exhibit --

9 THE COURT: Next in order?

10 MR. BLOCK: -- 16. Yeah.

11 THE CLERK: Counsel, is that exhibit already
12 marked?

13 MR. BLOCK: No.

14 THE CLERK: Let me give you a tag.

15 MR. BLOCK: Thank you.

16 (Petitioner's Exhibit 16 was marked for identification.)

17 THE COURT: It sounds like someone is on the line.
18 They need to make sure they're muted, or you need to mute
19 them.

20 THE CLERK: Yes. They're muted.

21 THE COURT: Because I just heard a noise.

22 MR. BLOCK: Your Honor, regarding the Zoom
23 situation, it occurred to me that it might be a good idea to
24 provide an admonishment about any recording by anyone on Zoom
25 just to ensure that they understand the importance.

26 THE COURT: Well, we're -- there's nothing for
27 them to record, because they can't see anything.

28 MR. BLOCK: Or audio.

1 THE COURT: Can you unmute, and let me just see if
2 anybody is on there.

3 THE CLERK: I have someone by the name of David on
4 there. I don't know who that is.

5 THE COURT: Good morning. This is Judge Nadel.
6 Is there anybody on the line?

7 THE CLERK: He's muted. Let me ask him to unmute.

8 MR. SPAUR: Yes.

9 THE COURT: Okay. May I ask who is on the line?

10 MR. SPAUR: David Spaur, S-p-a-u-r.

11 THE COURT: Okay. Mr. Spaur, are you listening
12 into the trial, or here for another reason?

13 MR. SPAUR: I am listening into the trial.

14 THE COURT: Okay. I just want to make sure and
15 remind you that any recordings of the trial are improper
16 because no request has been made.

17 MR. SPAUR: Okay.

18 THE COURT: And we're going to keep you muted as
19 well. Okay?

20 MR. SPAUR: Okay. That's perfect.

21 THE COURT: All right. Thank you.

22 MR. SPAUR: You're welcome.

23 THE COURT: Okay. We'll mute him. Great. Go
24 ahead, counsel.

25 BY MR. BLOCK:

26 Q. Thank you. Looking at the second page of
27 Exhibit 16, Mr. Pinoli, does Mr. Hildebrand include any
28 comments in this letter regarding Mendocino Railway's status

1 as a public utility?

2 A. Yes.

3 Q. Can you read the two full paragraphs towards the
4 top of the page?

5 MR. JOHNSON: Your Honor, I'm going to object.
6 This is hearsay. I don't know why it's relevant to what we're
7 doing today.

8 THE COURT: So, counsel, it is hearsay. And I'm
9 not sure having him read it -- I mean, we've got the document
10 here. We can read it.

11 MR. BLOCK: Okay. We were -- the -- the letter
12 from the CPUC was entered into evidence yesterday.

13 The question was why did Mendocino Railway seek that
14 letter? And it related to interactions with the city of Fort
15 Bragg.

16 And this letter shows how the letter -- what happened
17 with the CPUC letter.

18 THE COURT: I mean, you can certainly ask him as
19 to his understanding of what the opinion was. But, basically,
20 unless you have Mr. Hildebrand to authenticate this, it's
21 hearsay at this point.

22 But you can certainly ask him what his understanding of
23 the opinion is and how he addressed that.

24 BY MR. BLOCK:

25 Q. Thank you. And, Mr. Pinoli, what is your
26 understanding of Mr. Hildebrand's opinion of the CPUC letter?

27 A. That Mendocino Railway is a public utility.

28 MR. BLOCK: Thank you. I'd like to offer

1 Exhibit 16 into evidence.

2 MR. JOHNSON: Your Honor, I object. It's hearsay.

3 THE COURT: Yeah. I'm not going to receive it
4 into evidence. Thank you.

5 BY MR. BLOCK:

6 Q. I want to go back a little bit, Mr. Pinoli, about
7 your role with the Mendocino Railway, and, previously, your
8 role with California Western Railroad, going backwards.

9 You are presently the president and CEO of Mendocino
10 Railway?

11 A. That is correct.

12 Q. What are your roles and responsibilities in that
13 position?

14 A. In simple terms, general oversight and guidance of
15 the company. Making sure that we maintain a safe operation,
16 safe company while, you know, continuing to advance the
17 business.

18 Q. And you are also a member of the board of
19 directors of Mendocino Railway, correct?

20 A. That is correct.

21 Q. Do you have a particular title or role as a member
22 of the board?

23 A. I serve as president of the board.

24 Q. And how long have you served as president of the
25 board of directors of Mendocino Railway?

26 A. Since I became president and CEO of the company,
27 so about two, two-and-a-half years.

28 Q. Okay. And prior to being president and CEO of the

1 railway, you were vice president?

2 A. That is correct.

3 Q. And how was your role different when you were vice
4 president than now as president and CEO?

5 A. As the vice president of the company, I supported
6 the president and then the CEO of the company in their duties.

7 I also served as a general manager for one of our rail
8 operations, and so had much -- a much more hands-on approach,
9 if you will, to the day-to-day operations of the railroad.

10 Q. And what was that operation?

11 A. The California Western Railroad Skunk Train.

12 Q. Okay. And that includes both the passenger and
13 freight operations, correct?

14 A. That is correct.

15 Q. And during your term as vice president, going back
16 to -- was it 2008? Oh, go ahead and remind me.

17 A. Yeah. Yes. And even -- and even before 2008.

18 Q. Okay. While you were vice president, were you
19 also a member of the board of directors of Mendocino Railway?

20 A. I was.

21 Q. And did you hold any titles?

22 A. I served as the vice president of the board as
23 well, and as a general board member.

24 Q. Okay. And then prior to serving as vice president
25 of Mendocino Railway, you were -- what was your title at
26 California western Railroad?

27 A. I had a variety of -- of positions that I held,
28 but I was a member of the board. I was the corporate

1 treasurer and the director of marketing.

2 Q. Okay. As the president, CEO, and, prior, as the
3 vice president, what was your role with respect to planning
4 for future operations and facilities related to the portion of
5 Mendocino Railway's operations in Willits?

6 A. To research and develop any requests that may have
7 come before me from either colleagues on the board or from the
8 parent company level to sort of suss those ideas out and
9 explore opportunities to grow and advance the business.

10 Q. And let's talk about prior to 2015. What -- what
11 were those plans for future operations or facilities with
12 respect to operations in or about Willits?

13 A. To grow the operation. In short, to grow the
14 Willits operation, but, overall, to grow the -- the company.

15 Q. Were there plans prior to 2015 to develop or
16 enhance the facilities in or about Willits?

17 A. Certainly. Prior to 2015, there were plans to
18 develop and enhance the facilities. As I recall, in 2007 and
19 -8, we entered into a very large restoration project on the
20 Willits Depo Complex.

21 So they're, you know, continuing to advance and grow that
22 side of the rail core has certainly been at the top of mine.

23 Q. Were there any formal plans in -- in or around
24 2015 to expand freight and passenger services of the railroad?

25 A. Formal plans? No.

26 Q. Why no formal plans?

27 A. We are -- we are a -- an organization that is very
28 entrepreneurial in spirit.

1 We -- we aren't afraid of taking measured, calculated
2 risks. We want to grow the business. We want to leave the
3 business better for the next generation.

4 And, in part, it's spearheaded by my colleague, but,
5 also, the president and CEO of the CR Railroad company, who is
6 I would say a serial entrepreneur, a very creative individual.

7 And that energy or excitement, you know, is really
8 something that trickles down to everybody else. And it's
9 really something that is core to the team.

10 Q. As part of that entrepreneurial spirit, you're not
11 formulating business plans or other documents that set out
12 these ideas and kind of develop and -- and evaluate, and
13 analyze ideas?

14 A. A lot of our -- a lot of our discussions around
15 business advancement are simple discussions. Pick up the
16 phone, have a conversation, and, you know, go from there. So
17 no -- no formal plans.

18 There are times when we may on very -- it would be a rare
19 occasion, write something up specific, but it is generally a
20 lot of phone conversations.

21 Q. What about budgets or other kinds of written
22 documents that might reflect these -- these ideas or planning?

23 A. For operations, specifically, there are -- there
24 are annual budgets that are prepared by the general managers
25 for their day-to-day operations, but for projects, generally
26 speaking, not.

27 My colleague, again, the president and CEO of CR Railroad
28 Company is, you know, build it, get it done, and we'll go back

1 and do the budget and perform a for-revenue generation after.

2 Q. And the colleague you are referring to, is that
3 Michael Hart?

4 A. It is.

5 Q. And you joined Sierra or the Sierra group of
6 companies in 2004. Is that right?

7 A. 2002.

8 Q. 2002. Was this kind of process that you describe,
9 the lack of formality, big plans, budgets for ideas, and
10 developing future projects, was that the case when you started
11 with these -- this group of companies in 2002?

12 A. Yes. And I wouldn't say -- I -- I -- I wouldn't
13 characterize it as a level of disorganization.

14 Rather, it speaks to the creative and entrepreneurial
15 spirit that sort of abounds within the organization. But,
16 yes. Since 2002, that has been the case.

17 Q. And it hasn't changed at all in the 20 years since
18 then?

19 A. No.

20 Q. Now, Exhibit 3 that is up on the board depicts the
21 -- the facilities in Willits.

22 And you described how -- how the operations work, some of
23 the difficulties and complications in -- in utilizing these
24 facilities.

25 But aren't these the facilities that had existed for
26 many, many years, and you guys were able to operate
27 successfully with them?

28 A. No. They're not the facilities that existed for

1 many, many years. It's sort of been cobbled together over
2 time, one, in part because of the railroad's tunnel No. 1
3 being closed.

4 But, two, as the businesses continued to grow, there has
5 been a -- a need for having redundancy.

6 That is one thing that in the railroad industry,
7 redundancy in the things and practices that you do is
8 extremely important for safety, primarily.

9 And so as a result of this, what you're seeing here on
10 the exhibit is a very disjointed approach to running a rail
11 operation, disjointed in the fashion that from the very north
12 end of where a locomotive may be serviced if it needed to have
13 pit time, meaning that it was going to be parked over a pit
14 where you could access the under side of the locomotive, all
15 the way to the -- the MOW facility, you know, you're talking
16 about a mile and a half to two miles in distance.

17 And it -- anyways, it's quite disjointed.

18 Q. The -- the redundancy -- when you mention
19 "redundancy", what are you talking about?

20 A. I'm talking about the -- historically -- well, for
21 a number of years, most of the maintenance of the equipment
22 had been conducted and handled at the railroad's round house
23 in Fort Bragg.

24 And passing equipment through was certainly much easier
25 when the tunnel was open.

26 But it also takes a portion of a day to get a piece of
27 rail-mounted equipment from one side of the line to the other.
28 Having redundancy by having a secondary location is extremely

1 efficient.

2 It's why we've split up our track crews to have track
3 crews available on the Fort Bragg side of the line and also on
4 the Willits side of the line.

5 So having a secondary redundant facility certainly makes
6 things far more efficient, and we're able to respond to things
7 much quicker.

8 There -- there are examples of redundancy that have
9 really, really helped the railroad -- I shouldn't say helped
10 the railroad, but have helped the community in that there have
11 been fires that have broken out on the Willits side of the
12 line. There have been law enforcement or medical emergencies.

13 And having equipment stationed on the Willits side of the
14 line and crews being able to respond has helped immensely in
15 that our ability to get something out quicker has helped
16 everybody involved in whatever mission has taken place.

17 Q. So what was -- let's say around 2015, what was
18 Mendocino Railway's plans to deal with this disjointed or
19 deficient manner of operations on the Willits side of the
20 line?

21 A. Well, a couple of things. One, the tunnel had
22 just, you know, was closed for the second time because of the
23 landslide at the west portal of -- to the entrance.

24 But we had also in and around that time I believe
25 contemplated the Remco facility. And we had contemplated some
26 other facilities and properties in the area as we looked to
27 expand the rail operations.

28 Q. And, physically, as far as the facilities, or what

1 you were looking to -- to build or develop when you looked at
2 the Remco facility or these other properties that you were
3 exploring, what was Mendocino Railway planning to build?

4 A. We were -- we were looking to expand our
5 operations, both on the freight and passenger side. We were
6 looking to build rail cars, and -- and grow the business
7 generally.

8 Q. Were you planning to build maintenance facilities?

9 A. We were. In fact, one of the -- one of the
10 attractive things about the Remco facility was that that
11 building was very large in size, but also it was a very sound
12 building.

13 Q. Were Mendocino Railway's plans back in or about
14 2015 put on paper? Are there any documents that reflect those
15 plans?

16 A. Yes. Well, first, there is a contract.

17 The railroad had entered into an agreement to purchase
18 that property from the Willits Environmental Remediation
19 Trust. They were the trustees for the property charged with
20 cleaning it up.

21 PepsiCo was the ultimate owner of the property, and --

22 Q. That's the Remco property?

23 A. That is correct. And so in addition to the
24 agreement for purchase being signed and in escrow, actually,
25 there were -- there were plans, and some very -- some pretty
26 basic drawings, but drawings nonetheless, of the facility and
27 potential uses that we would have for it.

28 Q. Okay. Prior to the Remco transaction engaging in

1 that process, specifically, with respect to Remco, did
2 Mendocino Railway have any written plans for this development
3 of better facilities, expanding its freight and passenger
4 operations, building rail cars, those kinds of things?

5 A. I would point back to the document that we used in
6 2004 when we acquired Mendocino Railway through the bank --
7 or, excuse me, when we acquired the assets of the California
8 Western Railroad through the bankruptcy process.

9 That was a letter presentation, if you will, done to the
10 bankruptcy court judge.

11 So there were -- there were definitely plans in that
12 document, general ideas and thoughts of how we could grow the
13 business and turn the business around.

14 Q. And did that document or any other document
15 reflect plans for construction of rail facilities in or about
16 Willits, either a description or a plan?

17 A. I don't know. I'm sorry. I don't recall if it
18 did. But it certainly spoke to growing the business and
19 growing freight, growing passenger.

20 Q. Okay. Why -- why did Mendocino Railway want to
21 expand and develop its freight and passenger rail services at
22 this time when it acquired California Western in 2004?

23 A. Well, you have to remember that this is a railroad
24 that was built 137 years ago, and it was built to serve its
25 communities.

26 In my 30 years of working for the railroad and being in
27 service to the railroad, I have never lost sight of that
28 original mission.

1 C.R. Johnson built this railroad to connect the cities of
2 Fort Bragg and Willits, which at the time were extremely
3 isolate, and in many cases today are isolated as well.

4 And getting the ability to help get goods, and services,
5 and/or people to and from one side of the railroad to the
6 other is what the railroad was founded on, and that's
7 absolutely something that I'm keenly aware of and hold
8 absolutely, you know, very close to my core principals of how
9 we guide the business today.

10 Q. So yesterday you gave some examples of -- of
11 freight operations.

12 You talked about the -- moving the aggregate and other
13 materials along -- along the railroad. And you talked a
14 little bit about the -- the passenger service, other than --
15 than the -- the tourist or excursion operations.

16 But can you give us some examples of the Mendocino
17 passenger rail service, transportation service that Mendocino
18 Railway provides for quote/unquote commute?

19 A. Sure. There are many examples. There are --
20 there are homes and cabins that dot the entire rail corridor.

21 Keep in mind that Mile Post 0 is at Fort Bragg. Mile
22 post 40 is at Willits.

23 And at Mile Post 9, that is an area known as Company
24 Ranch. That is the end of electricity as we know it, meaning
25 it is carried by PG&E power lines.

26 And you don't pick up electricity back until you hit the
27 Willits side, and that is in the area of the summit, so Mile
28 35 -- 34 and a half.

1 The -- the residents who live out there, whether they be
2 seasonal or year round, some of them have access to roads,
3 some of them do not have access to road and do depend on the
4 railroad for service even to this day.

5 It wasn't long ago that one of the residents who lives
6 out there -- we had some late rains this spring, and they were
7 not able to get their vehicle over one of the logging roads
8 that they can access to their place.

9 And so we had to -- we shepherded them from Camp
10 Mendocino, which they were able to drive into, down to their
11 camp, or -- or home at Mile Post 16.4.

12 So that is one example that we are -- we get a request
13 for on a regular basis, particularly when the weather is poor.

14 The -- I mean, historically, you know, I -- I certainly
15 can recall the times where we -- we are also, I should say, a
16 flag-stop railroad. And that is not an uncommon thing to have
17 for railroads.

18 In fact, the Alaska Railroad is also to this day a
19 flag-stop railroad.

20 Q. It would be helpful for you to explain what that
21 means.

22 A. Absolutely. A flag-stop railroad is where
23 somebody who wishes to take passage on the train stands
24 adjacent to the tracks and flags the train down.

25 The train will stop. The conductor will greet that
26 person, and ask them, you know, what's going on?

27 And where they -- you know, if they wish for passage,
28 then they get on board. We'll take them to wherever they are

1 heading.

2 Countless times we used to pick up Mrs. Burkhart, Hannah
3 Burkhart, from the meal station, which is just east of
4 Northspur. And we would take her to Willits.

5 She would get off the train at the Safeway. The train
6 would continue on into the passenger depo. And upon return,
7 we would pick Mrs. Burkhart up, take her back, and load her
8 groceries for her on the train.

9 And she would do her shopping once a week, sometimes a
10 couple of times a month if she didn't go out. That isn't an
11 isolated event. That's a very common event.

12 So we -- we do have -- particularly on the Fort Bragg
13 side of the line, a lot of the houses that dot the tracks are
14 summer camps, summer residences. And we still have requests
15 even now to service those summer camps or summer residences.

16 We have made arrangements where we will take down a rail
17 van. And in the exhibit that is up on the wall here in the
18 picture that is on the far left-hand side, there are two white
19 vans.

20 Those are -- have rail wheels that they are permanently
21 mounted to, but they were converted for Ecoline vans.

22 And if it's one or two folk that need to get out to their
23 summer camp, we may use something like that to transport them
24 to get them and their goods and services out. There is plenty
25 of storage capacity in the rail vans to do that.

26 Q. And that passenger rail transportation service
27 that you have just described, that would be under the
28 passenger tariffs that we looked at yesterday?

1 A. That is correct.

2 Q. That was -- that service was available prior to
3 December 22, 2020?

4 A. Absolutely.

5 Q. And is still available up until today, correct?

6 A. Yes.

7 Q. Any plans to change that in the foreseeable
8 future?

9 A. No.

10 Q. So in -- in this eminent domain action, Mendocino
11 Railway seeks to acquire Mr. Meyer's property for a project,
12 correct?

13 A. That is correct.

14 Q. Please describe the project for which Mendocino
15 Railway seeks to acquire Mr. Meyer's property?

16 A. One of the -- one of the big items is sort of the
17 resurgence of the freight business and the need for freight
18 transportation, particularly that of trans load.

19 And that -- that's really -- that is key to having a
20 facility, but it's also key to what I was speaking about, the
21 disjointed effort in what is going on on the exhibit on the
22 wall.

23 It's to bring all of those items into one parcel of
24 property.

25 Keep in mind that this property that we currently occupy
26 in Willits but for the depo grounds is not owned by Mendocino
27 Railway or California Western Railroad. It is through a
28 trackage rights agreement, which is something that common

1 carriers have with other common carriers.

2 So there is a trackage rights agreement between our
3 railroad and the other railroad.

4 Q. Okay. I'm going to pause you for just a second,
5 because I want to get into some of these details.

6 But before we do that, let's take a step back and just
7 describe the project and the components of the project.

8 You started with freight facilities, including trans
9 load. Okay. Anything else related to freight?

10 A. Absolutely. There would be a maintenance
11 facility, a large building whereby locomotives and/or rail
12 cars could be taken inside and worked on.

13 There would be a pit in that building, again, where
14 locomotives or rail cars could be taken in and worked on.

15 And there would be a wide track, a wide track, again,
16 being extremely important to being able to turn cars around,
17 but being able to turn locomotives around as well.

18 There would be sidings and spurs. So sidings, meaning
19 that you can -- the train can ingress and egress from either
20 end, and a spur is ingress/egress out of the same switch.

21 There is no --

22 Q. So siding is two ways, and spur is one way?

23 A. That's right. It dead ends at the end. And so
24 there would be -- those are components that would be there to
25 support the freight side or trans load side of the business.

26 Q. Why -- why would sidings or spur tracks be needed
27 as part of the project?

28 A. To store rail cars, and to allow for items that

1 may have been shipped to be trans loaded onto a truck.

2 There may be a timing difference, in that you don't --
3 your -- the truck is delayed in getting there, and the
4 commodity still sits in that car. And if you need extra cars,
5 you need the capacity to store those cars.

6 And so the sidings and spurs are extremely important for
7 -- for the purpose of storing rail cars.

8 Q. Can you explain a little bit more about that?
9 Because it -- it's not necessarily common sense.

10 If it's a railroad, cars come in and out regularly,
11 right?

12 A. That is correct.

13 Q. So why do you need space to store cars on site?
14 Can't you just ship them out where they came from or somewhere
15 else?

16 A. Well, you need -- you need to have cars available
17 to -- to customers when the requests come in. It doesn't mean
18 that you're sitting on a backlog of inventory.

19 It means that your customers have ordered cars, you have
20 the cars available to them, and they'll take delivery of them
21 when they ask for the.

22 They they may be paying demurrage, which is cars sitting
23 not used. They may be paying that demurrage rate for a period
24 of time. But the cars are there, and ready based on their
25 request.

26 There also -- it is not uncommon for rail cars to have
27 problems, mechanical problems. Like anything else, it's a
28 piece of equipment, and so there may be repairs that need to

1 be made.

2 This -- the facility that we plan on constructing would
3 be able to handle those repairs.

4 Q. So you talked about trans load, maintenance,
5 building, including a pit, wide track, sidings and spurs.

6 Is there anything else relating -- any other facilities
7 as part of the project relating to the freight rail
8 operations?

9 A. Yes, offices. And the offices would be located in
10 the depo building. And the offices would be to support the
11 maintenance of late weight; MOE, maintenance of equipment
12 crews; and dispatching efforts as well.

13 Q. Are the facilities that you described as part of
14 -- for the freight kind of aspect of the project, are those
15 unusual for a short line conducting freight operations?

16 A. No.

17 Q. Are they similar facilities to what Mendocino has
18 in Fort Bragg?

19 A. The facilities proposed would actually be better
20 than that of the facilities that are in Fort Bragg.

21 The facilities in Fort Bragg were built in the early
22 1900s, and in many cases don't meet the demands of what we
23 need today to provide for our crews.

24 For instance --

25 THE COURT: They're muted, right?

26 THE CLERK: Yeah.

27 THE COURT: Go ahead.

28 THE CLERK: There's one number that's not. Let me

1 mute it now.

2 THE COURT: Go ahead.

3 THE WITNESS: The -- there have been a number of
4 occasions whereby we have leased classroom space for doing our
5 annual training sessions.

6 Our crews are required to go through annual training,
7 retraining, certification, and, in some cases,
8 recertification. It's not necessarily once a year we do this.
9 It is throughout the year.

10 There used to be an approach of where you would do your
11 annual class certifications in January, the slowest month.
12 And that just wasn't conducive. When you bring new staff on,
13 there is a need to constantly be training.

14 And so we have in the past leased classrooms from
15 Mendocino College at their Fort Bragg campus. We have also
16 leased classroom space in Willits at the museum complex, so --
17 which is where the college previously held classes, and I
18 think still has some classes, if I am not mistaken.

19 So these facilities that are proposed are absolutely what
20 railroads need today. They are facilities that we simply
21 don't have.

22 In fact, sometimes we've had to hold classes on board
23 rail cars, passenger rail cars, because you have seats
24 generally facing the same direction and you can line folks up
25 in sort of traditional classroom style, if you will.

26 BY MR. BLOCK:

27 Q. And does Mendocino Railway plan to improve or
28 develop the deficiencies in Fort Bragg?

1 A. Yes. There are plans to develop and improve
2 deficiencies in Fort Bragg at some point in time.

3 Q. So just to go through the -- the step-by-step --
4 well, yeah. Does Mendocino Railway have a maintenance
5 building at the Willits end of the line?

6 A. A maintenance building? No. It has a container,
7 a 40-foot shipping container.

8 Q. Does it have a pit?

9 A. Mendocino Railway does not have a pit. It has use
10 of a pit in Willits.

11 Q. And that's the pit that's north of the wye
12 depicted in Exhibit 3 --

13 A. That is correct.

14 Q. -- when we see on Exhibit 3 that Mendocino Railway
15 that has a wye track --

16 THE COURT: Has a what?

17 BY MR. BLOCK:

18 Q. -- available? A wye track, correct?

19 A. It has a wye track available to it, yes.

20 Q. And does Mendocino Railway have available to it
21 sidings or spurs in Willits presently?

22 A. Yes.

23 Q. Okay. And you mentioned the deficiency in the
24 offices. So there are offices currently at the Willits depo?

25 A. There are desks within an office. There are
26 multiple desks within an office.

27 Q. But insufficient to hold your briefings?

28 A. Extremely.

1 Q. And is it sufficient to hold all of the personnel
2 necessary for dispatching, marketing, and all the different
3 functions that you have described?

