

23-15857

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**MENDOCINO RAILWAY, a California
corporation,**

Plaintiff-Appellant,

v.

**JACK AINSWORTH, in his official
capacity as Executive Director of the
California Coastal Commission, and CITY
OF FORT BRAGG, a California municipal
corporation,**

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of California

No. 22-cv-04597-JST
The Honorable Jon S. Tigar

**APPELLEE JACK AINSWORTH'S
SUPPLEMENTAL EXCERPTS OF RECORD
VOLUME 1 OF 1**

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MENDOCINO

CITY OF FORT BRAGG,

Plaintiff,

v.

MENDOCINO RAILWAY,

Defendant,

CALIFORNIA COASTAL COMMISSION,

Intervenor.

Case No. 21CV00850
**DECLARATION OF JOSH LEVINE IN
SUPPORT OF CALIFORNIA COASTAL
COMMISSION’S MOTION TO
INTERVENE**

Date:
Time:
Dept:
Judge: The Honorable Clayton L.
Brennan

Trial Date:
Action Filed: October 28, 2021

DECLARATION OF JOSH LEVINE

I, Josh Levine, declare as follows:

1. I am the North Coast District Enforcement Analyst for the California Coastal Commission (“Coastal Commission”). My duties as an Enforcement Analyst for the Coastal Commission include review and investigation of complaints regarding unpermitted development

1 and other land use activities within the coastal zone and issuance of Notices of Violation and
2 other enforcement notices related to these unpermitted activities on behalf of the Coastal
3 Commission.


4 2. On July 12, 2022, I participated in a phone call with staff of the City of Fort Bragg
5 (“City”) wherein the City staff requested that the Coastal Commission assume primary
6 enforcement responsibility related to Plaintiff Mendocino Railway’s unpermitted development
7 activities in the coastal zone of the City of Fort Bragg.

8 3. On August 10, 2022, I prepared, signed, and mailed a copy of a Notice of Violation
9 letter (File Number V-1-22-0070) to Christopher G. Hart at Mendocino Railway, on behalf of the
10 Coastal Commission. A true and correct copy of that Notice of Violation letter is attached hereto
11 as Exhibit A.

12 4. I have confirmed that four of the parcels cited in the Notice of Violation letter (APNs
13 008-053-29, 008-054-16, 008-053-34, and 008-151-23) are owned by Mendocino Railway and
14 are located within the coastal zone, pursuant to section 30103 of the California Coastal Act of
15 1976. I am also informed and believe that the other parcel referenced in the Notice of Violation
16 letter (APN 008-151-26) was recently acquired by Mendocino Railway from Georgia-Pacific
17 LLC, and is also located in the coastal zone.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed this 6th day of September, 2022, in Arcata, California.

21 
22 _____

23 Josh Levine
24
25
26
27
28

CALIFORNIA COASTAL COMMISSION

1385 8th Street, Suite 130
Arcata, CA 95521
FAX (707) 826-8960
TDD (707) 826-8950



August 10, 2022

Christopher G. Hart
Mendocino Railway
100 West Laurel St
Fort Bragg, CA 95437

Violation File Number: V-1-22-0070 - Mendocino Railway Roundhouse
Property Location: 100 West Laurel Street, Fort Bragg, CA 95437;
Mendocino County Assessor's Parcel Numbers
("APNs") 008-053-29, 008-054-16, 008-020-18, 008-
053-34, 008-151-26, and 008-151-23.
Violation¹ description: Unpermitted development, that includes, but is not
limited to, the replacement of the "Roundhouse", the
replacement of a structure located off of West Alder
Street with an added concrete patio, the replacement
of a storage shed allegedly used to store rail bikes, a
lot line adjustment, and restricting public parking.

Dear Mr. Hart:

The California Coastal Act² was enacted by the State Legislature in 1976 to provide long-term protection of California's coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats; protect natural landforms; protect scenic landscapes and views of the sea;

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or the City of Fort Bragg LCP that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development. Please further note that "violation" as used in this letter refers to alleged violations of the Coastal Act and/or the City of Fort Bragg LCP, as determined by Commission staff.

² The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

Violation File No. V-1-22-0070 – Mendocino Railway Roundhouse

August 10, 2022

Page 2 of 5

protect against loss of life and property from coastal hazards; protect and enhance public recreation opportunities; and, provide maximum public access to the sea.