4 A. No.

5 Q. Okay. Now, with respect to -- or -- and are there
6 trans load facilities available to Mendocino Railway in
7 Willits?

8 A. There are not.

9 Q. Okay. Explain, please, briefly what transloading
10 is?

11 A. Yesterday, I touched on the importance of short
12 line railroads across the country, and there being -- having
13 the ability to carry the first mile and last mile of some
14 cargo that may be transported across the country.

15 Transloading is the reloading of commodity from a
16 traditional truck and/or trailer to a rail car, and vice
17 versa.

18 Q. And so a train is pretty big, or a rail car is
19 pretty big?

20 A. Yes. It can be.

21 Q. What is the typical size of a rail car length?

22 A. Well, they all vary. Again, it depends on the
23 commodity. I mean, you can get 50-foot gravel cars. You can
24 get gravel cars that are much longer.

25 It just depend on the commodity being shipped.

26 Q. So to properly conduct trans load operations, you
27 need space for a rail car?

28 A. Correct.

1 Q. And you need space for trucks?

2 A. That is correct.

3 Q. Rail cars travel on the train tracks?

4 A. Yes.

5 Q. So they would need sidings or spurs in order to
6 efficiently move around?

7 A. Correct.

8 Q. Maybe even a wye?

9 A. Correct.

10 Q. And then you need space to move trucks?

11 A. That is correct.

12 Q. And the trucks that you're talking about, are
13 those the 60-foot typical tractor/trailer trucks?

14 A. Semi trucks. Yes, absolutely.

15 Q. And if the commodity is a liquid or a gas, you
16 would need a tanker truck?

17 A. That is correct.

18 Q. And so -- and those trucks need space to circulate
19 and move around, in and out?

20 A. Absolutely. And the flow pattern is extremely
21 important, being able to come in, turn around, and exit
22 without creating, you know, a ball of mess.

23 Q. Would you need space to park trucks?

24 A. Yes.

25 Q. Why?

26 A. Well, if, for instance, you're loading, one of our
27 potential shippers that has expressed interest in shipping
28 commodity uses a lot of grain.

1 And if you have multiple grain trucks coming in to load
2 grain into a rail car, then you would absolutely need a place
3 to stage, because you're not going to have multiple pumping
4 stations or drop stations for grain product.

5 So there may be a backlog, and you're going to need a
6 place to stage trucks.

7 Q. You might also need space to stockpile or store
8 the commodity?

9 A. Yes.

10 Q. For example, grain?

11 A. Absolutely.

12 Q. Aggregate?

13 A. Without question.

14 Q. Other commodities would also require room to
15 stockpile or place the materials?

16 A. Correct.

17 Q. Or boxcars?

18 A. Correct.

19 Q. And then there might be the need for some kind of
20 conveyance system to move the materials from the train, from
21 the rail car onto the trucks?

22 A. That is correct.

23 Q. So that would also require space?

24 A. Yes.

25 Q. And if you're doing a trans load operation, is it
26 just one rail car at a time?

27 A. No. There is no reason why you couldn't be
28 loading or unloading multiple rail cars at a time.

1 Q. And so you need the space to accommodate all that?

2 A. You may have a forklift unloading items from a
3 truck onto a rail car on one side or on one track, and, you
4 know, two tracks over you may have a forklift unloading steel.
5 It's not one at a time.

6 Q. Now, over the 137-year history of Mendocino
7 Railway, has -- or the CWR, has there ever been transloading
8 activities taking place in Willits?

9 A. There have not been.

10 Q. So why do you need facilities to do it now?

11 A. Well, transloading is something that is relatively
12 new in the rail shipping industry. Actually, it was pioneered
13 by a railroad in the Central Valley of California, and that is
14 really where it exploded.

15 It -- it allows and it addresses -- it helps address that
16 first mile/last mile challenge that exists between the person
17 who is using the commodity or the person who is creating the
18 commodity, and the actual logistics of getting it moved
19 efficiently.

20 So right now, one of the challenges that we are hearing
21 from potential customers who want to come online is that the
22 costs of operating trucks simply across Highway 20 is cost
23 prohibitive, and they are looking for any way possible to get
24 items from those trucks onto rail cars and shipped, albeit a
25 short distance.

26 Q. 40 miles is short?

27 A. Well, 33 miles by Highway 20 across between
28 Willits and Fort Bragg.

1 Q. Oh, the track. Okay. The truck is relatively
2 short?

3 A. Yes. Shorter. And it is those 33 miles that
4 create a huge operating expense for -- for some of these
5 companies.

6 Q. How do you know these companies are interested in
7 -- in Mendocino Railway providing these transload services?

8 A. Some of the organizations we have proactively
9 reached out to, because they have expressed an interest in,
10 boy, wouldn't it be nice if we could ship freight by rail?
11 Well, you can ship freight by rail. Wow, can we? If the
12 tunnel gets open, we are going to -- we would love to ship
13 this commodity with you.

14 These entities have provided letters of support multiple
15 years in a row in the railway's effort to secure a build
16 grant, which is what I spoke of yesterday.

17 Additionally, there is one potential customer who has
18 reached out to us to ship aggregate from Willits to Fort
19 Bragg.

20 They already have a facility in Fort Bragg and a plant,
21 and they want to eliminate truck traffic over Highway 20.
22 They don't have enough staff to currently meet the demand of
23 what they are doing on a daily basis.

24 And for that business in particular, it isn't necessarily
25 high up in the sky. They are a legit existing business, they
26 have a permit for the aggregate already, they are already
27 transporting the aggregate by truck, and they have a facility
28 with an end use on the coastal side.

1 So they have all four of those items. What they are
2 looking to solve is a logistics problem, an employment
3 problem, and a transportation nightmare. And they have turned
4 to us to help solve that problem for them.

5 Q. What company is that?

6 A. The GEO Aggregates.

7 Q. And does the Mendocino Railway offer the service
8 that they are requiring in its existing tariffs, or existing
9 freight tariff?

10 A. Yes.

11 Q. And that is reflected in the tariff we looked at
12 yesterday?

13 A. That is correct.

14 Q. And the prior freight tariff?

15 A. That is correct.

16 Q. You said in your -- in your answer just now, you
17 said if the Tunnel No. 1 is opened.

18 It wasn't clear to me if that was you told this company
19 if the tunnel opens, or if the company said to you if the
20 tunnel opens, we'll use it.

21 But my question for you is what do you mean by if?

22 A. Well, it was their comment to us. They're keenly
23 aware of the situation with Tunnel No. 1. And it isn't an if.
24 It's just a matter of time.

25 Q. So the build grant application, you said these
26 companies offered letters of support with respect to your
27 build grant application?

28 A. That is correct.

1 Q. And that is the build grant application that the
2 city of Fort Bragg submitted on behalf of Mendocino Railway?

3 A. For three years.

4 Q. 2018, '19, and '20?

5 A. Correct.

6 Q. I'd like to show you three documents. This is one
7 that I did not show you yesterday, but the other is the
8 resolution and the application.

9 THE COURT: Have they been marked?

10 MR. BLOCK: Let's mark them --

11 THE COURT: Next in order?

12 MR. BLOCK: -- Exhibit 17.

13 THE CLERK: Here is a tag.

14 MR. BLOCK: Thank you.

15 (Petitioner's Exhibit 17 was marked for identification.)

16 MR. BLOCK: So the order I have them in is, first,
17 the agenda item summary of stapled-together documents.

18 Then the resolution, Resolution No. 4252-2020.

19 And then the third is the stapled-together documents
20 entitled at the top FY2020 City of Fort Bragg, California's
21 Build 2020 Grant Application.

22 MR. JOHNSON: Can I interrupt? Is that one
23 document you just provided him?

24 MR. BLOCK: No. I provided you the three
25 together.

26 MR. JOHNSON: Do I have that?

27 MR. BLOCK: I gave them to you yesterday, or
28 previously.

1 MR. JOHNSON: Those documents?

2 MR. BLOCK: Yes. Those two and this too be will
3 be 17.

4 MR. JOHNSON: All three of them?

5 MR. BLOCK: Yes.

6 MR. JOHNSON: Thank you.

7 BY MR. BLOCK:

8 Q. Okay. Mr. Pinoli, you've looked through
9 Exhibit 17?

10 A. I have.

11 Q. And what do we have here in Exhibit 17? Can you
12 take us through each of the three things that are encompassed
13 in Exhibit 17?

14 A. The top document is an agenda item summary
15 prepared by then city manager of Fort Bragg, Tabitha Miller.
16 It's for a meeting dated the 11th of May 2020.

17 And it was the report that the city manager issued to the
18 counsel so that they could take action at their meeting and
19 issue a resolution that would be in support of the Mendocino
20 Railway's application to the United States Department of the
21 Transportation for a build grant.

22 Q. Okay. And, then, after the agenda item summary,
23 there is another document, or another page. What is that?

24 A. That is resolution No. 4252-2020.

25 Q. I'm sorry. In this the first series of stapled
26 documents?

27 A. Oh. Yes.

28 Q. You have the addendum item summary, and then what

1 is the page after that?

2 A. A resolution dot dash 2020.

3 Q. So that is the proposed registration plus the
4 draft resolution?

5 A. The draft, Yes.

6 Q. And, then, the -- the next page, which is double
7 sided. What is that?

8 A. The last page is the legislation that details --
9 the city of Fort Bragg uses Legistar as a way to keep their
10 documents organized and tracked. And so this is the details
11 from the city's website that the public could access.

12 Q. And then the back page?

13 A. The back page is the more archaic way of looking
14 at their website and the Legistar portal, if you will.

15 Q. Okay. I will represent that this last page, the
16 double-sided page is something that I pulled off of Legistar
17 that reflects the results of the hearing.

18 And then the second page is the resolution, correct?

19 A. Yes.

20 Q. Are you familiar with this resolution?

21 A. I am.

22 Q. And does this appear to be a true and correct copy
23 of the resolution adopted by the Fort Bragg city counsel on
24 May 11, 2020?

25 A. Yes.

26 Q. And then the third series of taped documents, the
27 grant application, are you familiar with this document?

28 A. I am.

1 Q. How are you familiar with this document, the grant
2 application portion of Exhibit 17?

3 A. I did the majority of the work that went into
4 putting the grant application together so that the city of
5 Fort Bragg could submit it on our behalf.

6 Q. And does this third portion of Exhibit 17, the
7 grant application, appear to be a true and correct copy of the
8 build grant application submitted by the city of Fort Bragg on
9 behalf of Mendocino Railway in 2020?

10 A. Yes.

11 MR. BLOCK: I'd like to offer Exhibit 17 into
12 evidence.

13 THE COURT: Any objection? Exhibit 17 will be
14 received.

15 (Petitioner's Exhibit 17 was admitted into evidence.)

16 BY MR. BLOCK:

17 Q. Thank you. So as part of the grant application on
18 -- it looks like it's the third page, there are a series of
19 exhibits. And Exhibit 2 says Support Statements?

20 A. Yes.

21 Q. Are you familiar with the support statements that
22 were submitted on behalf of or in support of this build
23 application?

24 A. I'm very familiar.

25 Q. Okay. I'd like you to take a look at Exhibit 30.

26 A. Okay.

27 Q. What do we have in Exhibit 30? This is pages 1
28 through 11.

1 A. We have letters of support from various
2 businesses, various -- yeah, letters of support from various
3 businesses.

4 Q. Does Exhibit 30 reflect all of the support letters
5 submitted in support of the build grant application?

6 A. It does not.

7 Q. Okay. This is just the support letters from
8 businesses, correct?

9 A. That is correct.

10 Q. Is it a -- is it all of the businesses that
11 submitted support letters?

12 A. I don't believe it is.

13 Q. What is missing?

14 A. There was a support letter, if I'm not mistaken,
15 from supervisor Dan Gjerde, who represents the Fourth
16 District, where he encourages the railroad to ship municipal
17 solid waste.

18 And I spoke to that yesterday as something that has been
19 explored for a period of time. And he encouraged that this,
20 you know, this support would allow for that to possibly
21 finally happen.

22 Q. And that would be municipal solid waste being
23 shipped by rail from the city of Fort Bragg into Willits?

24 A. That is correct.

25 Q. Could that -- well, first of all, I apologize.
26 That's my mistake for not including that letter there.

27 Second of all, the build application does reflect, and,
28 otherwise, in Exhibit 17, that function that -- that proposed

1 use of the railroad for municipal solid waste, correct?

2 A. Yes.

3 Q. Now, if Mendocino Railway was to undertake the
4 transport of municipal solid waste in 2018, 2019, or 2020,
5 assuming that the tunnel was open, where would it go in
6 Willits?

7 Do you -- would -- with the existing facilities that are
8 reflected in Exhibit 3, could Mendocino Railway conduct that
9 operation?

10 A. Could Mendocino -- if I may clarify, could
11 Mendocino Railway conduct the existing operation of shipping
12 municipal?

13 Q. I'm sorry. Could it conduct the delivery of
14 municipal solid waste, that freight rail service for the city
15 of Fort Bragg, on the existing California Western Railroad
16 facilities that are reflected in Exhibit 3?

17 A. Yes.

18 Q. How would it do so?

19 A. Well, the -- the rail corridor passes the Solid
20 Waste of Willits facility. And it would require that a siding
21 and/or spurs be put in, but it could happen.

22 Q. Can you point to where the municipal solid waste
23 facility is?

24 A. Yeah. Here's the Remco facility. And this is the
25 Solid Waste of Willits facility.

26 Q. So just the waste? Or two or three properties
27 west on the north side of the tracks?

28 A. There's the Remco facility; there's Willits

1 Redwood Company; the Blosser Lane crossing, which is a gated
2 and eliminated crossing; Solid Waste of Willits; and then this
3 is Croply Lane, which is an un-gated crossing.

4 Q. So in order to undertake that operation, you would
5 just need the Mendocino Railway, which is to install siding or
6 spur tracks?

7 A. That is correct.

8 Q. Now, the other letters in -- why don't you tell us
9 what each of the letters in Exhibit 30 states?

10 A. So Exhibits 30-1 and 30-2 is a letter from the
11 owner/president of Flow Beds, and they are a mattress making
12 manufacturing company.

13 They use Latex, or Latex-like material in the production
14 of their mattresses, and would be a shipping commodity via
15 boxcar.

16 Q. And that -- that operation, shipping boxcars
17 between Willits and Fort Bragg by Flow Beds, would that
18 contemplate transloading?

19 A. Yes.

20 Q. And as of in 2018, 2019, 2020, if the tunnel No. 1
21 was open, could Mendocino Railway provide that freight rail
22 transportation function with the facilities that existed at
23 that time as reflected on Exhibit 3?

24 A. And what was the year again? 2018, '19? No.

25 Q. Why not?

26 A. We don't have the facilities to be able to do
27 that. One, we don't own the track. We have a trackage rights
28 agreement.

1 We don't have the ability to transload in the Willits
2 yard.

3 Q. Okay. Thanks for saying trackage rights. It
4 reminds me that we didn't -- that you haven't explained what
5 that means. Could you, please?

6 A. A trackage rights agreement is the equivalent of a
7 use agreement or a license agreement.

8 It allows -- it's something that common carrier railroads
9 often enter into mutually, meaning that the yard, the Willits
10 yard, but for the tracks owned by the California Western
11 Railroad, are owned by the North Coast Rail Authority, or the
12 North Western Pacific Railroad.

13 And there is an agreement in place that when we arrive at
14 the Willits yard, we then fall under their jurisdiction or
15 their -- their rules.

16 So we abide by two railroad's rules, if you will, when we
17 arrive in Willits. We abide by the rules of the California
18 Western Railroad, and we abide by the rules of the
19 Northwestern Pacific Railroad.

20 And a trackage rights agreement allows for the use of
21 certain tracks, and it's -- it can -- trackage rights
22 agreements look completely different, depending upon
23 situations.

24 It may be very prescribed in that it is one or two
25 tracks. It may be very broad, in that it could be wide open.

26 Q. And is that an ongoing agreement?

27 A. Yes.

28 Q. And can it be terminated?

1 A. It can.

2 Q. By whom?

3 A. By the issuer of the agreement, which is the North
4 Coast -- well, it could be mutually terminated, but it could
5 be terminated by the North Coast Rail Authority.

6 Q. So when we're talking about the trackage rights
7 agreement that could be terminated, you are specifically
8 referring to the existing trackage rights agreement between
9 California Western Railroad, or Mendocino Railway and NCRA?

10 A. That's correct.

11 Q. How long has that trackage rights agreement been
12 in effect?

13 A. 1999, I believe. 2000. In that era.

14 Q. And you are familiar with that agreement?

15 A. I am.

16 Q. How are you familiar with that agreement?

17 A. I was a part of the organization when the
18 agreement was created. It was created by the then chairman of
19 the board and NCRA.

20 And I have referred to the agreement many times in
21 discussions with the NCRA over the years, most recently in the
22 last couple of years.

23 Q. Can you show us on Exhibit 3, maybe mark in your
24 book on Exhibit 3 the limits of the trackage rights agreement,
25 or what -- what portion of the rail that it encompasses?

26 Do we have a Sharpee, maybe?

27 A. Right here.

28 Q. Maybe if you put a mark at the beginning and the

1 end. Go ahead. You can put a circle, or something. And then
2 where does it end?

3 A. The trackage rights agreement?

4 Q. Yeah. Does it have a northern terminate?

5 A. As I recall, it does. It's the main line, and I
6 believe it is just north. I believe it is just north of the
7 locomotive pit facility.

8 Q. Okay.

9 A. I can also draw it here, if you'd like.

10 Q. Sure. I'm going to show it to Mr. Johnson. Here,
11 Your Honor.

12 And this trackage rights agreement can be terminated by
13 either party?

14 A. Yes.

15 Q. On what -- what kind of notice?

16 A. 30 days.

17 Q. How does that trackage rights agreement and the
18 30-day termination impact, if at all, Mendocino Railway's
19 freight and passenger operations in Willits?

20 A. Well, it would certainly create an interesting
21 dynamic, and it would -- there is no certainty.

22 I mean, if that agreement is cancelled, it makes getting
23 from the CWR tracks to the CWR depo a bit of a problem.
24 Leapfrogging isn't possible in railroading and flying isn't
25 possible, so it makes it -- it makes it pretty prohibitive.

26 Q. In other words, CWR couldn't get to its depo on
27 Commercial Street?

28 A. That's correct.

1 Q. And Mendocino Railway would not be able to conduct
2 any of the maintenance operations that are set forth in the
3 three pictures on Exhibit 3?

4 A. That is correct.

5 Q. And it wouldn't be able to access its track
6 materials, maintenance of way materials at the wye?

7 A. That's correct.

8 Q. And it couldn't access the wye?

9 A. That's correct.

10 Q. And it couldn't access the locomotive pit to the
11 north of the wye?

12 A. That's correct.

13 Q. So back to Flow Beds. They -- this letter
14 indicates that they wanted to ship by rail?

15 A. It does.

16 Q. What's the next letter? Who is it from? Go
17 ahead.

18 A. Exhibits 30-3 and 30-4 from Line Redwood Forest
19 Company.

20 Q. Who is Line Redwood?

21 A. They are one of the largest timber landowners
22 adjacent to the railroad's corridor for the first 20 miles
23 right between Fort Bragg and Willits.

24 Q. So that would be Mile Post 0?

25 A. That is correct.

26 Q. And what does this letter say?

27 A. That if given the opportunity, they would ship
28 logs.

1 Q. Now, this letter -- ship logs using Mendocino
2 Railway's freight rail transportation services pursuant to the
3 tariff that we've looked at?

4 A. Yes. Including, in their situation -- because
5 they would even lease in addition to the -- the rates in the
6 tariff, they would lease flat cars that the railroad has for
7 the transportation of logs.

8 Q. Would the transportation of logs under -- by line
9 require transloading in Willits?

10 A. In some cases, it would.

11 Q. Similar to Flow Beds?

12 A. That's correct.

13 Q. So the Flow Beds letter and the Line Redwood
14 Forest letter, they're dated 2018. Was there another letter
15 produced for the 2019 or 2020 build-a-grant applications?

16 A. There were.

17 Q. Okay. Any substantive difference between the
18 letters that these companies presented in 2018 with the
19 letters they presented in 2020?

20 A. No.

21 Q. Let's go to Exhibit 30-5. What is that?

22 A. 30-5 and 30-6 are the same letter, just the second
23 page is a letter from the then CEO of North Coast Brewing
24 Company to support the railroad in its effort for the build
25 grant, and saying that it would ship freight via rail as well.

26 Q. And a similar letter was provided for the 2019 and
27 2020 build grant applications?

28 A. Yes.

1 Q. Would the North Coast Brewing Company's freight
2 rail transportation services require use of transload
3 facilities in Willits?

4 A. Yes. And it wouldn't be single commodity, either,
5 meaning it wouldn't be just logs, or just aggregate, or just
6 lumber.

7 Q. Or just beer?

8 A. Or just finished beer. Right. It would be the
9 products necessary to produce. So grain, glass, paper
10 products, the cardboard.

11 In this case, now days, spools of aluminum for their
12 cargo line versus their bottling line, because they produce
13 both. And it would be bidirectional.

14 Q. So the grain, the glass, the paper, and the
15 aluminium would go from Willits to Fort Bragg, and the
16 finished beer in cans, or bottles, and packaging would come
17 back from Fort Bragg to Willits?

18 A. That is correct.

19 Q. And there would be similar exchange between raw
20 material and finished materials with these other companies?

21 A. Yes. That is correct.

22 Q. Tell us what Exhibit 30-7 is?

23 A. 30-7 and 30-8, same letter front and back. It is
24 a letter from Chris Baldo, one of the owners of the Willits
25 Redwood Company. They are a small saw mill, but they are a
26 redwood only saw mill.

27 And Mr. Baldo says that one of the most significant
28 sources of redwood logs in Mendocino County is the

1 72,000 acres in the Noyo River Canyon. That is something that
2 feeds into their mill, and they would be able to take logs.

3 They also have log cars that they own, and so those cars
4 would be made available to an entity like Line Timber, or the
5 majority property owner on the eastern side of the line.

6 So between Northspur at the midpoint and Willits is
7 Mendocino Redwood Company. While Mendocino Redwood Company
8 has their own facility, there are some times when they can't
9 accommodate logs of a certain size.

10 Mendocino Redwood Company is one of the last few mills in
11 the county that can accommodate logs that are larger in size.

12 Q. And would Mendocino Railway providing freight rail
13 transportation services to serve the Willits Redwood Company
14 require transloading?

15 A. In some instances, yes, it could.

16 Q. Is there a direct connection to the Willits
17 Redwood Company and the Mendocino Railway?

18 A. There is.

19 Q. And is that what you showed us just to the west of
20 the municipal waste or solid waste facility?

21 A. That is correct. In this -- I'm sorry. In this
22 area right here. So this sort of inverted "L" to the west of
23 Remco, to the east of the solid waste facility, and right at
24 Croply Lane, which is this street that runs perpendicular to
25 state Route 20.

26 Q. So the logs would either be offloaded at a
27 transload facility to the west, or a spur siding track would
28 be constructed to connect the CWR to the mill?

1 A. And there are -- the Willits Redwood Company has a
2 log storage area, which is in this area right here, which is
3 across from Croply Lane and the main storage facility.

4 And there is a siding in there. It's actually listed on
5 the railroad timetable, and it's known as Sage, SAGE.

6 Q. Okay. And Exhibit 30-9. Was that?

7 A. 30-9, 30-10, and 30-11 are the same letter or part
8 of the same letter. And it is a letter from Wylatti
9 Enterprises, LLC, a.k.a. Geo Aggregates. And the letter is
10 saying that they are interested in shipping freight, and they
11 would be a customer of the railroads.

12 Q. And would why Wylatti require -- would Mendocino
13 County Railway providing freight rail transportation services
14 to Wylatti Enterprises require transload facilities?

15 A. Yes.

16 MR. BLOCK: I would like to move Exhibit 30 into
17 evidence.

18 THE COURT: Any objection?

19 MR. JOHNSON: Yes, Your Honor. It's hearsay.

20 THE COURT: Were these attached to the grant
21 application that has already been admitted?

22 MR. BLOCK: Yes. They are referenced as support
23 letters in Exhibit 2 on page 3.

24 THE COURT: Well, the grant application has
25 already been admitted. And if they are admitted in the grant
26 application, then I don't see any reason why not to.

27 MR. JOHNSON: Sorry to interrupt. But where are
28 they referenced in the grant application?

1 MR. BLOCK: Here. I'll show you. Which we
2 discussed at the beginning of Mr. Pinoli's testimony,
3 regarding this document or this exhibit.

4 MR. JOHNSON: Okay. No objection.

5 THE COURT: All right. So Exhibit 30 will be
6 received.

7 (Petitioner's Exhibit 30 was admitted into evidence.)

8 MR. BLOCK: Your Honor, it looks like it is about
9 10:30. I don't know if this is a good time for a break?

10 THE COURT: So let's return at 10:45.

11 MR. BLOCK: Thank you.

12 (Recess)

13 THE COURT: Let's go back on the record.

14 BY MR. BLOCK:

15 Q. Thank you, Your Honor.

16 Mr. Pinoli, I'd like you to take a look at Exhibit 29?

17 A. Okay.

18 Q. Are you familiar with this document?

19 A. I am.

20 Q. How are you familiar with it?

21 A. As a member of the California State Line Rail
22 Association, this is a document that was crafted by CalTrans,
23 but in conjunction with the short line operators in the state
24 of California.

25 And it is a short line rail improvement plan for the
26 state.

27 Q. Did you participate in the drafting of this
28 document?

1 A. From a very removed standpoint. I wasn't one of
2 the authors of the document, but, you know, I certainly
3 supplied information that would have been used for it and
4 provided critique to it.

5 Q. Critique to drafts?

6 A. Yeah. To -- at presentations at the California
7 State Short Line Association meeting.

8 Q. And this is the 2021 Short Line Rail Improvement
9 Plan. Is that right?

10 A. Yes.

11 Q. And did you -- or have you reviewed the completed
12 final version of the short line improvement plan that is
13 contained in Exhibit 29?

14 A. I have.

15 Q. And today and yesterday you described both
16 generally and specifically the importance of short line
17 operators within the California rail infrastructure
18 transportation system?

19 A. Yes.

20 Q. And you described how Mendocino Railway provides
21 services and has provided services, passenger and freight rail
22 transportation services consistent with industry standards.
23 Is that right?

24 A. That is correct.

25 Q. And you described some of the benefits of those
26 services, generally, within the state, and, specifically,
27 within Mendocino County, and, more specifically, within
28 Willits and Fort Bragg?

1 A. That is correct.

2 Q. Now, does the short line improvement plan
3 contained in Exhibit 29 discuss the benefits, generally? Or
4 let's start with the importance of short line railroads within
5 the California state transportation infrastructure?

6 A. Yes.

7 Q. And does it describe the benefits of short line
8 specifically within the state's rail transportation
9 infrastructure?

10 A. Yes.

11 Q. And does this plan also recognize the benefits of
12 the passenger and freight rail services provided generally by
13 short line railroad companies?

14 A. It does.

15 Q. And does it discuss --

16 MR. JOHNSON: Objection, Your Honor. Leading.

17 THE COURT: Okay. Don't lead him.

18 BY MR. BLOCK:

19 Q. Okay. Is -- does this report contain comments
20 about the benefits of short line railroad passenger and
21 freight transportation services different than the benefits
22 that you have described yesterday and today?

23 A. No. It's consistent.

24 Q. Okay. And it acknowledges the same benefits that
25 you have described?

26 A. It does.

27 Q. Now, if we look on page 29-5, this -- this page is
28 entitled Last Mile Shipping Solution?

1 A. Yes.

2 Q. And does that generally describe the same last
3 mile issue that you have testified to today and yesterday?

4 A. Yes.

5 Q. And then there is a section about transloading on
6 the right side of page 29-5?

7 A. Yes.

8 Q. And does that describe the same transloading
9 operations that Mendocino Railway intends to construct and
10 provide as part of the project in this case?

11 A. It does.

12 Q. And on page 29-6, does this report identify the
13 types of benefits that the project Mendocino Railway intends
14 to provide with its project in this case?

15 A. Yes. It does.

16 Q. On page 29-47, tell us what we have here?

17 A. 29-48?

18 Q. Yes.

19 A. So this is one of the pages that makes up the
20 plan. It, specifically, calls out CR Northern Railway.

21 It talks about how many miles of track are owned, how
22 many miles are leased, how many miles of track are in class
23 one or various standards.

24 The number of carloads transported over the years,
25 inbound, outbound, et cetera.

26 And then it talks about commodities in general, and the
27 freight rail needs for the operations specific.

28 Q. Okay. Under Owned track Mileage, up at the --

1 near the top of page 29-47, it identifies 112 miles?

2 A. Yes.

3 Q. And it identifies something called the Mendocino
4 Division?

5 A. That's right.

6 Q. What is the Mendocino Division?

7 A. That refers to the route of the California Western
8 Railroad, the 40 miles spanned between Fort Bragg and Willits.

9 Q. And then under class one mileage of FRA class of
10 track, it references Fort Bragg and Willits. What is that
11 referring to?

12 A. That is the track standard that we meet or exceed.
13 But that is the miles of track that are in that class standard
14 at the time that the report was produced.

15 Q. In the -- the next table below that, the number of
16 California carloads transported from 2015 to 2019, do those
17 inbound/outbound numbers contain freight rail transportation
18 services provided by Mendocino Railway?

19 A. It would.

20 Q. And then when we go down to freight rail needs,
21 are the needs of the Mendocino Railway discussed or identified
22 on page 29-47?

23 A. The rock hoppers for dumping ballast rock cars
24 would be based out of Oakdale, interchanged into class ones,
25 and entered into other divisions.

26 So that item, specifically would, be for having rock cars
27 being able to come to the Mendocino division.

28 Q. Are the other needs of Mendocino Railway, either

1 in Willits or Fort Bragg, identified on page 29-47?

2 A. They are not.

3 Q. Why not?

4 A. This is a report that was produced by the
5 Mendocino sister company, CR Northern Railway, and it doesn't
6 contemplate the full range of what our company needs or is
7 doing.

8 Q. But it doesn't mean that you didn't have -- that
9 Mendocino Railway didn't have those needs; it's just not
10 reflected in this particular report?

11 A. That is correct.

12 MR. BLOCK: I'd like to offer Exhibit 29 into
13 evidence.

14 MR. JOHNSON: Your Honor, I object. It is
15 hearsay. We have no idea if this is an official report. It's
16 definitely not reasonably beyond dispute.

17 Also, the taking of judicial notice of official acts of a
18 government entity does not in and of itself require the
19 acceptance of the truth of factual matters, which might be
20 deducted therefrom, since, in many instances, what is being
21 established is no more than the existence of the accusations
22 and is not without supportive evidence of what might factually
23 be associated with the flow there from.

24 THE REPORTER: I'm sorry. I can't hear you.

25 MR. JOHNSON: And this is R.J. Mangini versus
26 R.J. Reynolds Tobacco Company, 7 Cal.4th 1057.

27 THE COURT: Counsel?

28 MR. BLOCK: We have submitted a request for

1 judicial notice. Mr. Pinoli's testimony today substantiates
2 facts. It's not beyond a reasonable doubt. It's certainly an
3 official record of the state of California.

4 It's prepared by CalTrans and published by CalTrans, and
5 we would be happy to submit further briefing on this issue
6 with respect to the request for judicial notice.

7 THE COURT: No. I'm going to receive the report.
8 I'll give it whatever weight I deem necessary.

9 MR. BLOCK: Thank you, Your Honor.

10 (Petitioner's Exhibit 29 was admitted into evidence.)

11 THE COURT: That's Exhibit 29.

12 BY MR. BLOCK:

13 Q. Mr. Pinoli, I'd like you to take a look at
14 Exhibit 2.

15 A. Okay.

16 Q. What is Exhibit 2?

17 A. Exhibit 2 is the piece of property that is owned
18 by John Meyer that Mendocino Railway is looking to acquire.

19 Q. Okay. The property that you're referring to is
20 what is outlined in blue on Exhibit 2?

21 A. That's correct.

22 Q. Can you describe generally the property that is
23 outlined in blue?

24 A. It is a piece of property that borders State Route
25 20 and the railroad's corridor east of Highway 20 rail grade
26 crossing.

27 It is a fairly flat and level piece of property. While
28 it has a lot of soil stockpiled on the property at present, it

1 is a piece of property that has no large grade separation
2 issues, meaning that the separation of grade from the railroad
3 tracks to the property are consistent in that there are no
4 challenges with constructing rail facilities on that piece of
5 property.

6 Q. When did you first become familiar -- and let's --
7 is it fair for us to refer to it as the subject property?

8 A. Sure. That's fine with me.

9 Q. Okay. When did you first become familiar with the
10 subject property?

11 A. In and about 2017.

12 Q. How did you become aware of it?

13 A. It was an email from Mike Hart, who is the
14 president and CEO of CR Railroad Company. He was on his way
15 up to the Mendocino Coast, and was driving by and -- and saw
16 the property as it related to our looking at other properties
17 in the area.

18 Q. Why were you -- why were you or Mr. Hart looking
19 for properties in 2017?

20 A. To grow and expand the operations of the railroad.

21 Q. And what did you or Mendocino Railway do, if
22 anything, with respect to searching for properties for
23 expansion of the railroad or development of the railroad in
24 2017?

25 A. We looked at a variety of properties, and have
26 looked at a variety of properties over the years, going back
27 to 2015 when we looked at the Remco properties.

28 So it was one of the properties that we had looked at

1 during our consideration of the process.

2 Q. Did you, or Mendocino Railway, or Mr. Hart do
3 anything with respect to furthering your investigation or
4 analysis of potential proprieties for development of the
5 railroad after this email correspondence in 2017?

6 A. Yes.

7 Q. What did you do?

8 A. We looked at -- we -- we looked at a piece of
9 property that was further west of the subject property off of
10 Highway 20 -- actually, two parcels, one which was the former
11 Cutter Lumber Mill, where they manufactured pallets; and the
12 other was the Dudly property.

13 In addition to that, the KOA property.

14 Q. Now, was it 2017 or 2020? If you want to look at
15 documents in the exhibit binder to refresh your memory, you
16 can.

17 A. 2020. I'm sorry. 2020. I was -- I think I was
18 stuck on 2017 as it related to something we were talking about
19 earlier, but 2020.

20 Q. Okay. So you're -- you're -- the date that you
21 had said in your earlier testimony just now as to 2017 should
22 have been 2020?

23 A. Yes. The correspondence between Mr. Hart and
24 myself took place in 2020.

25 Q. Okay. And you're looking at Exhibit 33?

26 A. Yes. 33.

27 Q. We'll come back to Exhibit 33, but I want to focus
28 on just the subject property right now. Is the subject

1 property depicted in Exhibit 3?

2 A. It is.

3 Q. Can you show us where it is?

4 A. Absolutely. It's adjacent to the rail corridor.
5 It would be to the north of the rail corridor and
6 approximately compass south of State Route 20.

7 The railroad's intersection with State Route 20 is what I
8 am circling here with the red pen. And the subject property
9 spans in the outlined area here that I am tracing.

10 Q. Okay. And it is labeled on Exhibit 3 as the
11 subject property?

12 A. It is.

13 Q. Okay. As -- as -- as Mendocino Railway was
14 contemplating construction of -- of rail facilities, enhancing
15 its facilities for -- for its operations as -- as you have
16 described in earlier testimony, did -- did the railway
17 determine certain characteristics or factors that were
18 required for construction of those facilities?

19 A. Yes. In order to have facilities for -- to
20 service the railroad and to also service the transload, the
21 proximity to a roadway is key, and, of course, the proximity
22 to the railroad is key.

23 Q. Any other factors that were required for the
24 project?

25 A. Again, not having grade separations. So not
26 having natural barriers in place, meaning that there is some
27 feature between the railroad and a piece of property that
28 would prevent or make it prohibitive to get across to the

1 piece of property level.

2 And that's what I mean, again, by grade separation that
3 the distance does not require a mass change in elevation, up
4 or down, in order to access the property.

5 Q. What about size or shape?

6 A. Size is a consideration.

7 In order to fit elements that are in what I have referred
8 to as the sort of disjointed operation that exists in the
9 Willits yard area, size is definitely a factor.

10 You need -- you need space for trucks to turn around.

11 You need space for there to be more than one truck,
12 multiple trucks at a time.

13 You also need space for rail car storage for side tracks,
14 sidings, and spurs, and a wide track. You definitely need
15 space for a wide track.

16 Q. What about shape? Was that a consideration?

17 A. Shape is a consideration in order to get lineal
18 distance of track so that you're not making cuts of cars,
19 meaning that if you have a string of cars that may be four,
20 five, six, long, you know, six rail cars coupled, which is a
21 process of joining the cars together, that you don't have
22 instances where the -- the cars have to be cut, meaning that
23 they have to be staggered on multiple tracks.

24 From an efficiency standpoint, if a string of cars can
25 stay or remain coupled for the intended purpose, that makes
26 things easier and far more efficient too.

27 If you're unloading items, multiple carloads of the same
28 commodity, it is much easier to when you are finished with

1 that car, if it were let's say grain, being unloaded in a
2 specific spot, you pull forward, unload the next car, and keep
3 doing that. You keep advancing the cars.

4 If you have multiple cuts that have to be on parallel, or
5 side-by-side, tracks that makes it -- well, it's increased
6 inefficiencies.

7 Q. Did Mendocino Railway -- I'm sorry. We described
8 a number of factors, or you described a number of factors,
9 transloading being sufficient to accommodate transloading
10 operations near the railroad, near a railway or a highway; no
11 grade separation, being generally level and sufficient size
12 and shape for the operations.

13 Any other factors that were necessary for the project?

14 A. Size. Parcel size, property size.

15 Q. What parcel size were you looking for?

16 A. Well, in some of the previous properties that we
17 had looked at, they were small, smaller than what the
18 railroad's needs are.

19 For instance, at Remco, it was about a little shy of 10
20 acres. And that only gets us halfway there, if you will.

21 It doesn't allow for -- it certainly doesn't allow -- it
22 wouldn't have allowed for a wide track, and it would have
23 allowed for very minimal if at all transloading possibilities.

24 So 20 acres is the -- is the about right size. It allows
25 us room to -- for the needs we would have more immediately,
26 but it also allows us room for future growth, and doesn't
27 limit us to -- to future growth.

28 It also doesn't -- it also doesn't allow, or excuse me --

1 allow isn't the right word. It doesn't -- I'm sorry. I lost
2 my train of thought.

3 Having the 20 acres, or a parcel that size, not only
4 allows us to grow.

5 It allows us to service a more immediate need, but it
6 doesn't -- this is where I had lost my train of thought --
7 make us or force us to go and identify yet again another piece
8 of property that we have to acquire at a future time to meet
9 the expansion needs.

10 That's the problem we ran into with the Remco facility
11 for certain, because of the its size, half the size. And --
12 and, certainly, some of the problems identified with other
13 parcels.

14 Q. Did Mendocino Railway prepare a written analysis
15 of these factors or characteristics that were required?

16 A. No.

17 Q. Why not?

18 A. I spoke to that earlier today, and that goes back
19 to sort of the entrepreneurial spirit that we have. We know
20 the things that are required.

21 This is the business that we're in as a company. We are
22 intimately familiar with what was required from a transloading
23 standpoint and from a maintenance standpoint, and, as a result
24 of that, we know what it is going to take size wise.

25 We did prepare a site plan subject to design and
26 engineering, but no formal plan, if you will.

27 Q. When -- when did you prepare that site plan?

28 A. Well, we had it laid out in our minds long before,

1 but that was prepared I believe in June.

2 Q. June of 2022?

3 A. That is correct.

4 Q. When you say you had it in your minds, I assume
5 you're talking about yourself?

6 A. That's right.

7 Q. And who else? Or was there anyone else that it
8 was in their mind, and how do you know?

9 A. We had discussions. Again, my colleague and the
10 president and CEO of the CR Redwood Company, Mike Hart, we had
11 discussions about, you know, what things were optimal from the
12 perspective of bringing some cohesiveness to a Willits
13 facility.

14 Q. Are any of those discussion memorialized in
15 writing?

16 A. No.

17 Q. Why not?

18 A. Again, it goes back to the -- the style, and how
19 we have managed our organization collectively for the last
20 20 years that I have been associated with it.

21 Q. I'd like you to take a look at Exhibit 4. Is that
22 the -- the plan of June 2022 that you were just referring to?

23 A. It is.

24 MR. BLOCK: I just want to take a quick step back.
25 I'd like to offer Exhibit 2 into evidence.

26 MR. JOHNSON: No objection.

27 THE COURT: Exhibit 2 will be received.

28 (Petitioner's Exhibit 2 was admitted into evidence.)

1 BY MR. BLOCK:

2 Q. Mr. Johnson, can you -- well, let me first ask you
3 when did Mendocino Railway determine to acquire by exercise of
4 eminent domain Mr. Meyer's property, the subject property?

5 MR. JOHNSON: Meyer.

6 MR. BLOCK: What did I say?

7 MR. JOHNSON: Johnson.

8 BY MR. BLOCK:

9 Q. Mr. Meyer's property. I'm sorry.

10 A. In 2020.

11 Q. Did Mendocino Railway have a plan in place at that
12 time?

13 A. We did not.

14 Q. It was just a concept in your mind and that had
15 been discussed with Mr. Hart?

16 A. That's correct.

17 Q. Why wasn't a more formal plan prepared by
18 Mendocino Railway in 2020 when Mendocino Railway decided to
19 move forward with acquisition of the subject property by
20 eminent domain?

21 A. It, again, goes back to what I spoke of earlier,
22 and that is our style and our approach.

23 There was a -- a -- from a visual standpoint, or from a
24 -- a thought standpoint, we knew in order to accomplish the --
25 the goals of a transload facility, a maintenance facility, a
26 wide track, a depo building, office building, adequate parking
27 and turn around that we needed -- this is about the size of
28 the property that we needed.

1 You know, when you take a look at sort of all of the
2 factors that play into what the railroad has in Fort Bragg,
3 and what it plans to expand to in Fort Bragg, and what is
4 needed in Willits, again, 20 acres is about it.

5 It's a linear piece of property. It conforms to all of
6 the things that we know from having done this and being in
7 this industry for so long that -- that are needed.

8 And so we had -- quite frankly, we had put an immense
9 amount of effort into the Remco property. We had a contract
10 that was signed by both parties. Escrow had been opened. A
11 deposit had been made.

12 And we had gone down the path of engaging engineers, of
13 working on the environmental remediation items that we were
14 going to be inheriting from that property only to have the
15 entire project blow up.

16 Q. Had you had formal engineering plans prepared with
17 regard to the Remco property?

18 A. We had an architect, Robert Schlosser, from the
19 firm of Leventhal and Schlosser, now Schlosser and Newberger
20 in Fort Bragg go through the building, do measurements, and do
21 a full site analysis on what we could and couldn't do.

22 Q. In 2020, prior to making the decision -- Mendocino
23 Railway making the decision to proceed with the eminent domain
24 process to acquire the subject property, had Mendocino Railway
25 investigated or analyzed the physical dimensions of the
26 subject property?

27 A. We had. We had -- adjacent to our property, of
28 course, is the rail corridor, which is depicted on the orange

1 line on the exhibit that is posted up here.

2 Q. Exhibit 3?

3 A. Exhibit 3. And paced out the measurements. We
4 had also looked at the -- sort of a Google overlay I believe
5 of the property, and measured that out.

6 Q. All right. We'll talk a little bit more about the
7 Remco property in a minute, but I want to focus on Exhibit 4
8 for the time being.

9 Can you tell us what we're looking at, and walk us
10 through what is reflected in Exhibit 4?

11 A. Sure. So I will start -- just for ease of
12 everybody, I'll start at the -- the west/southwest corner of
13 the white area of the subject property. And that is where the
14 railroad grade crosses State Route 20.

15 Moving into the east, you'll see a darker black line that
16 has two dots in between it. And then it goes up, and then
17 heads right back to the west, northwest, and comes around.
18 That is a separate parcel.

19 And moving to the east of that, the first rectangle that
20 we get to that has railroad tracks running inside of that
21 rectangle is a maintenance repair facility for maintenance of
22 way and also a storage facility for maintenance of way
23 equipment, and a shop facility, which is where a pit would be
24 located.

25 Q. What is the approximate dimensions of that
26 building?

27 A. I'm sorry. I don't have the dimensions in front
28 of me. I would say based on scale -- I don't see the scale

1 legend on the map. But I would --

2 Q. Well, did you participate in the creation of this
3 plan?

4 A. I did.

5 Q. And did you -- who prepared this? The individual?

6 A. Burton Miller, who is a principal at the firm of
7 Hornburger and Worstell in San Francisco.

8 Q. Did you direct Mr. Miller in preparing this?

9 A. I did.

10 Q. And what did you tell him with respect to the
11 maintenance facility? Did you give him any direction on what
12 Mendocino Railway -- the dimensions of what it would need for
13 such a facility?

14 A. And we used the -- we used approximate footprint
15 size of the existing round house/engine house in Fort Bragg.

16 Q. Okay. So what is depicted here in Exhibit 4
17 should be somewhat similar?

18 A. Yes. In footprint size to the engine house,
19 round house in Fort Bragg.

20 Q. Okay. Go ahead. I'm sorry. I interrupted.

21 A. And I believe I covered those approximate
22 dimensions yesterday. I think they're either 40 to 60 feet in
23 width, and about 80ish feet in length.

24 Q. Okay. Go ahead.

25 A. To the east of that is parking, adequate parking
26 not only for passenger vehicles, employee vehicles and visitor
27 vehicles, but also for trucks. So excess parking, and
28 overflow parking for trucks.

1 To the south of that is the depo and office building,
2 which would include a conference room facility adequate enough
3 to be able to do training and -- and provide offices and
4 adequate work space for employees.

5 The -- to the east of that is the rail transload
6 facility, and there you will see a depiction of tracks. You
7 have multiple tracks running parallel -- parallel to the main
8 line, accessible from tracks that are further west.

9 And then at the -- in the middle of what looks like a "Y"
10 is the connecting track, which is a half-circle, if you will.
11 And that is what sort of consummates the wye in this subject
12 property.

13 To the east of that are what I would consider natural
14 barriers, trees better outlined in Exhibit 3, which is up
15 here.

16 Q. Maybe you can point it out more directly?

17 A. So, again, this being the subject property, and
18 what I would consider to be natural barriers are these trees
19 here and the creek that runs through there.

20 The railroad has a bridge located right here, and that
21 becomes a natural barrier. That creek snakes its way through
22 the property.

23 And those are natural barriers that we would not overcome
24 or seek to -- to do anything with, because we consider them
25 natural barriers.

26 Q. Is the plan depicted in Exhibit 4, does that
27 encompass the full breadth of the facilities to be constructed
28 by Mendocino Railway as part of the project, as you have

1 described it in your testimony today?

2 A. Yes.

3 Q. Now, prior to selecting the subject property for
4 the project, you mentioned that Mendocino Railway had explored
5 other potential properties?

6 A. That is correct.

7 Q. And prior to that, you talked about exploring or
8 that Mendocino Railway had entered into an agreement to
9 acquire the Remco property?

10 A. That is correct.

11 Q. I'd like you to take a look at Exhibit 32. And
12 could you flip through there and tell us what is contained
13 within Exhibit 2?

14 THE COURT: 32.

15 MR. BLOCK: I'm sorry. Exhibit 32. Thank you,
16 Your Honor.

17 THE WITNESS: Okay. So in Exhibit 32, the first
18 three pages, 11 by 17, are plans, again, as I mentioned, from
19 the firm of -- Bob Schlosser firm, who -- Bob is an architect.

20 And then starting on Exhibit 32-4 and continuing through
21 Exhibit 32-88, it is the -- give me just a second, please?
22 Yes.

23 It is the agreement and escrow instructions for the
24 purchase of real property, and referred to as the Remco
25 property.

26 Q. Take another look at pages 86, 87, and 88. Are
27 those three pages part of the escrow agreement, the purchase
28 and sale agreement?

1 A. 86, 87, and 88 are a follow-up to the purchase
2 agreement. The purchase agreement was entered into in May, I
3 believe. Yes. The end of May of 2015.

4 And this is a letter from myself to the Willits
5 Remediation Trust to the trustee, Anne Farr, which is an offer
6 to purchase interest.

7 And then Exhibit 32-88 is the statement of just
8 compensation.

9 Q. Why did you send that letter and statement of just
10 compensation after the parties had already entered into the
11 escrow agreement?

12 A. Because the parties terminated the escrow
13 agreement. It was torpedoed. So this was our attempt --
14 first attempt, and the first steps in the process to take the
15 property via eminent domain.

16 Q. You said "torpedoed", and I think earlier you
17 characterized it as blown up. What happened with Mendocino
18 Railway's efforts to acquire the Remco property?

19 A. The then mayor of the city of Willits interceded
20 and wanted the property. So his -- the trustee put a contract
21 in first position with him, and, basically, cancelled our
22 contract.

23 Q. Did the Mendocino Railway pursue or proceed with
24 efforts to acquire the Remco property by eminent domain
25 subsequent to the September 2015 letters that are the last few
26 pages of Exhibit 32?

27 A. Yes.

28 Q. What did -- what did Mendocino Railway do?

1 A. At the time -- well, we had selected different
2 counsel to assist us.

3 And we did a walk of the property to get a better
4 understanding and to determine if -- we also reached out to
5 the new owners of the property to see if there was a way that
6 we could work with them on splitting the property down the
7 middle.

8 The Remco property building, specifically, has a pretty
9 natural dividing line down the center of the building, and
10 that is depicted in the drawings in the first three pages --
11 to see if we could acquire the buildings that were compass
12 south or closest to the railroad's alignment to the south in
13 that area.

14 Q. And when were those discussions or efforts that
15 you are describing?

16 A. After this. And I -- I don't recall the year.

17 Q. And what happened to those discussions, or those
18 efforts?

19 A. They -- they went nowhere. The -- working with
20 the then mayor and his business partner proved to just be
21 completely unrealistic, and -- and not a path that we wanted
22 to go down.

23 Q. And why didn't Mendocino Railway pursue eminent
24 domain to acquire that property that had -- it had already
25 entered into an agreement to acquire and was ready to
26 purchase?

27 A. As I recall, the -- the -- you know, I don't
28 recall the date specific that we went back to reevaluate that

1 property, but it was a year or more later and our needs as a
2 growing organization changed.

3 Again, initially, nine -- a little shy of 10 acres would
4 have solved some immediate problems, but not solved problems
5 for the long term.

6 When we engaged in the build grant process in 2018, that
7 was as a result of potential freight customers coming to us
8 and saying we want to ship freight, and our exploring other
9 options, rather than just transporting freight from one
10 location to the other, but becoming -- being creative and
11 exploring the options of transloading.

12 And so in exploring those options quickly, nine acres is
13 not going to adequately accommodate.

14 Additionally, I mean, in -- in -- in retrospect, in
15 looking back, the access that the Remco facility has -- and if
16 I may show on Exhibit 3 here, the access that the Remco
17 facility has is not as conducive -- the access isn't as good
18 as the access on the subject property.

19 This is an area of city surface streets of very tight
20 corners that make navigating in and out of here a bit hard.

21 State Route 20 is much wider, has adequate lines of site
22 for ingress and egress, and this simply does not. The turns
23 are very hard, whereas at the subject property the highway is
24 sweeping.

25 Q. And that accommodates both vehicular access and
26 truck access?

27 A. It does.

28 Q. I just realized that I left a loose end. The --

1 described it in your testimony today?

2 A. Yes.

3 Q. Now, prior to selecting the subject property for
4 the project, you mentioned that Mendocino Railway had explored
5 other potential properties?

6 A. That is correct.

7 Q. And prior to that, you talked about exploring or
8 that Mendocino Railway had entered into an agreement to
9 acquire the Remco property?

10 A. That is correct.

11 Q. I'd like you to take a look at Exhibit 32. And
12 could you flip through there and tell us what is contained
13 within Exhibit 2?

14 THE COURT: 32.

15 MR. BLOCK: I'm sorry. Exhibit 32. Thank you,
16 Your Honor.

17 THE WITNESS: Okay. So in Exhibit 32, the first
18 three pages, 11 by 17, are plans, again, as I mentioned, from
19 the firm of -- Bob Schlosser firm, who -- Bob is an architect.

20 And then starting on Exhibit 32-4 and continuing through
21 Exhibit 32-88, it is the -- give me just a second, please?
22 Yes.

23 It is the agreement and escrow instructions for the
24 purchase of real property, and referred to as the Remco
25 property.

26 Q. Take another look at pages 86, 87, and 88. Are
27 those three pages part of the escrow agreement, the purchase
28 and sale agreement?

1 A. 86, 87, and 88 are a follow-up to the purchase
2 agreement. The purchase agreement was entered into in May, I
3 believe. Yes. The end of May of 2015.

4 And this is a letter from myself to the Willits
5 Remediation Trust to the trustee, Anne Farr, which is an offer
6 to purchase interest.

7 And then Exhibit 32-88 is the statement of just
8 compensation.

9 Q. Why did you send that letter and statement of just
10 compensation after the parties had already entered into the
11 escrow agreement?

12 A. Because the parties terminated the escrow
13 agreement. It was torpedoed. So this was our attempt --
14 first attempt, and the first steps in the process to take the
15 property via eminent domain.

16 Q. You said "torpedoed", and I think earlier you
17 characterized it as blown up. What happened with Mendocino
18 Railway's efforts to acquire the Remco property?

19 A. The then mayor of the city of Willits interceded
20 and wanted the property. So his -- the trustee put a contract
21 in first position with him, and, basically, cancelled our
22 contract.

23 Q. Did the Mendocino Railway pursue or proceed with
24 efforts to acquire the Remco property by eminent domain
25 subsequent to the September 2015 letters that are the last few
26 pages of Exhibit 32?

27 A. Yes.

28 Q. What did -- what did Mendocino Railway do?

1 A. At the time -- well, we had selected different
2 counsel to assist us.

3 And we did a walk of the property to get a better
4 understanding and to determine if -- we also reached out to
5 the new owners of the property to see if there was a way that
6 we could work with them on splitting the property down the
7 middle.

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9 natural dividing line down the center of the building, and
10 that is depicted in the drawings in the first three pages --
11 to see if we could acquire the buildings that were compass
12 south or closest to the railroad's alignment to the south in
13 that area.

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15 you are describing?

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20 the then mayor and his business partner proved to just be
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24 domain to acquire that property that had -- it had already
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28 recall the date specific that we went back to reevaluate that

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2 growing organization changed.

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4 have solved some immediate problems, but not solved problems
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20 corners that make navigating in and out of here a bit hard.

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22 for ingress and egress, and this simply does not. The turns
23 are very hard, whereas at the subject property the highway is
24 sweeping.

25 Q. And that accommodates both vehicular access and
26 truck access?

27 A. It does.

28 Q. I just realized that I left a loose end. The --

1 the build grant was not solely related to freight rail
2 services. Is that right?

3 A. That is correct.

4 Q. And it also includes passenger transportation,
5 passenger rail transportation services?

6 A. Absolutely.

7 Q. And what passenger rail transportation services
8 are discussed or contemplated as part of the build grant
9 applications in 2018, '19, and '20, both commute and
10 excursion?

11 Q. What type of commute services?

12 A. The transportation of -- of people. As I spoke to
13 earlier today, from either Fort Bragg, or Willits, or
14 intermediate stations to an end destination.

15 Q. And did Mendocino Railway contemplate working with
16 a public agency with respect to that commute passenger
17 services as part of its build grant applications in 2018, '19,
18 and '20?

19 A. Mendocino Railway has worked with other common
20 carrier public utilities in the past, specifically, and in
21 this county, MTA.

22 Q. What is MTA?

23 A. MTA is the Mendocino Transportation Authority.
24 It's more commonly known as our local bus service.

25 And we have in the past worked with M TA, where MTA
26 passes have been accepted on the railroad and specific passes
27 have been bought through -- it was through a grant program, as
28 I recall, whereby people could ride the train with that pass

1 that they had purchased.

2 Q. And what was contemplated with respect to the MTA
3 regarding passenger rail transportation services in the build
4 grant applications?

5 A. As I recall, it was sort of the rekindling of that
6 effort that we have done many times over the years.

7 Q. And is that referenced or -- or described in the
8 build grant application documents reflected in Exhibit 17?

9 A. I believe it is also reflected in the staff report
10 created by the then city manager Tabitha Miller.

11 Q. In Exhibit 17?

12 A. That is correct.

13 Q. Okay. Back to -- to Remco, in Exhibit 32, you
14 said the first few pages were some plans?

15 A. That's correct.

16 Q. Can you walk us through page 32-1? What is
17 reflect in that plan?

18 A. So 32-1 is a floor plan of the facility, and it --
19 its orientation is of the left-hand side being west. The
20 entrance to the facility would have in this case covered the
21 passenger loading area.

22 It does have a maintenance shop and storage on the north
23 end, as well as other -- other, you know, aspects to serve the
24 railroad passengers and from a freight standpoint.

25 Q. Are those railroad tracks that are depicted in
26 Exhibit 32-1, are those preexisting in the Remco building?

27 A. You know, there are no -- well, there are tracks
28 in the Remco building. The tracks that are in the Remco

1 billing are not connected, and, as I recall, were never
2 connected to the rail facility.

3 In fact, I believe the day that I did a walk through of
4 the facility, the gauge on the tracks, meaning the distance
5 between the rails, is wider than that of standard gauge.

6 And I think it was that they laid down rail in the
7 concrete to move heavy pieces of equipment around in the
8 facility.

9 But I don't -- I don't believe that they were railroad
10 tracks.

11 Q. So it wasn't something that Mendocino Railway
12 would be able to use in its existing state? It would have to
13 construct or install standard gauge tracks?

14 A. That's correct.

15 Q. Okay. Can you please take a look at 32-3?

16 A. Okay.

17 Q. So 32-1 was relying inside the building, and now
18 32-3 is what?

19 A. So this is a sort of a -- this is a property
20 overview, if you will. It does include the entire piece of
21 property.

22 It includes -- what is depicted here is parking. It also
23 has tracks that is titled CWR Corporation Yard. And it shows
24 a switch off of the main line, as well as the installation of
25 a new parallel track.

26 But it does contemplate some minimal amount of transload
27 capability, and the northwestern part where you have the
28 tracks basically running perpendicular to or at a diagonal to

1 the main line.

2 You'll notice that there is no wye here, and there is no
3 space for a wye. Simply, there is not enough room of tight
4 turning radius.

5 Q. You've testified earlier that Mendocino Railway
6 needs a Y, right?

7 A. It is imperative. Safety again as I mentioned
8 yesterday and I mentioned earlier today, safety in -- in this
9 business is first and foremost.

10 And the purpose of a wye -- well, a wye has many
11 purposes. But our primary use is to turn the locomotives so
12 that the locomotives are running short nose, not long nose.

13 Q. So how would you do that had Mendocino Railway
14 purchased the property and laid out its project the way it is
15 depicted in 32-3?

16 A. We would not have been able to do that. And,
17 again, because of the property size being about 9 acres,
18 10 acres, we would have had to undoubtedly acquire something
19 else.

20 MR. BLOCK: I'd like to offer Exhibit 32 in
21 evidence.

22 THE COURT: Any objection?

23 MR. JOHNSON: No, Your Honor.

24 MR. BLOCK: I'd like to offer Exhibit 4 into
25 evidence.

26 MR. JOHNSON: No objection.

27 THE COURT: Exhibit 4 will be received.

28 Exhibit 32 will be received.

1 (Petitioner's Exhibits 4 and 32 were admitted into
2 evidence.)

3 BY MR. BLOCK:

4 Q. Now, with respect to the project in -- in
5 Mendocino Railway's analysis and evaluation of potential
6 locations for the project in or around 2020, what did you do?

7 A. I had conversations with my business colleagues.
8 I had conversations with various members of the staff in
9 our organization to make sure that, you know, as I'm standing
10 on the railroad grade looking at the subject property, that it
11 could adequately work.

12 Could we actually get tracks into the property?

13 And, also, I reached out to Mr. Meyer, initially, to see
14 if he was interested in selling the property.

15 Q. In -- in evaluating potential locations for the --
16 the project, earlier you testified that you looked at a number
17 of different sites?

18 A. Yes.

19 Q. So are most of the sites that you looked at
20 depicted in Exhibit 3?

21 A. No. They are not.

22 Q. Okay. so why don't we start -- but some of them
23 are depicted in Exhibit 3?

24 A. Yes.

25 Q. Can you walk us through the properties that
26 Mendocino Railway considered for the project that are depicted
27 in Exhibit 3? And you can use the pointer.

28 A. Sure.

1 Q. So we have already discussed the Remco property,
2 and the Remco property is this facility right here. We had a
3 conversation with a gentleman by the name of Peter Koch,
4 K-o-c-h, and Peter Koch owns this property right here.

5 Q. So that's what? The northeast corner of -- of
6 commercial and the railroad tracks, the NCRA line?

7 A. That is correct.

8 THE COURT: And that's on the blue line?

9 THE WITNESS: Yes. That's correct.

10 BY MR. BLOCK:

11 Q. Go ahead.

12 A. So we looked at Peter Koch's property lease
13 option. We talked about Remco.

14 And then down over here, not quite depicted in the lower
15 right hand corner, is a piece of property off of Shell, Shell
16 Lane.

17 And that abuts -- it's, actually, much further because it
18 abuts the new alignment of the Highway 101 corridor. There
19 are no -- there is no exit to it. It is accessed off of a
20 very narrow road near Baechtel Creek.

21 And so that's what is sort of visible in this map as --
22 of course, and then the subject property.

23 Q. Okay. And is it -- there was a KOA property?

24 A. We did look at the KOA property, and only a
25 portion of it is included in the subject map -- or, excuse me,
26 in Exhibit 3.

27 And that is across the street from the subject property.
28 And, again, only a portion of this property is there.

1 Q. Okay. And let's take the properties one by one
2 that you mentioned here.

3 A. Sure.

4 Q. First of all, did you -- did Mendocino Railway
5 look for any properties within -- along either NCRA's tracks
6 or Mendocino Railway's tracks depicted in Exhibit 3 to find
7 potentially suitable sites for its project?

8 A. Well, yes. So properties along our tracks or the
9 NCRA tracks, yes.

10 The Shell Lane, the Koch property, the Remco property,
11 the KOA property. Additionally, to the east of that, the
12 Cutter and Dudly property.

13 Q. So you determined in looking at that that there
14 were no other properties than the ones you've identified that
15 were even potentially suitable and met most or all of the
16 factors that you described?

17 A. That is correct. Of all of the properties we
18 have looked at, the subject property is the most suitable for
19 some of the reasons I explained earlier.

20 Q. Okay. So let's look at the property that Mr. Koch
21 owns.

22 A. Okay.

23 Q. And is that property suitable for the project?

24 A. It's -- it's not, and there are a variety of
25 reasons.

26 One, the blue track we don't own, and we operate over a
27 trackage rights agreement. Never mind that in between this
28 blue line there are a set of tracks out here.

1 This is a yard commonly referred to as the midsection of
2 the Willits yard. We have the south section, the North Coast
3 Brewing section, and then the midsection.

4 And there is a natural barrier. There is a creek that
5 would actually have to be crossed by rail to get into the back
6 of this building.

7 And that drainage creek is in this general area.

8 Q. In other reasons why Mr. Koch's property is not
9 suitable for the project?

10 A. Well, again, it's -- the rail is not our property.
11 There is a natural barrier.

12 There -- there is no grade separation, meaning that it is
13 all fairly level. So that is an easy thing to overcome. But
14 the natural barrier and that the rail corridor is not ours
15 just simply doesn't make it conducive.

16 Q. What about the size?

17 A. Size wise, well, it's a bit small. And it's a bit
18 limited in its access.

19 Q. What is the size?

20 A. I'm sorry, I don't recall. But it is -- it is
21 limited to a couple of acres at most.

22 Q. Okay. Then the next one going south is the Shell
23 Lane property?

24 A. Down in this area over here not on the map, the
25 Shell Lane property as I recall was about four-and-a-half
26 acres, four-and-a-half acres, I believe.

27 And, again, it's on the Northwestern Pacific, or NCRA,
28 blue line as we have it depicted here. But there is a key

1 difference.

2 The tracks from where the CWR intersects with the NCRA or
3 NWP main line we circled earlier on Exhibit 3, and we circled
4 earlier at the north end, that defines the approximate yard
5 rights, trackage rights agreement.

6 When you get outside of yard rights on track, it's
7 referred to as the main line. And we don't have an agreement,
8 an operations agreement, to operate over the NCRA's main line.

9 And so this is not subject to a trackage rights
10 agreement. This would, actually, be subject to an agreement
11 that doesn't even exist.

12 So -- and railroads generally do not give up their
13 railroads. There are some examples of where it happens, where
14 the Union Pacific may cede to Amtrack for Amtrack to pass over
15 it tracks.

16 But, generally speaking, railroads don't give other
17 railroads agreements to operate over or through their main
18 line.

19 And so the Shell Lane property, which, again, is down
20 here and off of the corner of the map, is not accessible by
21 our railroad, not even in this direction.

22 And --

23 Q. Well, we need the record to be accurate. So the
24 direction that you were --

25 A. I'm sorry. I was on this -- I was on the CWR main
26 line in the area of of the MOW facility.

27 And if you were to construct track through that, there
28 would be multiple parcels that would have to be acquired in

1 order to get to that piece of property, which is about, again,
2 four-and-a-half acres, as I recall, that had a warehouse
3 facility building located on it where maintenance could be
4 conducted.

5 Q. Could the full scope of the project as you have
6 described it be constructed on the Shell Lane property that
7 you were considering, putting aside the trackage rights
8 issues, the main line connection issues, and things like that?

9 A. No, it could not.

10 Q. It's not big enough?

11 A. It's not big enough.

12 THE COURT: We're getting close.

13 MR. BLOCK: Okay. We hit a natural break again.

14 THE COURT: Union rules. Let's go ahead and
15 recess for lunch, and we'll return at 1:30. So we're off the
16 record.

17 (Recess)

18 THE COURT: Back on the record. Mr. Pinoli,
19 you're still under oath.

20 THE WITNESS: Thank you.

21 BY MR. BLOCK:

22 Q. Thank you, Your Honor.

23 Mr. Pinoli, when we left off, we were going through
24 Mendocino Railway's investigation and search for potential
25 locations for its project.

26 And we talked about the -- the Koch property; we talked
27 about the Shell Lane property; we've talked about the subject
28 property, Mr. Meyer's property.

1 And then you started to talk about some properties
2 further to the west, off the page of Exhibit 3. What other
3 properties were investigated or considered by Mendocino
4 Railway for its project?

5 A. There were three other properties, the Dudley
6 property, the Cutter property, and the KOA property.

7 Q. Okay. I'd like you to take a look at Exhibit 33.

8 A. Okay.

9 Q. What is Exhibit 33?

10 A. Exhibit 33 are a variety of correspondences and
11 emails between myself and other colleagues in the company.

12 Q. What other colleagues, or which other colleagues?

13 A. In Exhibit 33-1, there is an email from Mike Hart
14 to myself. Mike Hart is the president and CEO of the CR
15 Railroad Company.

16 There is Christopher Hart. Chris is the vice president
17 of business development.

18 Torgny Nilsson, who is our general counsel.
19 And executive vice president Dave Magaw, who is the former
20 president of CR Northern Railway, but serves as vice president
21 to CR Railroad Company.

22 Q. Are these also officers of Mendocino Railway?

23 A. They are.

24 Q. And are they always officers of CR Railroad
25 Company?

26 A. They are.

27 Q. I believe there is correspondence in here which
28 Jeff Miller also participates in. Is that right?

1 A. Yes. Jeff Miller is the chief financial officer
2 for our company.

3 Q. When you say "our company", which company are you
4 referring to?

5 A. All of our companies. The CR Railroad Company,
6 and its subsidiaries.

7 Q. Okay. What -- what is the substance of the
8 correspondence that is reflected in Exhibit 38?

9 A. Exchange of ideas, thoughts, discussions, and some
10 -- some analysis on the KOA property.

11 I think there's -- if I recall correctly, there is some
12 conversation about the -- certainly, the Meyer property, and
13 evidentiary bullet points. There some mention of the Dudley
14 property images.

15 And there's also a letter in here to Mr. Meyer.

16 Q. And is Exhibit 33 -- so this relates to Mendocino
17 Railway's search and investigation of potential locations for
18 the project?

19 A. Yes.

20 Q. Are there correspondences or other documents which
21 reflect Mendocino Railway's search and investigation of
22 potential locations for its project that are not included in
23 Exhibit 33?

24 A. Yes. The exhibit that we were on prior to this
25 had items related to the Remco property, so they are not in
26 Exhibit 33.

27 Q. Anything else?

28 A. I don't know that there is any -- I don't recall

1 if in Exhibit 33 if there is any mention of the Shell Lane
2 property or the Koch property without going through these
3 again.

4 Q. Okay. Does Exhibit 33 reflect all of Mendocino
5 Railway's discussions or consideration regarding its search
6 for potential locations for the project?

7 A. It does not.

8 Q. What is not included?

9 A. Our verbal discussions.

10 Q. And are there any records of your verbal -- any
11 documents which reflect Mendocino Railway's verbal discussions
12 regarding this?

13 A. There are none.

14 Q. Is that typical for Mendocino Railway's business
15 conduct?

16 A. Yes.

17 Q. As you've discussed in earlier testimony?

18 A. That's correct.

19 Q. Were those verbal communications by phone, or in
20 person?

21 A. A mix of both. Phone conversations, perhaps some
22 Zoom conversations. In 2020, we were just embarking into the
23 pandemic, so, certainly, some perhaps via Zoom, and then in
24 person.

25 Q. I would like to direct you to page 33-1.

26 A. Okay.

27 Q. Why don't you just briefly read that first page?

28 A. Okay.

1 Q. Earlier today you testified that you first became
2 aware of the subject property, Mr. Meyer's property, in an
3 email from Mr. Hart to yourself. Do you recall that?

4 A. Yes.

5 Q. Is that -- is Exhibit 33-1 the email to which your
6 testimony was referring?

7 A. Yes.

8 Q. Okay. Now, in Exhibit 33-1, Mr. Hart refers to
9 quote/unquote "Camp Willits". Do you see that?

10 A. I do.

11 Q. And the subject line says Camp Willits. Do you
12 see that?

13 A. I do.

14 Q. Who named or gave it that name?

15 A. Mr. Hart.

16 Q. And what is that name referring to, if you know?

17 A. I don't know that I -- I do know the answer to
18 that. Mr. Hart likes to give things names, whether it be
19 pieces of property, or a house or whatever, right?

20 As an example, if you had a house with a sycamore tree in
21 front of it, it would be the sycamore house.

22 So I'm not certain what the name refers to, other than
23 this is in -- in my working with him for 20 years now,
24 something that he does.

25 Q. Did you ever ask him what he meant by Camp
26 Willits?

27 A. No. It was not important to me, and it's not
28 important to the business.

1 Q. Okay. Now, in the second sentence of this email
2 to you, he refers to a presumption that the Mendocino Railway
3 must find a location west of the crossing.

4 Do you have an understanding of what he is referring to
5 there?

6 A. Looking for something that would be west of the
7 crossing, which would help or further eliminate an additional
8 grade crossing.

9 Q. Why is that a consideration for Mr. Hart, or Mr.
10 -- or Mendocino Railway?

11 A. I think that he was trying to -- if I were to
12 guess, it would be that he was trying to think critically.
13 Any time you can reduce the number of grade crossings over a
14 piece of railroad, all the better.

15 Q. Why is that?

16 A. Well, to -- to reduce the number of potential
17 accidents or incidents that take place.

18 People are increasingly impatient when it comes to, you
19 know, red lights coming on and gates coming down, so that they
20 drive around gates all the time.

21 It's -- it's something that we hear about. In my
22 industry and in my profession, it's something that I see and
23 have seen, you know, the grim outcome of what happens when a
24 car goes through a gate.

25 Q. So it's a safety consideration?

26 A. It's a safety consideration.

27 Q. And is elimination of grade crossings an element
28 of Mendocino's -- one of the benefits of Mendocino Railway's

1 project in this case?

2 A. It is, although it doesn't address the issue of
3 getting rid of the grade crossing at Highway 20.

4 And railroads will never be able to get rid of
5 100 percent of their grade crossings. That is just not
6 practical.

7 But what it does is that it eliminates the grade
8 crossings that exist between the Wilits Depo and the yard at
9 Commercial Street all the way out to the subject property.

10 Q. How many grade crossings are eliminated by
11 Mendocino Railway constructing its project on the subject
12 property?

13 A. You have the grade crossing -- would you like me
14 to point to them?

15 Q. Please?

16 A. You have the grade crossing at Commercial Street.
17 So in order for the trains to turn around, they have to
18 access the wye, and, in doing so, you cross over Commercial
19 Street.

20 So you have the grade crossing another Commercial Street.

21 You have the grade crossing at East Valley.

22 You have the grade crossing at San Francisco, and this is
23 ungated and unprotected via elimination.

24 So it is a -- it is an old crossing that is protected by
25 crossbucks, which are the -- the white sign with the arms that
26 are in an "X" fashion that say railroad on a diagonal and
27 crossing on the opposite diagonal.

28 You come down here, and this is the road that goes into

1 the old Windsor Mill. It is an ungated and unprotected
2 crossing.

3 You come down through here and you have Main Street in
4 Willits, which is the old U.S. 101 alignment.

5 You have the crossing at Blosser Lane, and its proximity
6 to a school.

7 And then you have the crossing at Croply Lane, which is
8 also ungated and unprotected by modern equipment.

9 Q. So by my count, that is eight crossings that are
10 eliminated by citing the project at the subject property?

11 A. That's correct.

12 Q. In the second paragraph, the second sentence says,
13 "We can build a station and plenty of car storage with ease."
14 Do you know what Mr. Hart was referring to?

15 A. To the ongoing growth and development of the
16 company and the installation of tracks to accommodate a
17 transload facility.

18 Q. In the next sentence, he talks about hikers, rail
19 bikes needing to trigger the crossing. What -- can you -- can
20 you explain what that means, what he's referring to?

21 A. Sure. And this is an example of Mr. -- I've been
22 -- Mr. Hart has also been railroading for a long period of
23 time, although he has other businesses that keep him focused.

24 And this is something that I have spent 30 years doing.
25 There was a technology at that time that I don't believe that
26 he was familiar with.

27 And what he is referring to is that if you go up to a
28 crossing, a highway pedestrian crossing, sometimes you will

1 see adjacent to the crosswalk a button that you can push that
2 will engage the lights going across the highway so that it
3 alerts oncoming motorists of -- that there is a pedestrian
4 crossing.

5 And the thought was that you push a button and it would
6 activate the gate, and you could do the the same on the
7 opposite side.

8 And while that is something that could be done from an
9 engineering standpoint, it isn't something that would pass, if
10 you will, the FRA or CPUC test for complying as a utility
11 common carrier with the laws that govern gated crossings.

12 There is, however, a solution to get across a crossing.
13 Crossings are not triggered by pushing a button. Crossings
14 are triggered by, in simple terms, short-circuiting the
15 circuit, which means that when the steel wheels of a
16 locomotive or rail car enter that circuit, and depending upon
17 what the track speeds are in that area -- the circuit may be
18 an eighth of a mile, a quarter of a mile or even further,
19 right?

20 Q. From the crossing?

21 A. From the crossing. It's all dependent upon track
22 speed in that area.

23 And what will happen is that the moment that the wheels,
24 those steel wheels hit the first joint where the rails are
25 connected or where there is a bond in the circuit, it will
26 send a signal, if you will, down the line to that signal house
27 that says hang on, something's not right. We've just gotten a
28 short on our circuit. We need to drop the gates. Right?

1 That's what the computer is saying to the mechanism. And
2 as a result of that, it is now counting and waiting for the
3 next set of wheels to hit that first circuit.

4 And when it hits that, it sends a confirmation, yep,
5 there is a train coming. So by engaging the gates when the
6 first set of wheels hit, it has already put the lights on.

7 The lights stay illuminated first for a brief period of
8 time before the gates drop to give motorists additional
9 warning so that the gates doesn't come down immediately onto
10 their vehicle.

11 So as the train is traveling through that circuit and it
12 continues to hit bonds down the line, it will eventually
13 complete and fall out of the circuit when the train passes the
14 entire circuit on the opposite side.

15 Because if the distance is a quarter of a mile or an
16 eighth of a mile, again, dependant upon track speed in that
17 area, if the circuit is -- let's say a quarter of a mile, when
18 it is a quarter of a mile on the opposite side, it's keeping
19 track as well.

20 And when it no longer detects that there's wheels hitting
21 the circuit over here -- let's say it started on the east and
22 is moving west, it's saying no more wheels detected, and it's
23 advancing each bond. No more wheels detected until the last
24 train has cleared the crossing.

25 And when the -- the last wheel goes through the crossing,
26 it's reading all of that information, and, eventually, the
27 gates will go up because it is following the direction of
28 travel.

1 And if it were the opposite, it would do the opposite in
2 reverse.

3 The technology that is -- that's deployed that we
4 actually used for things like, as Mr. Hart mentioned, rail
5 bikes is something called DTMF technology, and it stands for
6 dual tone multifrequency.

7 It uses radio signal to transmit a signal to the
8 computers in the signal house, and adjacent to every gated and
9 illuminated crossing.

10 I think I mentioned yesterday that there is a stand-alone
11 box that holds all of the components.

12 That signal house, or that signal box receives that
13 frequency via the radio with a unique four-digit code for that
14 signal specific, and it senses that the gates need to go down,
15 and the gates will drop down.

16 And then the gates will go back up when you key the code
17 on the opposite side. We actually use that technology now for
18 our maintenance of way equipment.

19 And while our maintenance of way equipment has steel
20 wheels, there is not enough tonnage oftentimes to make a good
21 bond or a good connection.

22 And it is also short-wheel based. So a locomotive, 65,
23 70, 80 feet long, right? Various sizes. There were axles
24 under our EMD Tp9 locomotives.

25 There is redundancy. And there is heavy redundancy.

26 When you get a rail band like in the picture in the
27 middle on the far left of Exhibit 3, the wheel base is very
28 narrow and very short. There isn't that redundancy.

1 And it is often times not heavy enough to make the bonded
2 connection.

3 Q. Okay. So are you suggesting that the rail bike --
4 or hikers wouldn't be pushing a button to clear the crossing?

5 A. Absolutely not. That's not even an option.

6 Q. Okay. There is a comment in -- in these emails
7 where you say something like they would get a kick out of
8 pushing the button.

9 So doesn't that kind of contradict what you just
10 testified to that they're not going to?

11 A. Well, somebody would get a kick out of it. That's
12 one thing. It's sort of like putting a quarter in the
13 merry-go-round, and watching it go around.

14 But that's -- what somebody can get a kick out of and
15 what will actually happen are two different things.

16 Q. So in deciding to site the project at the subject
17 property, were you concerned about safety issues relating to
18 the crossing just to the west of Mr. Meyer's property, or at
19 the west edge of Mr. Meyer's property?

20 A. But for pushing a button, no. I'm not concerned
21 with safety issues to the west. It's a gated, illuminated
22 crossing. It's been upgraded. I -- I'm not concerned about
23 it today.

24 Q. In the third paragraph here on page 33-1, in the
25 first sentence, Mr. Hart makes reference to 1700 feet of
26 roadway for signage and visibility.

27 Do you know what Mr. Hart is referring to there?

28 A. I mean, 1700 feet of roadway access is certainly

1 integral in the development of a facility. It's certainly a
2 consideration when you're talking about transload.

3 As I had mentioned earlier, when we had contemplated --

4 Q. Why is it a consideration?

5 A. Well, it's a consideration. As I mentioned
6 earlier when we were talking about the Remco Facility, the
7 turns into that facility are hard. They're surface streets.
8 Highway 20 is windy, and much wider with greater visibility.

9 So the ability to ingress and egress from the property is
10 much easier.

11 Q. For vehicles and trucks?

12 A. Yes.

13 Q. The next sentence in the photograph of 33-1. Mr.
14 Hart says, "As I recall, there is a very large flat valley
15 there up against the tracking that would make a great spot for
16 a station and parking."

17 "Just along the property line, there is 2200 feet of
18 track that would make for some secure site of storage back
19 there."

20 Do you know what Mr. Hart is referring to?

21 A. Again, if I may point to the exhibit up here, the
22 main line of the California Western informed to the east of
23 the high point is a flat area. The distance is the 2200 feet
24 that is referenced.

25 And because it is flat, there is no drainage. There is
26 no creek in this area. Again, the creek that we discussed
27 earlier isn't until the bridge crossing, which is back here.

28 And so that -- having that long tangent -- the tangent

1 being a straight piece of track, in railroad terms, allows for
2 there to be a switch installed at the west, end and allows for
3 multiple tracks to be installed, and, also, to access tracks
4 -- install tracks, build tracks at the proper angle towards
5 the eastern side of the property for the transloading
6 facility.

7 Q. And the wye?

8 A. Yes. And the wye.

9 Q. The next pages, 33-3 to 33-6, are earlier email
10 correspondences in January of 2020 between you, and Mr. Hart,
11 and the other employees of Mendocino Railway and Sierra
12 Railroad Company, correct?

13 A. Yes.

14 Q. And what -- what is the substance of the
15 discussion in those January 2020 emails?

16 A. The -- the one in the mid part of the page of 33-3
17 at 4:39 p.m. was related to a piece of property known as
18 Broaddus LLC, and that is the Cutter Lumber Mill.

19 Q. Okay. Tell us about the Cutter property?

20 A. So the Cutter property is to the west of the
21 subject property.

22 It backs up to Broaddus Creek, and it's a flat piece of
23 property. It is, as I recall, about 9, 10ish acres. A flat
24 piece of property.

25 There were several issues with this piece of property
26 when we identified it.

27 There is a grade separation between the railroad and this
28 piece of property, meaning that once the rail -- once a train

1 crosses Highway 20, it begins its ascent up the east face of
2 the coast mountain range. And it getting pretty steep pretty
3 quickly, so it's on a grade.

4 When the train crosses over Highway 20, it passes the KOA
5 campground, which is on the right-hand side, or the north-hand
6 side. And, again, there is a grade separation between the
7 railroad's main line and the Cutter property.

8 But there is a natural barrier, or what we would consider
9 a natural barrier, and that is the creek.

10 It is a pretty large cut in there, and would require to
11 installation of at least one bridge to get across over to the
12 property.

13 Additionally, the other considerations when looking at
14 this property are the ingress and egress.

15 On the western -- excuse me, on the eastern end of the
16 property, the ingress and egress is pretty easy. But it is
17 limited to ingress and egress at that one gate.

18 On the western edge of the property, there is the ability
19 to ingress and egress and there is a driveway, but it is
20 adjacent to a very sharp curve on the downhill side of
21 Highway 20.

22 And at that point, Highway 20 is still five miles per
23 hour. There is a very short period of time for trucks of even
24 just regular automobiles to get out of that driveway and up to
25 speed in order to deal or compete with oncoming traffic that
26 is heading eastbound.

27 Westbound, there is great line of sight. So if you were
28 pulling out and heading westbound, fine. No issues.

1 It's the eastbound heading become towards the 101
2 corridor that creates problem from an ingress/egress
3 standpoint.

4 Q. And that's for both vehicles and trucks, correct?

5 A. It's extremely vehicle. I mean, having done it
6 several times in a vehicle, it's difficult for a motor
7 vehicle.

8 I can only imagine what it would be like for a truck that
9 was loaded.

10 Q. And the trucks -- for a transload facility, you
11 would need to travel east?

12 A. Yes.

13 Q. To get to 101?

14 A. That's correct.

15 Q. So did Mendocino Railway determine whether the
16 Cutter property was suitable for the project?

17 A. It determined that it was not suitable for the
18 project for the reasons that I mentioned, the grade
19 separation, the natural land barrier, and the ingress/egress.

20 Also included are the size, the ability to put in a wide
21 track. Putting in a wide track would require undoubtedly a
22 second bridge.

23 The bridge would actually be part of the wye. So you
24 would have a bridge that would go in two directions.

25 Q. So not workable?

26 A. No.

27 Q. Were there other properties discussed in the
28 January 20th emails reflected in the first few pages of

1 Exhibit 33?

2 A. Further down, it -- Mr. Hart suggests that the
3 Dudley property is a consideration. It -- it's a flat piece
4 of property. It -- it abuts a very steep hill behind it.

5 Many issues with this piece of property. Not all of the
6 -- not all of the land is developable, one, because it is
7 steep uphill.

8 But issues with the property are the ingress and egress
9 is limited to one driveway, and one driveway only.

10 It is to the east -- or, excuse me, it is to west of the
11 Cutter property.

12 And so the curve I was speaking of where downhill traffic
13 at speed on Highway 20, that puts cars further to the west,
14 sort of in the cross hairs of that blind turn.

15 The grade separation between the back of that property
16 and the railroad's grade are absolutely prohibitive.

17 There is without question a 20-plus-foot grade separation
18 between the Dudley property and the railroad's grade in a
19 short distance because it is just to the east of Cutter, which
20 is just to the east of the Highway 20 crossing.

21 And as I mentioned earlier, the ascent up the east face
22 of the coast mountain range rises very quickly through there.

23 The grade separation over a straight line distance of
24 probably a half mile is well over 20 feet from the base of
25 that, of the Dudley property to the railroad's grade, which
26 sits up here.

27 So from a construction standpoint, absolutely
28 prohibitive.

1 But then there is a natural barrier at this property as
2 well, and that is where Broaddus Creek comes down through the
3 property, and winds.

4 So not only do you have a 20-foot grade separation, but
5 you have a natural barrier that makes it prohibitive as well.

6 Q. What was the size of the Dudley property?

7 A. I do believe that it was in here, and I'm going to
8 quickly look for it. 12 acres.

9 Q. Also insufficient for the project?

10 A. Yes. I mean, you couldn't -- I mean, even if
11 there weren't a grade separation of 20 feet, and there weren't
12 a natural barrier, you couldn't accommodate everything that is
13 needed.

14 And, also, setting aside the ingress/egress issues that
15 there is on one driveway in and out, with no ability -- it was
16 a piece of property that is narrower at the front, and opens
17 towards the back.

18 So from a configuration standpoint, prohibitive.

19 Q. All right. Were any other properties discussed
20 amongst -- in between Mendocino Railway during those
21 January 2020 discussions?

22 A. We've covered Dudley, Remco, and the subject
23 property. KOA.

24 Q. All right. Tell us about the KOA property?

25 A. So that was an interesting opportunity that
26 presented itself. The owners of the KOA, we had conversations
27 with them.

28 And it is -- the KOA, when you -- when the railroad

1 heading from east to west and crosses State Route 20, the KOA
2 is on the right-hand side, or the north side of the railroad
3 tracks.

4 It is a parcel of land that is a campground. There's
5 some flatness to it. It is a long piece, a narrow piece
6 similar to the subject property.

7 However, it has a natural barrier or impediment, in that
8 it has a creek running through it as well and a bridge that
9 bridges the front half of the property with the back half of
10 the property.

11 So in order for them to access their property, they do it
12 over a bridge.

13 It is, as I recall, narrower. It is long and skinny,
14 which is good for linear distance in railroad tracks, but it
15 is narrower.

16 It also has an ingress/egress issue. There is one road
17 in, and one road out.

18 It is on the -- the tip or the -- the pivot point in the
19 curve on State Route 20, and has significant blind spot issues
20 as it relates to its location.

21 Q. How big is it?

22 A. I -- I'm going to look so that I don't misspeak.

23 Q. There's a picture of it on Exhibit 33-46.

24 A. I was close. 36-and-a-half acres.

25 Q. So that's more than enough land to build the
26 project that you thought needed about 20 acres, isn't it?

27 A. It is more land. It's not -- it's not useable
28 land. In fact, the greatest majority of the land is also on

1 hill.

2 And there are -- in fact, the image on Exhibit 33-46
3 shows the topo elevation lines, and how close they come down
4 to the railroad's grade.

5 Q. Just to orient everyone, you're talking about the
6 topographical notes towards the left side of the page, or the
7 west side where it says, "...36-and-a-half acres"?

8 A. Yes.

9 Q. And there is a marking there that says 1,480 feet,
10 and then another notation that said 1,560 feet. Is that
11 right?

12 A. That is correct.

13 Q. So that would be a change in elevation of about
14 80 feet?

15 A. Yes.

16 Q. And that's the slope that you're talking about?

17 A. Yes.

18 Q. So in order for Mendocino Railway to utilize that
19 wide area there on the west side of the KOA property, what
20 would you have to do to make it usable for the project, or
21 could you?

22 A. Well, I suppose you could, but it would require
23 the moving of half of a mountain, and that is just something
24 that is not beneficial to anybody.

25 Q. So if Mendocino Railway were to acquire the KOA
26 property, would it be able to accommodate the entire project
27 that it has planned?

28 A. No.

1 Q. It would need to acquire another property?

2 A. It would have to. The constraints I mentioned
3 earlier when we started talking about the KOA property, it's
4 narrower than the subject property.

5 And as a result of -- and it also has a natural barrier
6 right in the middle of it. So installation of a wide track
7 would not -- would not be possible.

8 The -- towards the front of the property -- and when I
9 say the front of the property, I mean the east of the property
10 closest to Highway 20 where it's circled primary campground --
11 there is elevation change there from within that pink circle
12 with the yellow writing that says Primary Campground.

13 1,440 feet is a topo line that runs at the edge -- the
14 northern edge of that pink circle. And closer to the railroad
15 is -- there is, again, a definite elevation change.

16 Q. Exhibit 33 contains numerous email chains amongst
17 and between representatives of Mendocino Railway between
18 January 2018 and August -- I am sorry, January 2020 and
19 August 2020, correct?

20 A. Yes.

21 Q. And on page 33-12, there is a letter from you to
22 Mr. Meyer dated May 16, 2020, correct?

23 A. Yes.

24 Q. Is this Mendocino Railway's first contact with
25 Mr. Meyer regarding its interest in acquiring the subject
26 property?

27 A. It is.

28 Q. And after that letter on May 16, 2020, there are a

1 series of discussions between and amongst yourself, and Mike
2 Hart, and others at Mendocino Railway regarding the KOA
3 property?

4 A. Yes.

5 Q. Including an extensive financial analysis?

6 A. That is correct, yes.

7 Q. And it also contains discussions about Mendocino
8 Railway operating a campground?

9 A. It does.

10 Q. In fact, the discussions aren't just limited to
11 the Mendocino Railway operating a campground on the KOA
12 property, but discussions of constructing and operating a
13 campground on the subject property?

14 A. It does.

15 Q. Does Mendocino Railway have the authority to
16 utilize eminent domain to acquire Mr. Meyer's property to
17 construct a campground?

18 A. It does not.

19 Q. Why was Mendocino Railway talk amongst itself for
20 six months, or three months, after you sent Mr. Meyer the
21 letter about a campground when it can't utilize eminent domain
22 to build a campground?

23 A. I think it was one individual in our organization
24 wanting to continue the conversation to fully suss it out, and
25 that individual is Mike Hart.

26 As I mentioned, you know, earlier in my testimony, Mike
27 is a very energetic entrepreneur, and it -- campgrounds are
28 not something that we have an interest in.

1 It is not a part of, you know, what Mendocino Railway
2 does. And it's certainly not a part of what Mendocino Railway
3 is going to do.

4 Q. When Mendocino Railway acquires the subject
5 property for its project, how do we know it's not going to
6 build a campground?

7 A. I serve as the president and chief executive
8 officer of our company. And while I do have board members and
9 colleagues that I work with and collaborate with, the
10 decisions of the company stop with me.

11 I grew up in this community. I'm four generations into
12 this community, and I've spent 30 years -- I have spent my
13 entire career dedicated to the preservation of a railroad that
14 was founded in 1885.

15 I'm entrusted with this legacy operation. I'm not going
16 to say something today, and do something different tomorrow.
17 We will not be building a campground.

18 Q. When Mendocino Railway takes possession of the
19 subject property, when will it commence development of the
20 project?

21 A. Our work will start immediately.

22 Q. What does that mean? What are you going to do?

23 A. Well, I think the first thing that we need to do,
24 depending on what the outcome is of the soil on the property,
25 is determine what we can do from a GEO technical standpoint,
26 meaning do we utilize the soil that is in place? Do we need
27 to move the soil? Does it need to be engineered?

28 And so we need to go through the analysis of -- of what

1 we can do with the soil as it presently sits on the property.

2 Q. When will Mendocino Railway after -- how quickly
3 after acquiring possession of the property does Mendocino
4 Railway intend to start actual construction, shovels in the
5 ground?

6 A. I'm not a person that likes to work in a
7 single-line fashion. I like to have multiple things happening
8 at the same time so that a project can move forward, and
9 multiple facets of that project can move forward in harmony.

10 There is no sense in doing a study, and then reviewing
11 it, and then talking to a contractor and reviewing whatever
12 they give us, and then deciding to actually turn dirt.

13 If we have the ability to come in and do the GEO tech
14 items, and, also, at the same time, work with an architect to
15 help us solidify the buildings and the facilities at the same,
16 time we have now advanced two things forward that would
17 normally happen in sort of a staggered or one-, two-step
18 process.

19 I -- I don't know how fast the consultants to the project
20 will move, but, suffice it to say, once we have moved those
21 items out of the way, we will immediately begin the actual
22 movement of dirt and construction on the land tracks first,
23 maintenance and facility building in tandem.

24 Q. Is that -- that time period for Mendocino Railway
25 to get started on the project once it obtains possession of
26 the property measured in weeks, or months, or years?

27 A. I would say that it is measured in weeks and
28 months, and not years.

1 Q. I would like you to take another look at
2 Exhibit 4.

3 Does Exhibit 4 fairly and accurately reflect the project
4 which Mendocino Railway intends to construct on the subject
5 property?

6 A. Yes.

7 Q. I would like you to take a look at Exhibit 34.
8 What is Exhibit 34?

9 A. An offer to purchase and appraise -- an offer to
10 purchase and appraisal basis of offer from Mendocino Railway
11 to Mr. Meyer.

12 Q. And is that your signature on page 34-4?

13 A. It is.

14 Q. Did you send this letter to Mr. Meyer?

15 A. I did.

16 Q. And on page 34-4, it references re-enclosures. Do
17 you see that?

18 A. Yes.

19 Q. No. 1 is an appraisal?

20 A. Yes.

21 Q. Was an appraisal enclosed with this letter in
22 Exhibit 34?

23 A. Yes.

24 Q. No. 2 references a legal description and map
25 exhibit. Was that included with the letter?

26 A. It was.

27 Q. And No. 3 is an eminent domain information
28 brochure. Was that included with the letter?

1 A. It was.

2 Q. Does Exhibit 4 fairly and accurately reflect the
3 project that Mendocino Railway intended to construct on the
4 subject property as of October 7, 2020?

5 A. Yes.

6 Q. Do you know when the complaint and eminent domain
7 in this case was filed?

8 A. I'm sorry. Offhand, I do not.

9 Q. December 22, 2022. Does Exhibit 4 fairly and
10 accurately reflect the project which Mendocino Railway intends
11 to construct on the subject property as of December 22, 2022?

12 A. This drawing was created in June.

13 Q. I understand. Does it accurately reflect the
14 project, generally, that --

15 A. Yes, it does.

16 Q. And -- pardon me if I have already asked this
17 question -- does Exhibit 4 fairly and accurately reflect the
18 project which Mendocino Railway intends to construct on the
19 subject property?

20 A. Yes.

21 MR. BLOCK: I'd like to move exhibits -- exhibits
22 33 and 34 into evidence.

23 THE COURT: Any objection?

24 MR. JOHNSON: No, Your Honor.

25 THE COURT: Exhibits 33 and 34 will be received.

26 (Petitioner's Exhibits 33 and 34 were admitted into
27 evidence.)

28 ///

1 BY MR. BLOCK:

2 Q. I would like you to take a look at Exhibit 9.

3 A. Okay.

4 Q. Does Exhibit 9 accurately identify and describe
5 the passenger rail transportation services provided by
6 Mendocino Railway to the public on the California Western
7 Railroad during the effective periods of the tariff from 1993
8 to 2014?

9 A. It does.

10 Q. Did Mendocino Railway provide those passenger rail
11 transportation services to the public continuously during
12 those effective dates?

13 A. It did.

14 Q. I'd like you to take a look at Exhibit 10.

15 A. Okay.

16 Q. Does Exhibit 10 accurately identify and describe
17 the passenger rail transportation services provided by
18 Mendocino Railway to the public on the California Western
19 Railroad during the effective periods of the tariff or commute
20 fares from 2014 to January 1, 2022?

21 A. The commute fares in place? Yes. Yes.

22 Q. Did Mendocino Railway provide those passenger rail
23 transportation services to the public continuously during
24 those effective dates?

25 A. It did.

26 Q. I'd like you to please take a look at Exhibit 7.

27 A. Okay.

28 Q. Does Exhibit 7 accurately identify and describe

1 the passenger rail services provided by Mendocino Railway to
2 the public on the California Western Railroad since January 1,
3 2022?

4 A. It does.

5 Q. Is Mendocino Railway currently providing these
6 passenger rail transportation services to the public?

7 A. It is.

8 Q. Does Mendocino Railway intend to continue to
9 provide these passenger rail transportation services to the
10 public for the foreseeable future?

11 A. It does.

12 Q. If Mendocino Railway is able to provide these
13 transportation passenger rail services now without the
14 project, why does Mendocino Railway need to develop the
15 project on the subject property?

16 A. Mendocino Railway -- the -- the subject property
17 development has to do with the railroad's freight business,
18 and the ability to grow the business and to offer transload
19 services to businesses that have requested that of us.

20 The -- the -- the only place that this can happen out of
21 all of the properties that we have identified, Dudley, Cutter,
22 KOA, Remco, Shell Lane, Koch -- those properties that I just
23 mentioned simply don't have the space or have elements about
24 them that make it prohibitive.

25 Q. Does Exhibit 8 accurately identify and describe
26 the freight rail transportation services provided to the
27 public during the effective periods of the tariff from
28 January 1, 2008, to January 1, 2022?

1 A. It does.

2 Q. Did Mendocino Railway provide those freight rail
3 transportation services to the public continuously during
4 those effective dates?

5 A. It did.

6 Q. I would like you to please turn to Exhibit 6.
7 Does Exhibit 6 accurately identify and describe the
8 freight rail transportation services provided by Mendocino
9 Railway to the public on the California Western Railroad since
10 January 1, 2022?

11 A. Yes.

12 Q. Is Mendocino Railway currently providing these
13 freight rail transportation services to the public?

14 A. It is.

15 Q. Does Mendocino Railway intend to continue to
16 provide these freight rail transportation services to the
17 public for the foreseeable future?

18 A. It does.

19 Q. And I think you've already answered this question,
20 but I'll ask it anyway.

21 If Mendocino Railway is able to provide these freight
22 rail transportation services now without the project, why does
23 Mendocino Railway need to develop the project?

24 A. Mendocino Railway is not presently able to provide
25 all of the services that it wants to do at present. It cannot
26 use -- it doesn't have the ability to provide transload.

27 Q. How would Mendocino Railway be impacted if the
28 project was not constructed?

1 A. There would be no opportunity or little
2 opportunity for growth.

3 The -- again, I go back to the founding of the railroad.
4 The purpose in which it was founded was it was a railroad
5 built to serve its communities.

6 And in order to properly serve its communities, it needs
7 to grow and meet the current demands that exist. Not being
8 able to do that limits our ability to serve those interested
9 parties who want to ship freight via rail.

10 MR. BLOCK: Your Honor, I have no further
11 questions for the witness at this time.

12 THE COURT: Okay.

13 MR. BLOCK: There is one housekeeping matter. We
14 had started to discuss it yesterday afternoon.

15 It is Exhibit 15, which is the declaration of the
16 custodian of records of the California Public Utilities
17 Commission, dated July 6, 2022.

18 It was included within the sealed package in response to
19 Mendocino Railway's subpoena to the custodian of records of
20 the California Public Utilities Commission.

21 And we have also requested that the Court take judicial
22 notice of that declaration. I would like to offer it into
23 evidence.

24 THE COURT: Any objection?

25 MR. JOHNSON: No, Your Honor.

26 THE COURT: All right. So it will be marked next
27 in order, or, actually -- it's actually No. 15. And then the
28 documents that were submitted through the request will be

1 attached?

2 MR. BLOCK: No. Just the declaration is
3 sufficient.

4 (Petitioner's Exhibit 15 was admitted into evidence.)

5 MR. BLOCK: Your Honor, the plaintiff rests.

6 THE COURT: Subject to rebuttal?

7 MR. BLOCK: Of course.

8 MR. JOHNSON: Your Honor, may we take a 10-minute
9 break?

10 THE COURT: I was going to ask if you wanted to do
11 it now, instead of waiting.

12 MR. JOHNSON: I'd rather do it now.

13 THE COURT: So why don't we return at 2:50.

14 (Recess)

15 THE COURT: Back on the record. Mr. Johnson?

16 CROSS-EXAMINATION:

17 BY MR. JOHNSON:

18 Q. Mr. Pinoli, my name is Steve Johnson. I represent
19 John Meyer.

20 In front of you is a blue binder that says Exhibits. The
21 Mendocino Railway versus John Meyer. Defendant John Meyer's
22 Trial Exhibits.

23 We'll be using those exhibits, and, potentially, also the
24 other exhibits we referred to earlier today.

25 Mr. Pinoli, is it correct that you are the president of
26 Mendocino Railways?

27 A. That is correct.

28 Q. And is it also correct that the Mendocino Railway

1 owns and operates the California Western Railroad, also known
2 as the Skunk Train?

3 A. That is correct.

4 Q. And is it correct to state that you oversee the
5 whole operation of the Mendocino Railway?

6 A. I do.

7 Q. And if you look in the blue binder at Exhibit A --

8 A. Yes.

9 Q. -- there is a map in there that I believe is
10 similar to a map we looked at earlier, provided by Mr. Block.

11 Are you familiar with this map?

12 A. Yes.

13 Q. Okay. And does this map generally reflect the
14 location of the tracks for the California Western Railroad?

15 A. Yes.

16 Q. All right. And those tracks on this -- on this
17 exhibit are generally reflected in the dotted lines. Is that
18 correct?

19 A. Yes.

20 Q. And it appears that those -- the track generally
21 -- is generally located near the Noyo River. Is that right?

22 A. That is correct.

23 Q. And it -- the tracks run from Fort Bragg,
24 California to Willits, California?

25 A. That is correct.

26 Q. And there is a station, or Mendocino Railway
27 operates a station in Fort Bragg, a train station?

28 A. It does.

1 Q. And it also operates a train station in Willits,
2 currently?

3 A. It does.

4 Q. And I believe you mentioned that the length of the
5 railroad is approximately 40 miles?

6 A. That is correct.

7 Q. Do you know who prepared this map?

8 A. I do not.

9 Q. Okay. Do you know if this map was prepared for
10 this litigation?

11 A. I don't know that.

12 Q. Okay.

13 A. The operation of the Skunk Train, can we call it
14 -- is it called the Skunk Train? Is that the easiest name to
15 go along with to use?

16 A. I will know what you're referring to. But the --
17 the -- the name of the company is Mendocino Railway.
18 California Western Railroad is the actual railroad name, and
19 our designation is the California Western Railroad CWR. And
20 the Skunk Train is a nickname that the company acquired in
21 1985.

22 Q. Should I call it the CWR?

23 A. That would be fine.

24 Q. The CWR has a train station in Fort Bragg. Is
25 that correct?

26 A. Yes.

27 Q. And is it correct to state that as part of the
28 operation of the CWR, passengers embark on a train in Fort

1 Bragg?

2 A. Yes.

3 Q. And the CWR sells tickets to passengers to embark
4 on a train and take them along the California Western
5 Railroad?

6 A. That is correct.

7 Q. And that's done on a regular basis?

8 A. It is.

9 Q. And is it generally for sightseeing purposes that
10 people embark upon the California Western Railroad?

11 A. Yes. That is one of the -- one of the things that
12 the California Western Railroad offers.

13 Q. Okay. And is that what most people do when they
14 -- excuse me. Let me restate that.

15 Is that the most common use of the California Western
16 Railroad is for sightseeing purposes?

17 A. It is a common use, yes.

18 Q. And is it more common than -- than -- than any
19 other use that is made of the California Western Railroad?

20 A. At present?

21 Q. Yes.

22 A. At present, yes.

23 Q. And when the -- when the CWR departs Fort Bragg
24 with passengers, it -- the train travels east, generally. Is
25 that correct?

26 A. That is correct.

27 Q. And at a certain point, does the train that
28 departs from Fort Bragg stop, and then subsequently return to

1 Fort Bragg?

2 A. Yes.

3 Q. And it returns with -- with the passengers that
4 embarked upon it originally. Is that correct?

5 A. In some cases, yes.

6 Q. All right. And in some cases, that is not
7 correct?

8 A. That is correct.

9 Q. And in what cases would it not be correct?

10 A. If there are passengers who are presently getting
11 off at Glen Blair Junction, and electing to walk back.

12 Q. Okay. The train that departs from Fort Bragg does
13 not go to another station, does it?

14 A. Glen Blair Junction at present is the easternmost
15 station that the train travels to.

16 Q. Okay. And approximately how far away is -- what
17 is the name of the station?

18 A. Glen Blair Junction.

19 Q. How far away from the original Fort Bragg train
20 station is Glen Blair Station, generally?

21 A. 3.5 miles.

22 Q. So it would be correct to say that sometimes the
23 train -- when it goes to Glen Blair Station, sometimes
24 passengers get off the train and then walk back to the Fort
25 Bragg station?

26 A. Yes.

27 Q. Would it be also fair to say that, generally, most
28 passengers return to the Fort Bragg station by train?

1 A. Yes.

2 Q. Okay. And going to the -- to the Willits train
3 station, there was earlier discussion where you explained that
4 the Willits train station is located on Commercial Street in
5 Willits. Is that correct?

6 A. That is correct.

7 Q. So that would be -- would that, generally, be
8 considered central Willits or the middle of Willits?

9 A. Yes. It's adjacent to the central business
10 district, or central part of downtown Willits.

11 Q. And how long has that train station been there, to
12 your knowledge?

13 A. The train station was constructed in 1915.

14 Q. Okay. And based on your knowledge, is it your
15 understanding that it's been operating as a train station in
16 that location since 1915?

17 A. It is my understanding that that was its use.

18 Q. Okay. And is it true to state that -- that
19 passengers embark on a train that is located in Willits that
20 is operated by the California Western Railroad?

21 A. Passengers in Willits could embark on a train that
22 is operated by the California Western Railroad. That is
23 correct.

24 Q. And -- and then that train would then generally
25 head west on the California Western Railroad. Is that
26 correct?

27 A. Yes.

28 Q. And is that train that is used on the California

1 Western Railroad out of Willits, is that also used for
2 sightseeing purposes?

3 A. Yes.

4 Q. Okay. And is the majority of the use of -- is the
5 train that is -- that leaves Willits generally used, or mostly
6 used for sightseeing purposes?

7 A. I wouldn't say that the train that leaves Willits
8 is mostly used for sightseeing purposes. If it were a
9 passenger train, perhaps.

10 But keep in mind that we service the other 36-and-a-half
11 miles of railroad from Willits. And so there are a lot of
12 work trains and/or other services that we offer that depart
13 from Willits.

14 Q. Okay. So -- so would it be correct to say that,
15 generally, the -- the service that is used most out of Willits
16 is for sightseeing purposes, or is that incorrect?

17 A. I wouldn't say that that is correct.

18 I would say that -- what I just said a moment ago, and
19 that is that a train departing from Willits is not necessarily
20 designated a passenger train. It could very well be a freight
21 train or a work train.

22 Q. Okay. So to be -- to be clear, then, or I'm
23 trying to clarify, the trains that leave Willits could
24 potentially be, one, a sightseeing train, correct?

25 A. That is correct.

26 Q. One could be a freight train?

27 A. That is correct.

28 Q. And one could be a work train?

1 A. Yes. That is correct.

2 Q. Are those generally the three types of trains that
3 may leave Willits?

4 A. Yes.

5 Q. Work train, does that refer to, like, a train that
6 is used for maintenance and -- and operations for the
7 railroad?

8 A. That is correct.

9 Q. And a freight train relates to the carrying of
10 freight?

11 A. The carrying of freight or any goods or services
12 for somebody along the line. So it could be even equipment.

13 Q. Okay. And then the passenger train, that would be
14 the train that would be usually used for sightseeing. Is that
15 correct?

16 A. In most cases, yes.

17 Q. And for -- for the Willits -- or trains leaving
18 the Willits station, is there a general stopping point where
19 the passenger trains stop and then return to Willits?

20 A. There are different segments of trips that have
21 been offered in the past. Willits to Northspur, and then
22 Willits to Crowley.

23 Q. So, generally, there's two potential stopping
24 points, Northspur and Crowley?

25 A. That is correct.

26 THE COURT: Are you marking a new one?

27 MR. JOHNSON: I would like to mark these next in
28 order.

1 THE CLERK: Separate, or as one?

2 MR. JOHNSON: We can do it as one. I have --
3 let's see here. I have exhibits --

4 THE CLERK: It would be L.

5 MR. JOHNSON: Is that what it is, L?

6 THE CLERK: L.

7 MR. BLOCK: We're going to do both as L?

8 MR. JOHNSON: Yes.

9 (Respondent's Exhibit L was marked for identification.)

10 THE COURT: Thank you.

11 BY MR. JOHNSON:

12 Q. I'll represent to you that these are a calendar
13 that I pulled up today on the website for the California
14 Western Railroad.

15 Are you generally familiar with the California Western
16 Railroad website?

17 A. I am.

18 Q. Okay. And do you recognize this type of printout?

19 A. I don't know that I've ever actually printed it
20 out, but I am familiar with the boxes and the departure times
21 consistent with our operation.

22 Q. All right. So there's one -- these documents have
23 collectively been marked Exhibit L, and there is one document
24 on the top left that states Pudding Creek Express. Do you see
25 that?

26 A. Yes.

27 Q. Okay. And does this generally reflect the
28 schedule for the time frame represented here, which looks to

1 be approximately from August 29th through September 17th for
2 the Pudding Express?

3 A. Yes. Although, I'm not sure why there's nothing
4 noted on the 3rd, 4th, 10th, and 11th, because that would be
5 inconsistent with the railroad's operations.

6 Q. Okay. So it's your understanding that there would
7 also be trains available on those 3rd, 4th, 10th, and 11th of
8 September?

9 A. Yes. And I would even include the 28th.

10 Q. Okay. And on this -- this train, the Pudding
11 Express, would it be correct to say that that is the train
12 that would go the three-and-a-half miles out the track from
13 Fort Bragg, and then return?

14 A. Yes.

15 Q. And when it returns, does it return in reverse?
16 Does the train just back up?

17 A. It does.

18 Q. It doesn't effectively turn around?

19 A. It does not.

20 Q. And how long does this generally -- ride generally
21 take to go to three-and-a-half miles out?

22 A. Well, if you operate at track speed, you can make
23 it in about 12 minutes, 12 to 15 minutes.

24 Q. Okay. And then, generally, when the train reaches
25 the three-and-a-half mile destination, does it stop there? Or
26 what occurs at that point?

27 A. So it takes about 25 minutes to get out there. We
28 don't operate at track speed. We actually operate at speeds

1 lower than track speed.

2 Once the train gets out there, it stops. There's about a
3 25- to 30-minute layover. Guests have the opportunity to get
4 off the train, walk around, or enjoy a picnic lunch if they so
5 choose before returning back.

6 They can either take that train back, take the next train
7 back, or they can walk back.

8 Q. Okay. So I'm looking at the schedule.

9 It appears that on most days, or lots of days, there is
10 one train that goes out, and then on some days there is two.

11 And it looks like even on the 5th there appears to be
12 three trains. Is that correct?

13 A. Well, again, I've never printed out this page that
14 you referenced you printed out from our website.

15 And I also don't believe it to be accurate from the
16 standpoint that it is missing some very key dates. There are
17 dates that are not listed as operational, and I know that
18 there are a full slate of operations for those dates.

19 Q. Okay. So irrespective of what this reflects, is
20 it -- would it be correct to say that on some days, there is
21 one train that goes on the Pudding Express?

22 A. Yes.

23 Q. And then some days, there's two trains that go on
24 the Pudding Express?

25 A. Or more.

26 Q. Or more. Okay. Generally, is three the most that
27 would go on one particular day?

28 A. No.

1 Q. Is there special days that they have more trains
2 that go out there?

3 A. There are.

4 Q. Okay. So it varies. Is that correct?

5 A. Yes, it does.

6 Q. Okay. And so you testified that it generally
7 takes about 25 minutes to take the train to the end point out
8 of Pudding Express, and then, generally, there is a layover
9 approximately 30 minutes, and then the train returns. Is that
10 correct?

11 A. That is correct.

12 Q. And on the return trip, that would generally take
13 about 25 minutes as well. Is that correct?

14 A. Yes.

15 Q. And then when the train returns to the Fort Bragg
16 station, the passengers disembark?

17 A. Yes.

18 Q. Okay. And the -- that ride, or that use of the
19 train is over at that point. Is that correct?

20 A. That's correct.

21 Q. Okay. If you look at the other document that is
22 in Exhibit 11, this is a document that I also printed off the
23 website today. And it at the top left, it states it's Wolf
24 Tree Turn.

25 Are you generally familiar with this document?

26 A. Yes.

27 Q. And this is the -- this would be the schedule,
28 upcoming schedule of departures from Willits. Is that

1 correct?

2 A. Yes.

3 Q. And when a train -- the train leaves the Willits
4 station and passengers get on the train in Willits and pay
5 their money to go on the Wolf Tree Turn, how far does the
6 train travel to?

7 A. This train, specifically, travels to Milepost
8 32.6, which is known as Crowley. It's an approximately 15 and
9 change mile round trip.

10 Q. Say that again?

11 A. About 15 miles round trip.

12 Q. Okay. So it goes out approximately
13 seven-and-a-half miles, and then returns?

14 A. That's correct.

15 Q. And when it returns, does it -- does it, again,
16 reverse back to the station? Is that the way they handle
17 that?

18 A. The locomotive runs around the train at Crowley.
19 So using a side track, the locomotive goes from what was the
20 front of the train to what was the rear of the train, and
21 pulls. It isn't a push/pull operation; it's a pull/pull
22 operation.

23 Q. All right. Thank you. And approximately how much
24 time does it generally take the train to run from the Willits
25 station to the seven-and-a-half mile Wolf Tree Turn?

26 A. About 40 to -- about 45 minutes.

27 Q. 45 minutes. And is there a layover at that time?

28 A. There is.

1 Q. How long is the layover, generally?

2 A. About 25 to 30 minutes.

3 Q. And after the 30-minute layover, the train then
4 returns to the Willits station?

5 A. That is correct.

6 Q. And that also takes approximately 45 minutes?

7 A. Yes.

8 Q. And looking at the calendar for the Wolf Tree
9 Turn, does that generally reflect your understanding of the
10 schedule for the Willits Wolf Tree Turn train?

11 A. I know that the Willits operation does have some
12 days of non-operation, generally reserved for Monday or
13 Tuesday, earlier in the week.

14 But, again, given the errors in the first page of this
15 exhibit, I would not accept this as being the actual schedule
16 of the railroad.

17 Q. Okay. So as you sit hear today, you really don't
18 know what the actual schedule of the railroad is. Is that
19 correct?

20 A. I'd have to pull it up.

21 Q. And these are the -- these are, effectively, the
22 two main runs that are -- that the California Western Railroad
23 is operating for passengers at this time?

24 A. For excursion passengers, yes.

25 Q. Approximately how big or large is the parcel that
26 the current train station is located on in Willits? Do you
27 know?

28 A. Maybe an acre.

1 Q. And, then, you also mentioned earlier today that
2 there are other properties that the train uses, or California
3 Western Railroad uses for its turning around area and its
4 repair area in Willits. Is that correct?

5 A. That is correct.

6 Q. And can we go through those? So the -- there is
7 an area where you repair trains. Is that correct?

8 A. That is correct.

9 Q. And where is that located?

10 A. That is -- would you like me to use the exhibit on
11 the board?

12 Q. Sure.

13 A. Okay.

14 MR. BLOCK: Just so the record is clear, it is
15 Exhibit 3.

16 THE COURT: Exhibit 3.

17 THE WITNESS: So this dot right here is sitting
18 right on top of the station that is used by the California
19 Western Railroad.

20 Historically, this station hasn't always been owned by
21 the California Western Railroad. It wasn't until the late
22 '90s that it was purchased from the Northwestern Pacific
23 Railroad.

24 The maintenance facilities are located across the tracks
25 from the station at 299 East Commercial Street, and that's
26 what these three pictures depict here on Exhibit 3 that are
27 titled MOE Shop Facility.

28 This is the main -- what is considered the main line in

1 the picture that is to the right, the track that is the most
2 prevalent. It is considered the main line track.

3 And then these are separate service tracks. This is a
4 picture depicting a set of trucks being lifted off of a -- of
5 a truck trailer.

6 And then the container, a shipping container that houses
7 tools and equipment for the maintenance equipment.

8 BY MR. JORNSON:

9 Q. Okay. And are they -- those three that you just
10 discussed, are they all in the same general location?

11 A. Yes. They absolutely are. This is -- if you're
12 standing -- in fact, this -- sorry. I have my back to you.

13 The shadow here is actually the shadow of the Willits
14 depo. So if you were standing at the Willits depo, this is
15 the roof line.

16 So you're looking across. It's just immediately across
17 the street of the railroad's parking lot, which is right here,
18 to the north of Commercial Street and to the west of the
19 railroad tracks.

20 And then this is just beyond and further back north of
21 the front of M100, which is in the picture on the right of
22 Exhibit 3.

23 Q. Okay. Thank you. So the -- the area across the
24 street -- you mentioned there is an area across the street.
25 Is that considered separate from the station, or is that part
26 of that one acre that you discussed was the side of the
27 station?

28 A. That would include it as well.

1 Q. Okay. And, then, so -- so everything you just
2 mentioned, this maintenance area and the station would all be
3 included in this one acre that you discussed generally?

4 A. Yes.

5 Q. And then is there another location where you do
6 operations in Willits?

7 A. The area of the wye track, which is to the north.
8 This is an area where we have storage for ties, rock, and OTM.

9 This fifth picture is in this general area right here.
10 There is a much larger rock storage bay located at the north
11 end of the wye.

12 Q. And is that rock that you generally use for the
13 maintenance and operation of your track and railroad?

14 A. Yes.

15 Q. And do you have an idea about how big of an area
16 is being used for the wye track and the storage?

17 A. I would say about four-plus acres.

18 Q. Okay. Besides the train station area and the four
19 acres around the wye and rock storage, is the California
20 Western Railroad making any other use of real property in
21 Willits for its operation?

22 A. The locomotive pit service area and the MOW
23 facility, the locomotive pit facility being north of the
24 Willits Depo, and the MOW facility being on the railroad's
25 property near the intersection, if you will, of the California
26 Western main line and the Northwestern Pacific, or the NCRA,
27 main line.

28 Q. So the MOW that you referred to, what does that

1 reference?

2 A. The MOW stands for maintenance of way. So the
3 maintenance of the right of way.

4 Q. All right. And so it looks like there is a small
5 building. Is that correct?

6 A. Yes. That is correct.

7 Q. What is in that building, generally?

8 A. Tools, power tools, our power pack, generators,
9 all of the heavy hydraulic tools and machinery that are needed
10 that would go into a push cart that would follow behind one of
11 the rail vans to do maintenance along the railroad.

12 Q. Okay. And the pit you discussed earlier also, the
13 pit, now that -- that would be -- represent a building or,
14 potentially, a building that -- where there would be repairs
15 on cars or locomotives. Is that right?

16 A. There is a building there, but it is a set of
17 tracks that are laid over a concrete wall that the center is
18 open.

19 And it allows somebody to physically be down underneath a
20 locomotive or a rail car overhead so that when you are looking
21 up, you're seeing the underside of that piece of equipment
22 that is over you.

23 Q. Okay. Thank you. So I believe you testified
24 earlier that the California Western Railroad -- as far as is
25 reflected on that Exhibit 3, the California Western Railroad
26 line would be reflected in the orange. Is that correct?

27 A. That is correct.

28 Q. And, then, there is also a blue line, and that

1 would be the main line that is owned by the NCRA or their new
2 name, is that correct?

3 A. That is correct.

4 Q. And, then, the NCRA -- is it NCRA?

5 A. Yes.

6 Q. The NCRA is effectively, technically the owner of
7 the blue line. Is that correct?

8 A. That is correct.

9 Q. Okay. And you or California Western Railroad has
10 some type of contract or permission to use a portion of that
11 line. Is that right?

12 A. That's correct. It's a trackage rights agreement.

13 Q. So would it be correct to state that the -- the
14 portion that you have a right to use at this particular time
15 as reflected on Exhibit 3 would be, basically, where the
16 orange line intersects with the blue line on the bottom of
17 Exhibit 3 all the way up, generally, to where the pit -- the
18 pit is located?

19 A. Yes. That is correct. And earlier, we drew -- or
20 I drew two circles, one to the north of the pit, and one at
21 the very south end, at the point of intersection, meaning that
22 the trackage rights agreements are generally limited to the
23 area that spans between those two circles.

24 Q. Thank you. And would it be correct to say that
25 the NCRA effectively controls the main line. Is that right?

26 A. That is correct.

27 Q. And does the -- do you have an idea of where the
28 NCRA line runs from the most northern point to the most

1 southern point?

2 A. The most northern point is a bit north of Eureka,
3 California.

4 And the most southern point of the NCRA would be at its
5 interchange with the National Rail System, and that is in an
6 area referred to as -- it's not Napa Junction.

7 Q. Shell Mill?

8 A. Shell Mill. Thank you.

9 Q. So my question to you is -- and this is based on
10 your knowledge, if you know, of when was the last time the
11 NCRA or anyone ran a train, say, for example, from Ukiah to
12 Willits on the main line of the NCRA?

13 A. They may have run trains after 1998 in work-train
14 fashion. But 1998, as I recall, was one of the last freight
15 trains that they certainly interchanged with the California
16 Western.

17 Q. So the way that it's -- it is today, it's not
18 possible or legally possible for -- for anyone to run a train
19 from Willits say where you know effectively from Willits south
20 to Ukiah. Is that correct?

21 A. With appropriate repairs, it would be legally
22 possible.

23 Q. But at this particular time, and, approximately,
24 since 1978, would it be correct to say, that effectively, it
25 is illegal to drive a train from Willits south to Ukiah?

26 A. It would not be appropriate to operate a train
27 from Willits south to Ukiah at this time.

28 Q. And isn't there a federal moratorium on the

1 operation of trains on the NCRA line at this time?

2 A. There is an FRA in place, emergency order.

3 Q. And that order was put in place because the NCRA
4 line was not safe. Is that correct?

5 A. That is correct.

6 Q. And do you have an idea of when the last time a
7 train would have driven or been taken from Eureka south to
8 Willits?

9 A. 1998 would have been the last.

10 Q. And is it correct to say that the only line -- the
11 only line that intersects or train line that intersects the
12 California Western Railroad presently is the NCRA line that we
13 were just discussing?

14 A. That is correct.

15 Q. So is it correct to say that since 1998, at least,
16 it has not been possible for freight to leave the county of
17 Mendocino -- is that correct? -- on a train?

18 A. Freight could have left the County of Mendocino on
19 a train after 1998 by using the California Western Railroad
20 and a combination of trucks.

21 Q. Okay. But as far as just being on a railroad, no
22 train has left Mendocino County solely on a railroad since
23 1998 -- is that correct? -- based on your knowledge?

24 A. I couldn't answer that with an affirmative yes.

25 Q. You don't know?

26 A. I just simply -- I am not going to speculate.

27 Q. Okay. So do you know when the last train left
28 Mendocino County?

1 A. I do not.

2 Q. And do you know the last time that train freight
3 that was on the California Western Railroad left Mendocino
4 County?

5 A. The last time that we interchanged a freight train
6 with the Northwestern Pacific Railroad, which was the operator
7 over the NCRA line, was Thanksgiving eve of 1998.

8 Q. And is it your understanding that the -- that the
9 Surface Transportation Board is -- is presently preventing the
10 use of the NCRA line based on a moratorium for safety -- is
11 that correct? -- that is presently in place?

12 A. The Surface Transportation Board?

13 Q. Are they the ones that operate -- that control
14 that?

15 A. No.

16 Q. Who controlled it?

17 A. The -- with respect to safety, the Federal
18 Railroad Administration.

19 Q. And so the Federal Railroad Administration
20 currently has a moratorium preventing use of the NCRA line.
21 Is that correct?

22 A. On its main line south of Willits, and the Willits
23 yard.

24 Q. So your use is the only use that's being made on
25 the NCRA line. Is that correct?

26 A. In the Willits area, yes.

27 Q. And is it your understanding that the -- the NCRA
28 has filed a request with the Surface and Transportation Board

1 to abandon the NCRA line from Willits north?

2 A. I'm very well aware of that.

3 Q. That's true?

4 A. Yes.

5 Q. And the Surface and Transportation Board has not
6 ruled on that request yet. Is that correct?

7 A. That is correct.

8 Q. And if -- if the Surface Transportation Board were
9 to rule on that request and -- and grant the abandonment of
10 the rail line, that would, effectively, terminate the use of
11 the rail line. Is that correct?

12 MR. BLOCK: Objection, vague.

13 THE COURT: Do you understand the question? If
14 not, you can rephrase.

15 THE WITNESS: May I have the question reread?

16 THE COURT: Okay.

17 MR. JOHNSON: I can rephrase it?

18 THE COURT: You want to rephrase it?

19 BY MR. JOHNSON:

20 Q. Sure. So if the Surface and Transportation Board
21 grants the request and, effectively, rules that the railroad
22 can be abandoned, as requested by the NCRA, that would,
23 effectively, terminate the use of the railroad -- is that
24 correct? -- in that portion from Willits north?

25 A. That is correct.

26 THE COURT: Can I just ask a question along that
27 line?

28 MR. JOHNSON: Sure.

1 THE COURT: Would -- would it render, then, the
2 tracking rights agreement null and void if they grant that
3 request?

4 THE WITNESS: The Surface Transportation -- what's
5 before the Surface and Transportation Board right now, Your
6 Honor, is a request to abandon from Willits north to and
7 including Eureka, and it is the northern edge of Commercial
8 Street. So the northernmost edge of Commercial Street.

9 So, yes, that would render everything north of Commercial
10 Street, the depo, the wye, the pit facility, and it would
11 knock out the trackage rights agreement as well.

12 THE COURT: So then you would no longer be able to
13 use those facilities?

14 THE WITNESS: That is correct.

15 THE COURT: Okay.

16 BY MR. JOHNSON:

17 Q. As -- as discussed earlier, the Skunk -- or,
18 excuse me, the California Western Railroad cannot functionally
19 run from or operate from Willits, California and -- and arrive
20 in Fort Bragg, California. Is that correct?

21 A. At present, it cannot.

22 Q. And that is due to the -- to the problem with the
23 tunnel?

24 A. That is correct.

25 Q. Tunnel No. 1?

26 A. Tunnel No. 1, yes.

27 Q. And that is the tunnel that is approximately
28 three-and-a-half miles from Fort Bragg?

1 A. That is correct.

2 Q. And so would it be correct to say that where you
3 -- where the California Western Railroad stops at Pudding
4 Creek would be right near the tunnel?

5 A. That is correct.

6 MR. JOHNSON: I'd like to have these marked
7 separately, if possible.

8 THE CLERK: M, N.

9 (Respondent's Exhibits M and N were marked for
10 identification.)

11 BY MR. JOHNSON:

12 Q. Mr. Pinoli, which document is marked -- what is
13 the document letter that reflects a bridge?

14 A. N. N, as in Nancy.

15 Q. So looking at this document that's been marked N
16 with a bridge on it, are you familiar with the location of
17 this photograph?

18 A. I am.

19 Q. Where is that?

20 A. That's bridge 3.51.

21 Q. We're looking across that bridge. And if you look
22 at the middle of the photograph, there is a dark area. Would
23 that be considered one of the outlets to Port 1?

24 A. That is the west tunnel to Tunnel No. 1.

25 Q. And that would be the tunnel that is not
26 functional. Is that correct?

27 A. That's correct.

28 Q. And this bridge, it looks like there is a rail

1 across the bridge, but then it looks like the rail stops on
2 the far side of the bridge. Is that correct?

3 A. That is correct.

4 Q. And that used to be a part of the railroad?

5 A. It still is.

6 Q. Okay. And so would the railroad then -- the
7 railroad would -- does not go over that bridge any longer,
8 though, is that right?

9 A. There is nothing that prevents a train, or rail
10 car, or piece of equipment from occupying that bridge.

11 Q. Okay. So there is -- there is -- that's kind of,
12 effectively, the end of the rail as far as the operation is
13 concerned?

14 A. The rail actually continues beyond that. It's
15 just that the way this photo is taken, it appears that the
16 rail doesn't exist beyond there, but the rail does exist
17 beyond there.

18 Q. Okay. It exists a little beyond there?

19 A. It does. It actually exists to the other side of
20 the berm.

21 The berm is temporary, and was put in place as a
22 catchment -- a secondary catchment basin. And then there is a
23 small break in the rail, and then it is -- it picks up again
24 at the portal.

25 Q. Okay. And then if you look at Exhibit M. Would
26 that -- would that, also, in the middle of the picture, there,
27 be considered the western tunnel of Portal 1? Is that
28 correct?

1 A. Yes.

2 Q. And it appears that there is a -- that it's,
3 effectively, turned into a creek. Is that correct?

4 A. No. I wouldn't -- I certainly wouldn't call it a
5 creek. It is not an official creek. That is -- again, that
6 is the secondary catchment basin that was put in place for the
7 construction of the -- the reconstruction of the hillside
8 above.

9 In the image M, where it appears to be sunlight shining
10 on the hillside to the upper right of the shadowing of the
11 sunlight, you can see some of the lines that go across the
12 hillside.

13 And that is the terrace, or benches that I spoke of
14 yesterday in my testimony.

15 Q. Okay.

16 A. So that secondary catchment basin was put in place
17 so that if anything during the construction process got away,
18 if you will, from the crews dirt wise, that there would be no
19 discharge of sediment into Pudding Creek.

20 So if the primary didn't catch it, the secondary was
21 supposed to catch it.

22 Q. Okay. Thank you.

23 So I believe you testified earlier today that,
24 originally, there was a problem with Tunnel 1, and that
25 occurred originally in 2013. Is that correct?

26 A. Actually, yesterday, I mentioned that one of the
27 first problems that happened was in 1976.

28 Q. Okay. And then at some point after the 1976

1 problem -- that problem was fixed. Is that correct?

2 A. Yes.

3 Q. When did that occur? Do you know?

4 A. It was the same year within a couple of months.

5 Q. And then, after that '76 problem, would it be
6 correct to say based on your knowledge that Mendocino Railway,
7 or the California Western Railroad, did not have a problem
8 with Tunnel 1 until 2013?

9 A. No. I also testified yesterday that because of
10 winter storms, there was a -- a landslide in 1990 -- I believe
11 it was the winter of '97 to '98. No. Excuse me.

12 It was '96 to '97 whereby a landslide came down and
13 affected the west portal.

14 That is why the west portal entrance is a steel structure
15 that mirrors the sets that I described yesterday, the
16 equivalent of a door jam.

17 And then on the east portal, in 2005 there was, again, a
18 similar sort of sloughage of the hillside that came down and
19 affected the east portal.

20 And, in effect, there was a -- an extension built and put
21 on to the east portal that brought the -- or increased the
22 length of the tunnel as to not have to deal with those future
23 slides.

24 Q. Okay. And then after that 2005 problem, what was
25 the next problem that was incurred, as far as the Tunnel No. 1
26 is concerned?

27 A. 2013.

28 Q. All right. And that's the -- that's -- that was

1 the problem that arose due to the fact that too big of a car
2 was taken through the tunnel, or too tall of a car?

3 A. That was in 1976.

4 Q. Okay. What was the problem in 2013?

5 A. A rock came through the tunnel ceiling.

6 Q. A rock fell through the ceiling?

7 A. That is correct.

8 Q. And when did that occur? Do you know?

9 A. It was in the late winter, early spring of 2015.

10 Q. 2015, or 2013?

11 A. Excuse me, 2013.

12 Q. Okay. And how long before that -- that problem
13 did it take to -- let me rephrase that. How long did it take
14 to repair that problem in 2013?

15 A. The first train ran through the 17th of August
16 that same year. So 2015.

17 Q. So what year -- how long did it -- it occurred --
18 the rock problem occurred in 2013, and it was repaired when?

19 A. I'm sorry. The -- the -- it was in the spring of
20 2013, and the first train was passed back through on the 17th
21 of August in 2013.

22 Q. Okay. So it took a few months to repair?

23 A. Yes. That's correct.

24 Q. And, then, I believe you testified yesterday that
25 the problems that haven't been repaired occurred in 2015. Is
26 that right?

27 A. The problems that occurred in 2015 had been
28 addressed.

1 In fact, from 2013 forward, the modernization efforts
2 from 2013 through 2015 -- the modernization efforts were
3 continuing all during traffic, meaning that rail traffic was
4 passing through while crews were able to work on the interior
5 of the tunnel.

6 And efforts shifted when the landslide was triggered by
7 contractor negligence, and we had to refocus our efforts to
8 rebuild the hillside.

9 Q. Okay. And when did that negligence occur?

10 A. That was in June of 2015.

11 Q. All right. So is it your understanding that
12 Tunnel No. 1 has not been used or passed through by a
13 passenger train since -- or any other train since June 2015?

14 A. That's correct.

15 Q. All right. And that -- that problem is still
16 present. Is that right?

17 A. That's correct.

18 Q. Now, is there -- is there a -- have the funds been
19 obtained to fix that problem at this point?

20 A. The process of -- of securing the funds is well
21 under way.

22 It was a process that we started in March 2020 through a
23 program that the Department of Transportation Administers,
24 known as the RRIF program. Railroad Infrastructure Financing
25 is what it stands for.

26 And we are -- we hope to see funding. We've already
27 passed the credit worthiness standpoint, and all of that. So
28 we hope to see funding in late fall, early winter of this

1 year.

2 Q. And that would be Federal Government funding?

3 A. Yes. It would be a low interest loan that is
4 amortized over a 35-year period. So it is not a grant.
5 Rather, it is a loan.

6 Q. But at this particular time, that funding has not
7 been officially secured. Is that correct?

8 A. That is correct.

9 Q. And is that the funding that the city of Fort
10 Bragg assisted you with?

11 A. The city of Fort Bragg assisted the railroad with
12 a build grant application and funding request. That was in
13 2018, '19, and '20.

14 Q. And was that for the railroad Tunnel No. 1?

15 A. It was for the tunnel and other maintenance-of-way
16 improvements.

17 Q. And have you received that funding?

18 A. No.

19 Q. Mendocino Railway -- you also operate what are
20 called rail bikes. Is that correct?

21 A. That is correct.

22 Q. Can you generally explain what a rail bike is?

23 A. A rail bike is a bike that is a two-person
24 incumbent-style bike that is affixed with rail wheels and
25 operates down the tracks.

26 Q. And is that powered by human feet?

27 A. It is. It is a pedal-powered bike. And all of
28 our bikes have electric assist.

1 Q. And so people would come to Mendocino Railway and
2 then, effectively, rent one of those bikes? Is that how it
3 works?

4 A. Yes. The bikes are a part of an organized
5 departure time. So they are subject to the same rules as our
6 trains are from a government standpoint.

7 So in order to have a railroad, there are three things
8 that you have to follow. And we use the acronym gap, GAP,
9 Government Authority Protection.

10 And those are the rules that govern trains out along the
11 main line of any railroad. So they adhere to the same
12 standards.

13 So they don't just get to rent a bike and have at it.
14 There is a lead bike and a tail bike that sandwich the group
15 of bike riders between them.

16 Those individuals on the lead and tail bike meet the
17 qualifications of a conductor on board either a passenger or a
18 freight train.

19 That go through the exact same training, and, in fact,
20 even have more advanced training in that they're required to
21 do, things like wilderness state trainings, CPR, and such.

22 Q. Generally, are rail bikes departing from both
23 Willits and Fort Bragg stations?

24 A. Rail bikes depart from Fort Bragg in two
25 locations.

26 Q. Okay. So they depart from the town of Fort Bragg
27 in two locations?

28 A. They depart from the town of Fort Bragg downtown

1 at the railroad complex at 100 West Laurel Street, and then
2 from a piece of property that the railroad owns on Sherwood
3 Road, which is the east side of Tunnel No. 1.

4 Q. Okay. So it's on the other side of the tunnel?

5 A. That is correct.

6 Q. And how far do they generally go?

7 A. The rail bikes that depart out of the Fort Bragg
8 station proper travel seven miles round trip, and the rail
9 bikes that depart off the east side of the tunnel travel
10 25 miles round trip.

11 Q. Is that done on a daily basis?

12 A. Generally, yes.

13 Q. So there are no rail bikes that depart from the
14 Willits area?

15 A. At present, there are not.

16 Q. And how long has Mendocino Railways generally been
17 operating rail bikes?

18 A. I believe 2018 is when we built the bikes, and
19 began launching them in test/prototype fashion.

20 Q. And they have been operating generally from 2018
21 on?

22 A. Yes.

23 Q. For the outgoing passenger rail operations, can
24 you give us an overview of what they consist of?

25 A. For the outgoing passenger rail operations?

26 Q. Excuse me. For the ongoing passenger rail
27 operations, can you give us an overview of what they consist
28 of?

1 A. The ongoing passenger rail operations consist of
2 the two excursion-style trains that we operate that you
3 referenced earlier with the earlier exhibits, the Pudding
4 Creek Express and the Wolf Tree Turn.

5 The railroad also offers passenger service subject to its
6 tariff, and transports folks based on their needs to wherever
7 they may need to go, generally, to the -- either the summer
8 camps, or summer houses, or the year-round residences.

9 Q. And would it be correct to say that -- that the --
10 besides the two trains that we discussed, the Pudding Creek
11 and the -- the Pudding Creek Express and the Wolf Tree Turn,
12 besides those trains, throughout the course of the year, the
13 railroad is called upon by residents of the line who may have
14 access impaired because of simply location, and that's the
15 only way for them to get in and out is by rail. Is that
16 correct?

17 A. That is correct.

18 MR. BLOCK: Can I have the question read back,
19 please?

20 (The record was read.)

21 MR. BLOCK: Thank you.

22 THE COURT: Mr. Johnson, one moment. Go ahead.

23 BY MR. JOHNSON:

24 Q. Okay. Would it be correct to say that the
25 California Western Railroad hauls a very limited amount of
26 freight?

27 MR. BLOCK: Objection, vague as to time.

28 ///

1 BY MR. JOHNSON:

2 Q. Presently?

3 A. At present, if you exclude the years 2020 and
4 2021, when we carried over 100 carloads of aggregate. I
5 wouldn't call that a minimal amount of freight.

6 Q. Okay. Besides the -- the carrying of the 100 --
7 approximately 100 loads of aggregate that was discussed
8 yesterday for a restoration project along the line, would it
9 be correct to say that the California Western Railroad hauls a
10 very limited amount of freight?

11 A. At present, yes.

12 Q. And if you look at this Exhibit 30 that we
13 discussed, it's -- it's in a big binder.

14 A. Okay.

15 Q. All right. The first letter on Exhibit 30 is a
16 letter from Flow Beds, a personal crafted mattress company, it
17 looks like.

18 And it's a request that was made on behalf of the
19 Mendocino Railway to the Honorable Elaine L. Chao, Secretary
20 to the United States Department of Transportation. Is that
21 correct?

22 A. It was a letter from Flow Beds to the -- to the
23 then secretary of transportation.

24 Q. Okay. And I can't -- can you clarify exactly what
25 was the reason for this letter?

26 A. To support the efforts of the build grant, and to
27 show that there is an interest in carrying freight along the
28 route of the California Western Railroad.

1 Q. Okay. Does Flow Beds presently carry freight on
2 the California Western Railroad?

3 A. They do not.

4 Q. And there is also a letter from Line Redwood to
5 the secretary of the Department of Transportation requesting
6 the same grant. Is that correct?

7 A. That's correct.

8 Q. And does Line Redwood carry freight presently on
9 the California Western Railroad?

10 A. Presently, it does not.

11 Q. And there is also one from the North Coast Brewing
12 Company. Do they presently carry freight on the California
13 Western Railroad?

14 A. Presently, they do not.

15 Q. There is also a letter from the Willits Redwood
16 Company to the secretary of the department of transportation
17 on behalf of Mendocino Railroad that was sent on behalf of the
18 Mendocino Railroad.

19 Does Willits Redwood Company presently carry freight on
20 the California Western Railroad?

21 A. Presently, they do not.

22 Q. There is also a letter from Wylatti GEO Aggregate.
23 Does GEO Aggregate presently carry freight on the California
24 Western Railroad?

25 A. Presently, they do not.

26 Q. While we're here, look at Exhibit 29.

27 This is a short line improvement rail plan that was
28 prepared by CalTrans based on the representations that were

1 made.

2 And if you look at page -- exhibit page 29-5, this is a
3 page that is entitled Last Mile Shipping Solution. It was
4 discussed earlier today. Do you recall seeing that?

5 A. Yes.

6 Q. All right. And was that page discussed earlier
7 today?

8 A. It was.

9 Q. And I believe you testified that your operation is
10 consistent with what is reflected in this page. Is that
11 correct?

12 A. I testified that our purpose for acquiring the
13 subject property was to put a transload facility to
14 accommodate first mile and last mile.

15 Short line railroads are known as the first mile, last
16 mile carrier, and, as such, if -- when the tunnel reopens, we
17 will be that first mile, last mile carrier.

18 Q. Okay. Now, it appears in this document -- it
19 states in the second paragraph because short lines connect to
20 class one railroads, these companies often work hand-in-hand
21 to provide rail service to customers located in areas that
22 aren't directly served by the larger railroads.

23 Most short lines connect to at least one if not multiple
24 class one railroads, and, essentially, every item that ships
25 on a short line ends up on a class one. Is that correct?

26 A. That's not necessarily correct. Keep in mind that
27 our connection to the transcontinental system is via the NCRA,
28 or the Northwestern Pacific Railroad.

1 They acquired the line from Southern Pacific, which was
2 acquired through a merger with the Union Pacific. So, in
3 essence, that line was a class one carrier.

4 It is now considered a short line. And having multiple
5 short lines connect with each other in order to reach a class
6 one is certainly something that is done.

7 Q. But the statement that I read is not a correct
8 statement? That's what I asked you.

9 A. I don't believe it to be a correct statement,
10 because it -- it precludes a situation like I just described.

11 Q. Okay. So -- so perhaps the CalTrans report is not
12 correct? Is that what you're stating?

13 A. I'm not stating that the report isn't correct.
14 I'm just saying that their -- their interpretation is overly
15 broad, or general in nature.

16 Q. And would it be correct to say that at this
17 particular time, the Mendocino Railways cannot access a class
18 one railroad that leaves the county of Mendocino? Is that
19 right?

20 A. The Mendocino Railway does not have access to a
21 class one carrier -- direct access. I would -- I would say
22 direct access to a class one carrier.

23 Q. The only access that the Mendocino Railways has
24 right now is the 40 miles that it owns. Is that correct?

25 A. It has access to the Northwestern Pacific
26 Railroad, or the NCRA track in Willits.

27 Q. Okay. And that -- and that is the track that is
28 reflected on Exhibit 3 that is blue. Is that correct?

1 A. That is correct.

2 Q. And that -- the track that is reflected in blue on
3 Exhibit 3 and the California Western Railroad track that is
4 owned by the Mendocino Railway are the only tracks that the
5 Mendocino Railway has access to. Is that correct?

6 A. Yes.

7 Q. Does the Mendocino Railway, or the California
8 Western Railroad -- let me rephrase that.

9 Does the California Western Railroad conduct any
10 transloading now?

11 A. When we transported the aggregate, we did a mini
12 version of that, in that the aggregate that was being deferred
13 was dropped off and stockpiled, and then reloaded into a rail
14 car and transported.

15 Q. So would that be considered transloading?

16 A. Given that the aggregate wasn't exclusively for
17 us, that would be an example of transloading.

18 Q. Okay. Can you explain then, specifically, what or
19 how you define the term transloading?

20 A. The movement of goods from a rail car to a truck,
21 or vice versa.

22 Q. Okay. So there isn't any specific requirement to
23 make it a transloading site. Is that correct? As long as you
24 can drop off material and then put it in a train?

25 A. Well, the site has to be adequately prepared. You
26 couldn't do it if there were -- if there was a hill, or
27 massive grade separations, or if there was a distance between
28 rail and the drop-off spot.

1 Q. Okay. But, effectively -- I'm not trying to be
2 difficult here. I just want to understand it.

3 Transloading, as far as the term is concerned,
4 effectively, means that some material, or freight, or
5 something that needs to be transported is placed at the --
6 near the railroad, and then subsequently placed on the train
7 to take somewhere. Is that correct?

8 A. That would be a fine understanding, yes.

9 Q. So where did you do the transloading for the
10 aggregate?

11 A. In the wye that is described on Exhibit 3.

12 Q. So is it possible to do transloading at the
13 present wye today?

14 A. It is not.

15 Q. Why is that?

16 A. The access can't accommodate truck volume or
17 multiple commodities.

18 Q. So how did it -- how did the aggregate get to the
19 wye in the -- in the transloading example you gave us?

20 A. I'll point to it on the map.

21 Through the parking lot, there is a gate, a small gate.
22 There is a building here, and it was the former communications
23 building for the Western Pacific Railroad.

24 So this is the depo. And the parking lot I'm referring
25 to is across the street, and there is a gate. So the
26 aggregate trucks were able to go in, dump, and come back out.

27 And when they did that, because the gate is only wide
28 enough for one vehicle, it would have to yield if there was

1 another truck coming in.

2 Q. So it's your position or understanding that
3 transloading cannot occur any longer at that spot?

4 A. Effective transloading could not.

5 Q. Okay. So in order to do it efficiently, it could
6 not be done there. Is that correct?

7 A. That's correct.

8 Q. And as far as -- as far as things are today,
9 you're not doing any transloading. Is that correct?

10 A. Today we are not.

11 Q. And besides that one particular project, were you
12 doing transloading in the recent past?

13 A. We -- no.

14 Q. In this legal action, Mendocino Railway wishes to
15 take John Meyer's property by eminent domain, correct?

16 A. That is correct.

17 Q. And isn't it correct to say that Michael Hart and
18 yourself are the only ones that have been involved with the
19 eminent domain process as it relates to John Meyer's property?

20 A. We have been the principal individuals, in
21 addition to our counsel.

22 Q. Your counsel, meaning Mr. Block?

23 A. Yes.

24 Q. But as far as your company is concerned, besides
25 Mr. Block's counsel on the process, you and Mr. Hart are the
26 only ones that have been involved with the eminent domain
27 process as it relates to John Meyer's property. Is that
28 right?

1 A. In the beginning, our general counsel, Torgny
2 Nilsson may have been involved, but I don't recall. I don't
3 recall that.

4 Mr. Hart and you are the principals that are involved,
5 and -- and have been through the entire -- through this entire
6 process.

7 MR. JOHNSON: Okay. Your Honor, just to be clear,
8 I'd like to reference deposition testimony of Mr. Pinoli?

9 THE COURT: Okay. Hold on. Hold on. Let me pull
10 it up here. Page and line?

11 MR. JOHNSON: Page 32, line 5.

12 MR. BLOCK: I'm also looking at page 32, line 5.

13 BY MR. JOHNSON:

14 Q. "QUESTION: Besides yourself being part of this
15 eminent domain process at Mendocino Railway, is there anyone
16 else at Mendocino Railway that has been involved in the
17 eminent domain process as it relates to Mr. Meyer's property?"

18 "ANSWER: Michael Hart."

19 "QUESTION: How do you spell the last name?"

20 "ANSWER: H-a-r-t."

21 "QUESTION: Okay. What is his title?"

22 "ANSWER: He is the president/CEO of Sierra
23 Railroad Company."

24 "QUESTION: Okay. Is there anyone else that's
25 been involved in the eminent domain taking of John Meyer's
26 property other than yourself and Mr. Michael Hart?"

27 "ANSWER: We've had conversations internally, but
28 nobody else was involved, if you will."

1 "QUESTION: Okay. So, basically, you and Mr. Hart
2 are the ones that kind of are overseeing this eminent domain
3 action, as far as the company is concerned?"

4 "ANSWER: That's correct."

5 Mr. Pinoli, will you look at Exhibit B in -- in the blue
6 binder?

7 A. Exhibit B?

8 Q. B, as in boy?

9 A. Sure.

10 Q. This document appears to be a preliminary title
11 report prepared by the Redwood Empire title company of
12 Mendocino County.

13 If you look at the first page, in the middle of the page
14 it states property address 1401 West Highway 20 Willits,
15 California 95490. Do you see that?

16 A. I do, yes.

17 Q. Do you know if that is Mr. Meyer's property?

18 A. I believe it to be.

19 Q. Okay. If you look at the second page of this
20 exhibit, it says Schedule A, and it goes down. There's a
21 No. 2, titled To Set Estate or Interest With John Meyer.

22 Do you see that?

23 A. I do.

24 Q. Is it your understanding that this is a title
25 report that involves the real property in question, the
26 subject property?

27 A. It is consistent with other title reports that I
28 have seen from Redwood Empire.

1 Q. Do you know if your company or counsel obtained
2 this preliminary title report?

3 A. I would believe -- I believe that Mr. Block did.

4 Q. Okay. Have you reviewed this before?

5 A. I have seen it before.

6 Q. And if you look at -- if you look at the third
7 page of this report, there is a map. It looks like some type
8 of an assessor parcel map. Do you see that map?

9 A. I do, yes.

10 Q. Okay. And on the right-hand side of the map, if
11 you turn the document beyond the west side of the west side of
12 the map, effectively, there is an area. Do you see that?

13 A. I do.

14 Q. And is that -- is it your understanding that that
15 area is pointing to Mr. Meyer's property?

16 A. Yes. Where it lists 53, and a circle.

17 Q. Yes?

18 A. Yes.

19 Q. There is also to the -- to the left of that
20 parcel, there is two small parcels similar -- that are --
21 border the railroad, and are just to the west of -- or it
22 looks like they appear to be just to the south of the State
23 Highway 20. Do you see those?

24 A. Are you referring to parcels 40 and 41?

25 Q. Yes, I am.

26 A. Yes. I see those.

27 Q. Is it your understanding that Mr. Meyer owns
28 parcel 40 as well?

1 A. It is my understanding that he does.

2 Q. And -- and it's also your understanding that as
3 part of this eminent domain process, Mendocino Railway is not
4 attempting to take parcel 40. Is that correct?

5 A. That is correct.

6 Q. And is there a reason why Mendocino Railway does
7 not wish to obtain title to parcel 40?

8 A. It's a separate parcel. It is not needed. I do
9 believe that early on, we had a conversation with Mr. Meyer
10 about the possible acquisition of that.

11 But it is something that is not needed, and, you know,
12 we're not going to take something we certainly don't need.

13 Q. Okay. All right. Thank you. If you go to
14 Exhibit C?

15 A. Yes.

16 Q. Do you recall ever seeing this map?

17 A. I believe I referred to it earlier today.

18 Q. Okay. Actually, it's not a map. It is an areal
19 photograph. Is that correct?

20 A. Yes.

21 Q. And would it be correct that the subject property
22 that we have been discussing today, or referring to today,
23 Mr. Meyer's, property is the property that is enclosed within
24 the blue line?

25 A. That is correct.

26 Q. Okay. And, then, the yellow line generally
27 reflects the Mendocino Railway, or California Western Railway
28 -- Railroad as it passes near the Meyer property. Is that

1 correct?

2 A. That is correct.

3 Q. And, then, it also appears that on the other side
4 of Mr. Meyer's property would be a portion of Highway 20. Is
5 that right?

6 A. Yes. On the north side.

7 Q. On the north side, yes.

8 And, then, while we're looking at this, you can see on
9 the -- coming down around the turn, there is the two parcels
10 that we just discussed, 40 and 41.

11 They would be the portion that appear to be kind of cut
12 out from the blue line. Is that -- do you understand that?

13 A. Yes. I -- I see that adjacent to the blue line
14 are the parcels 40 and 41 that we reviewed in exhibit -- the
15 map in Exhibit B.

16 Q. Okay. And, then, right across from Highway 20,
17 there appears to be a portion in written -- or a portion of
18 what we have referred to earlier today as the KOA campground.
19 Is that correct?

20 A. Yes.

21 Q. And there it's now written -- it says -- written
22 next to that portion of the KOA campground, it states
23 Mendocino Redwoods RV Resort. Do you see that?

24 A. I do see that.

25 Q. Would it be correct to say based on this that it's
26 not called the KOA Campground; it's now called the Mendocino
27 Redwood RV Resort?

28 A. It is my understanding that there has been a

1 change in ownership.

2 We have an affiliation with them, in that we do pick up
3 passengers from their location. We have in the past. And
4 there was a change in ownership, and they let the KOA flag, or
5 franchise, go.

6 Q. Okay. And -- and earlier today, we -- I think you
7 were discussing the crossing of Highway 20, where we -- there
8 was discussion regarding pushing a button, or triggering the
9 -- the guards to come down over the road. Is that correct?

10 A. Yes.

11 Q. Do you recall that?

12 A. Yes. I recall the testimony, the questions, and
13 the conversation. Pushing a button is not an option.

14 Q. Okay. But the area that you were discussing as
15 that area or the issue involves the area where the yellow --
16 where the train line goes across Highway 20, just right near
17 this Mendocino Redwoods RV Resort. Is that right?

18 A. Yes.

19 Q. Okay. I'd like to take a look at Exhibit D.

20 Now, Exhibit D are emails, chains of emails. And in
21 order to effectively -- or the easiest way in my opinion to
22 effectively go through them is to start at the back, because
23 those are the oldest emails, and we'll work our way forward.

24 So I would request that you turn, and I'll refer to the
25 numbers on the bottom of these pages.

26 The first page I'd like you to turn to in Exhibit D would
27 be the one that states Mendo RLWY 0135.

28 A. Okay. I'm at that page.

1 Q. So it's effectively page 0135?

2 A. Yes, sir.

3 Q. Okay. You're at that page?

4 A. I am at that page, yes.

5 Q. Okay. So the first email in this chain that we're
6 going to discuss is on the bottom of page 135, and it states
7 that it is from Mike Hart.

8 It is dated January 17, 2020. And it's to Chris Hart and
9 Robert Pinoli. Do you see that?

10 A. I do.

11 Q. Chris Hart is -- is -- can you provide us with a
12 title of Mr. Hart?

13 A. Chris Hart is -- I mentioned this earlier, he's
14 the vice president of business development for the CR Railroad
15 Company.

16 Q. And Mike Hart is the president of CR Redwood
17 Company?

18 A. That is correct.

19 Q. And are they both owners of the CR Railroad
20 Company?

21 A. They both are shareholders of CR Railroad Company.

22 Q. Along with yourself?

23 A. That is correct.

24 Q. And then if you go to the next page, or the page
25 136, it appears that this email was copied to Torgny Nilsson.
26 Is that correct?

27 A. That is correct.

28 Q. And what Mr. Nilsson's title?

1 A. Mr. Nilsson is the general counsel, and vice
2 president of the company as well, the CR Redwood Company.

3 Q. It's also copied to Dave Magaw?

4 A. Mr. Magaw was the former president of Sierra
5 Northern Railway. He is retired, and serves as the treasurer
6 and vice president of the CR Railroad Company.

7 Q. Okay. So on this email, would it be correct to
8 say that you were the only one that was copied that is an
9 employee of -- of the Mendocino Railway?

10 A. That is correct.

11 Q. The subject of the emails is Camp Willits. I
12 believe you testified about Camp Willits earlier, but I
13 request that you inform us what that refers to?

14 A. As I mentioned, our -- the CEO of CR Redwood
15 Company oftentimes likes to give names to projects or things,
16 and referred to this in this email as Camp Willits.

17 Earlier, I used the reference that if there were a house
18 and a sycamore tree in front of it, the appropriate title that
19 he would give to it, after spending 20 years working with
20 Mike, would be sycamore house.

21 Q. Okay. So based on your knowledge, would this
22 email be the first reference that you had ever seen with the
23 subject Camp Willits?

24 A. Yes. I believe it to be.

25 Q. Was the term Camp Willits ever discussed with you
26 before this email?

27 A. No, sir.

28 Q. And -- and you did not ask Mr. Mike Hart what that

1 referred to when you received this email?

2 A. No. I'm not paying attention to what Mr. Hart
3 will sometimes title projects in his mind.

4 Q. Okay. So I'd like you to read this yourself, if
5 you could, briefly. And then let me know when you're done
6 reading this email, and I have some questions.

7 A. Okay. I'm finished reading.

8 Q. Thank you. If you look in the first paragraph or
9 sentence, it states, "So I on the drive up to the Skunk this
10 afternoon" in parentheses "(the meeting with NCBC went great),
11 I drove past" in parentheses "(the Remco site), then the KOA,
12 and closed lumber mill. Both sold out from under us last
13 year."

14 "I know that Robert has always wanted for us to get out
15 of Willits if possible, and I was sad that we missed our
16 chance with these two sites."

17 Can you specifically tell me what two sites are being
18 referred to that you missed, or the railroad missed out on
19 purchasing?

20 A. Remco, and an opportunity to purchase the Cutter
21 Lumber site.

22 Q. So the Remco site we discussed earlier. Did you
23 put in an offer to purchase the Cutter Lumber site?

24 A. No. We did not put in an offer. We made inquiry.

25 Q. Okay. So why is it referred to as a missed chance
26 to the Cutter Lumber site? Do you know?

27 A. I think Mr. Hart is referring to -- well, I'm not
28 going to speculate as to what he is referring to.

1 Q. So you don't know?

2 A. I don't know.

3 Q. At this particular time, you had -- there is also
4 reference to KOA. That is not a missed site -- is that
5 right? -- as far as you know?

6 The first sentence references the KOA. As of January of
7 2020, you had not missed the opportunity to buy the KOA. Is
8 that right?

9 A. That's correct.

10 Q. Did the Cutter Lumber site get sold to some other
11 party around that time, based on your knowledge?

12 A. Based on my knowledge, yes, I believe that to be
13 true.

14 Q. And if you go to the next paragraph, it says, "I
15 saw an absolutely perfect parcel next door to KOA and the
16 mill, owned by George Dudley."

17 "He bought it in 2008 for \$300,000. I have no idea if he
18 would consider selling it, but it is 12 acres that entirely
19 backs up to the railroad and has a nice creek on the eastern
20 side of the property." Do you see that?

21 A. I do.

22 Q. So at that particular time, it appears that
23 Mr. Hart thought George Dudley's site was an absolutely
24 perfect parcel. Is that correct?

25 A. Perhaps when you're driving by at 45 or 50 miles
26 an hour, it looks perfect. But that was the impression he
27 gave in his email.

28 Q. All right. And his email also reflects that that

1 absolutely perfect site is 12 acres in size. Is that right?

2 A. Yes. That's correct.

3 Q. And Mr. Hart is -- he's been a part of the
4 railroad operations for a very long period of time, hasn't he?

5 A. He has.

6 Q. And how long has he been a part of railroad
7 operations, based on your knowledge?

8 A. The mid '90s is when he stepped in to purchase his
9 first railroad.

10 Q. Okay. So over 25 years. Is that correct?

11 A. Yes.

12 Q. So do you think Mr. Hart would have a decent idea
13 of what a good parcel would be for construction and operation?

14 A. I think that if Mr. Hart spent time working from
15 the trenches up through the ranks, he would have a fantastic
16 understanding.

17 But he is an individual that I described as a -- an avid
18 entrepreneur. And if the rest of the crowd is flying at
19 30,000 feet, he's flying at 60,000 feet.

20 Q. Okay. So it would be your understanding that he
21 does not have a good idea of what a good site would be?

22 A. No. Because when we actually evaluated the site,
23 the site being Mr. Dudley's that we're speaking of, that site,
24 the grade separation is well over 20 feet.

25 The ingress and egress is limited to one access point.
26 It's narrow at the front, and broader at the back, with a
27 hillside towards the west.

28 And there is a natural barrier at the back of the

1 property, which is a creek.

2 Q. Okay. So -- so would it be correct to
3 characterize your statement as meaning that Mr. Hart would not
4 be a good judge of siting for the railroad. Is that correct?
5 A railroad station in the Willits area?

6 A. I think that it is appropriate for Mr. Hart in his
7 role to make suggestions, and for somebody like myself to vet
8 those out.

9 Q. Okay. And is that generally how this process
10 worked for determining what the proper site was for the
11 potential station in the Willits area?

12 A. Yes.

13 Q. And so were you the one that generally vetted out
14 the different parcels that would potentially -- could be used
15 for a site?

16 A. Yes.

17 Q. And did Mr. Hart play any role in determining what
18 parcels should be evaluated?

19 A. Mr. Hart and I speak regularly, and so this would
20 be something that would come up as a part of our normal
21 conversation.

22 Q. Okay. And if you go to the next -- the next
23 sentence in this paragraph, it says, "The land is ideally
24 situated, and has easy visibility and access power, ect.," et
25 cetera.

26 "There is more than enough land to place parking,
27 camping, RV sites, etc., as needed."

28 "It is zoned appropriately, for amusement and recreation,

1 and KOA is on the other side of the tracks."

2 "There is small grade difference with the track at this
3 point, see picture, but not terrible." Do you see that?

4 A. I do see that.

5 Q. I'd like to go through this statement a little
6 with you.

7 So at this particular time, which is January 17, 2020,
8 that was the time when the sites were being evaluated in this
9 particular area after the Remco potential transaction. Is
10 that correct?

11 A. Yes.

12 Q. And this was the initial discussion regarding
13 sites in that particular area. Is that correct?

14 A. Yes.

15 Q. So at that particular time, it would be correct to
16 say that at least as far as Mr. Hart was concerned, the site
17 should be evaluated for parking, camping, and RV sites as
18 needed. Is that correct?

19 A. That's what it says, yes.

20 Q. And it also states that it's zoned appropriately
21 for amusement and recreation. Do you have an understanding of
22 why Mr. Hart would say that it's zoned appropriately?

23 A. I don't. And I'm not familiar with the zoning of
24 amusement recreation as being a zoning within Mendocino
25 County.

26 Q. Do you recall asking Mr. Hart about that statement
27 and that relating to the zoning?

28 A. It, frankly, wasn't a focus of mine, meaning that

1 I was focused on the development of the overall railroad from
2 a freight standpoint, and from a passenger standpoint.

3 And I go back to the comments that I've made several
4 times, in that this is a railroad that was built to serve its
5 communities, and the most effective way to be able to do that
6 is to transport goods and services in addition to what it's
7 doing already to assist in the economic generation. And I
8 have no interest in amusement recreation zoning.

9 Q. Did you discuss that with Mr. Hart?

10 A. I'm sure that we had a discussion on one of our
11 many calls, or a walk about this.

12 Q. Okay. So we'll get to the response to this email.
13 But as far as you know, you have no idea why he would think
14 that amusement and recreation is appropriate zoning?

15 A. Well, in subsequent emails as a part of this
16 chain, he talks about -- and there's a drawing that he's
17 created that was, you know, looking to duplicate a campground
18 on the subject property similar to that of what is across the
19 street at the KOA.

20 And as I testified to earlier, that is not what Mendocino
21 Railway is going to do. That is not what Mendocino Railway's
22 interests are. And it is that simple.

23 Q. Okay. But at that particular time of January 17,
24 2020, it appears that Mendocino Railways did have an interest
25 in potentially creating a campground and an RV park. Is that
26 correct?

27 A. I wouldn't say that Mendocino Railway had an
28 interest. I would say that Mr. Hart had an interest.

1 Q. So it would be correct to say, then, probably,
2 based on your statements that you have just made, that when
3 you received this email, you would have replied to Mr. Hart
4 and said, Mr. Hart, we are not looking for a campground or RV
5 park. We are looking for an area to do freight and
6 transloading.

7 Would that be a correct statement as to how you would
8 respond to this email?

9 A. Not necessarily. It doesn't hurt to engage in
10 conversation, and go down a creative path, if you will, with
11 an individual. It is in the -- in the spirit of being a good
12 entrepreneur.

13 And so having that discussion, saying no, or immediately
14 closing the door after one email would -- would not be
15 appropriate.

16 Q. Okay. So you would expect, though, or it would be
17 probably correct to say that in the discussions we have here,
18 and these emails that went on for months, that there would be
19 a focus, then, at some point on transloading and freight. Is
20 that correct?

21 Based on the statements you have made in court today,
22 that seems to be the focus that you have. Is that right?

23 A. That is my focus.

24 Q. And so that would also -- should be reflected in
25 these emails, wouldn't you think?

26 A. We had many conversations outside of these emails.
27 Not all of our conversations -- certainly, not all of our
28 conversations take place via email.

1 Our conversations take place, as I mentioned earlier,
2 either via Zoom, or teams, or a regular phone call. Sometimes
3 in person.

4 Q. Okay. If you go to the next paragraph, it says,
5 "I don't know how serious Robert is about wanting to move out
6 of Willits, but this property screams that this is the right
7 place to go, if you are!" exclamation point.

8 "Robert, what do you think?" And then the next sentence
9 says, "Would it be a great place to pack up the existing
10 station and truck up this site?" Do you see that?

11 A. I do.

12 Q. So was it your idea to move out of Willits?

13 A. In part, yes, for a variety of reasons.

14 One, the inefficiencies that are described in Exhibit 3
15 on the wall behind me, and elimination of eight crossings that
16 we counted through earlier today.

17 And the -- the opportunities to expand and grow the
18 railroad's business simply don't present themselves in the
19 current location.

20 Q. Okay. Would it be correct to say, then, that it
21 was your idea, or you were the one that came up with the idea
22 of leaving Willits?

23 A. Well, leaving 299 East Commercial Street.

24 Q. Right. Leaving the existing station in Willits?

25 A. That is correct.

26 Q. And when did you come up with that idea?

27 A. It is something that I am certain that I've been
28 kicking around in my mind for probably well over a decade.

1 Q. Do you know what Mr. Hart is referring to when he
2 states, or why he states, "But this property screams that it
3 is the right place to go if you are!"

4 Do you know what that is referring to?

5 A. I don't.

6 Q. Do you recall asking Mr. Hart what he was talking
7 about?

8 A. No. And I don't believe that in the subsequent
9 email in my reply that I addressed it. I've learned to weed
10 things out.

11 Q. And so the next sentence we discuss talks about
12 packing up the existing station, and trucking it to the site.
13 Do you see that?

14 A. I do see that.

15 Q. And was that a thought that Mr. Hart had?

16 A. Mr. Hart has long wanted to pick up a building and
17 move it, I think for the sheer factor of just being able to
18 move a building, something that the Mendocino Railway is not
19 interested in doing.

20 Q. Okay. And if you look at the information below
21 the writing, it says, "Camp Willits is --" then it references
22 a parcel number acreage. It looks like it has Mr. Dudley's
23 name and address. Do you see that?

24 A. I do.

25 Q. And is it your understanding that that is the
26 information that relates to Mr. Dudley's property?

27 A. Yes.

28 Q. Okay. And so to be clear, did we look at

1 Mr. Dudley's property in some of the pictures today or
2 photographs? Do you recall?

3 A. I recall speaking of Mr. Dudley's property, but --
4 and describing on Exhibit 3 on the board behind me that it was
5 to the west of the subject property, but I don't believe we
6 pulled out any maps that specifically talked about
7 Mr. Dudley's -- or images that talked about Mr. Dudley's
8 property.

9 (Respondent's Exhibit 0 was marked for identification.)

10 THE COURT: Have him describe where it is to get a
11 reference.

12 BY MR. JOHNSON:

13 Q. This is a photograph that's been marked Exhibit 0.
14 And on that document, there is a parcel that has been outlined
15 in red.

16 Based on your knowledge, is that the parcel that's been
17 referred to as the Dudley parcel?

18 A. Yes.

19 Q. And can -- can you generally explain where that is
20 in relation to what we have on Exhibit 3?

21 A. Sure. So if this map were extended, it would be
22 somewhere to the west of the edge here.

23 This is the KOA. The highway comes down, and the -- in
24 this exhibit here, this is Cutter Lumber.

25 And if you don't mind, I would actually put a -- mark the
26 map with an "N" so we have the orientation for north right.
27 That way it will align.

28 Q. Maybe you can write on there in the parcel

1 "Dudley", just so the Court has it.

2 And then is there a portion of the KOA property on that
3 Exhibit O?

4 A. There is, yes. There is a portion of the KOA
5 property on this exhibit. So I've marked it N for north, and
6 then Dudley.

7 And then to the -- to the right of the Dudley property,
8 would be the KOA property.

9 Q. Do you want to put the KOA? Maybe it's easier.

10 A. Sure. Would you like me to mark the KOA?

11 THE COURT: Yes.

12 THE WITNESS: And I'll also mark the Cutter
13 property too.

14 MR. JOHNSON: Okay. Thank you. That would be
15 great.

16 THE WITNESS: Of course. Okay. I've now marked
17 it so that Dudley, Cutter, and KOA are listed.

18 MR. JOHNSON: All right. Thank you.

19 Your Honor, before I get ahead of myself too far, I would
20 like to move some of these exhibits into evidence, if
21 possible. I'd like to move Exhibit A into evidence, which is
22 the map.

23 MR. BLOCK: No objection, Your Honor.

24 THE COURT: Exhibit A will be received.

25 (Respondent's Exhibit A was admitted into evidence.)

26 MR. JOHNSON: I'd like to move Exhibit B into
27 evidence, which is the preliminary title report.

28 MR. BLOCK: No objection.

1 THE COURT: Exhibit B will be received.

2 (Respondent's Exhibit B was admitted into evidence.)

3 MR. JOHNSON: I'd like to move Exhibit C into
4 evidence, which is the areal photograph of Mr. Meyer's
5 property.

6 MR. BLOCK: No objection.

7 THE COURT: Exhibit C will be received.

8 (Respondent's Exhibit C was admitted into evidence.)

9 MR. JOHNSON: I believe the train schedules that
10 we discussed are Exhibit L. I'd move those into evidence.

11 THE COURT: Well, the only thing about that is
12 that he was -- he testified that those didn't reflect the
13 accurate schedules.

14 So I'm wondering when -- you said you printed them off
15 today?

16 MR. JOHNSON: Yes, Your Honor. At lunchtime.

17 THE COURT: Maybe what we can do is have
18 Mr. Pinoli print them out, and see if they're the same.

19 MR. JOHNSON: That's fine.

20 MR. BLOCK: I don't have an objection to that.

21 MR. JOHNSON: Okay. And then we have Exhibits M
22 and N, which are the photographs.

23 MR. BLOCK: No objection.

24 THE COURT: All right. Exhibits M and N will be
25 received.

26 MR. JOHNSON: Thank you.

27 (Respondent's Exhibits M and N were admitted into
28 evidence.)

1 THE COURT: Is this a good place to break at this
2 point for the night? Because you're not going to finish.
3 MR. JOHNSON: I'm definitely not going to finish.
4 THE WITNESS: May I ask a question?
5 THE COURT: Yes.
6 THE WITNESS: The printed time schedules -- is
7 there a time frame that you want me to capture?
8 MR. JOHNSON: It's up to you, but maybe you can
9 print out the same time frame.
10 THE WITNESS: Early August into September?
11 MR. JOHNSON: Yeah. Just so, you know.
12 MR. BLOCK: Oh, maybe the weekends are sold out,
13 and that's why it doesn't show up.
14 THE WITNESS: That could be. And I may print it
15 in list form.
16 THE COURT: Okay.
17 (Recess)
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO
UKIAH BRANCH

- - -

MENDOCINO RAILWAY,)
)
 PETITIONER,)
)
 VS.)
)
 JOHN MEYER,) CASE NO.
) SCUJ-CVED-2020-74939
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) VOLUME 2

REPORTER'S TRANSCRIPT OF PROCEEDINGS

AUGUST 25, 2022

BEFORE HONORABLE JEANINE B. NADEL, JUDGE

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APPEARANCES OF COUNSEL

FOR THE PETITIONER:
CALIFORNIA EMINENT DOMAIN LAW GROUP
BY: GLENN L. BLOCK
ATTORNEY AT LAW
3429 OCEAN VIEW BOULEVARD SUITE L
GLENDALE, CALIFORNIA 91208

FOR THE RESPONDENT:
MANNON, KING, JOHNSON, AND WIPF, LLP
BY: STEPHEN F. JOHNSON
ATTORNEY AT LAW
P.O. BOX 419
UKIAH, CALIFORNIA 95482

CAROL J. DEUCHAR, CSR NO. 13877
OFFICIAL COURT REPORTER
MENDOCINO COUNTY COURTHOUSE
100 NORTH STATE STREET UKIAH, CALIFORNIA 95482

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