The Coastal Act establishes a permitting system for proposed development, as that term is defined in the act (see below), in the “Coastal Zone.” The Commission is the original permitting authority, but local governments with territory within the Coastal Zone are required to develop Local Coastal Programs (“LCP”s) to implement the Act, and once the Commission certifies a local government’s LCP, permitting and enforcement authority in the area covered by that LCP is generally delegated to that local government. Although the property at issue here is within the City of Fort Bragg’s LCP jurisdiction, the Commission can assume primary responsibility for enforcement of any Coastal Act and LCP violations at issue in this case pursuant to Section 30810(a) of the Coastal Act, which provides that the Commission may issue an order to enforce the requirements of a certified LCP in the event that the local government, in this case the City of Fort Bragg (“the City”), requests the Commission to assist with or assume primary responsibility for issuing such order. During a July 12, 2022, phone call with City staff, Commission staff were asked to assume primary enforcement responsibility for this case.

Commission staff was notified on July 7, 2022, and on August 4, 2022, of unpermitted development occurring on APNs 008-053-29, 008-054-16, 008-020-18, 008-053-34, 008-151-26, and 008-151-23 (“subject property”), including, the replacement of the entire roof and the windows/walls of the structure known as the “Roundhouse,” which constitutes the replacement of the entire structure. The potential impacts of the unpermitted development include the disturbance and removal of toxic construction materials that may have been used in the Roundhouse’s original structure. These materials have the potential - especially during their disturbance/resuspension, deconstruction, temporary storage, removal, and disposal - to impact hydrologic and biologic coastal resources.

Commission staff became aware of further unpermitted development during our investigation of the Roundhouse replacement. Unpermitted development including, but not limited to, the replacement of a structure off of West Alder Street, on APN 008-151-26, including completely new interior, wiring, plumbing, flooring, roof, windows, fencing, and a concrete slab partially enclosed patio, imposing new restrictions on parking on the subject property that has historically been available to the public, and the replacement of a shed on APN 008-054-16, which reportedly is being used to store rail bikes. Additionally, the Lot Line Adjustment (“LLA”) that Commission staff first addressed in our December 21, 2018 letter to the City, which letter was then sent to you as an attachment to Commission staff’s June 11, 2019 letter to Anthony LaRocca as counsel for Mendocino Railway (“MR”), remains unpermitted development.

Section 30600(a) of the Coastal Act and Section 17.71.045(B) of the City of Fort Bragg’s certified LCP require that any development occurring within the Coastal Zone

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Violation File No. V-1-22-0070- Mendocino Rail Roundhouse

August 10, 2022

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must first be authorized by, and must be undertaken in accordance with, an approved coastal development permit (“CDP”).

Section 30106 of the Coastal Act and Section 17.71.045(B) of the City’s certified LCP defines “development” as:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of materials; change in the density or intensity of use of land, ... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z’berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

Commission staff have sent several letters to MR, including letters dated June 11, 2019, November 2, 2020, and February 3, 2021. In our November 2, 2020, letter we stated that:

“We also remain unconvinced that Mendocino Railway’s (“MR”) rail holdings are necessarily still appropriately considered to be a part of the interstate rail network for purposes of the ICCTA, and thus believe that the proposed development plans at the former Georgia-Pacific Mill site may be outside the jurisdiction of the Surface Transportation Board (“STB”) pursuant to 49 U.S.C. § 10501(a). Finally, even if MR’s holdings were determined to be subject to STB jurisdiction, we believe that certain portions of the proposed development would also be subject to federal consistency review by the Commission.”³

Furthermore, as we have also mentioned elsewhere, even if MR’s rail operations are still subject to STB’s jurisdiction, that jurisdiction does not extend to non-rail-related activities merely because they are conducted by an organization that also operates rail lines. Thus, any such activities would remain subject to the Coastal Act’s permitting requirements, in addition to potentially being subject to the Commission’s federal consistency review authority.

We request a full description of all development that has occurred on the subject property without a CDP. Please include all staging areas and construction debris

3 Jessica Reed letter to Mendocino Railway dated November 2, 2020 p.1.

Violation File No. V-1-22-0070 – Mendocino Railway Roundhouse

August 10, 2022

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removal plans in your description. Depending on the extent, type and nature of the unpermitted development that has occurred, resolution may require that you obtain authorization to remove, and then do remove, the unpermitted development or that you obtain authorization of the development “after-the-fact,” as well as compliance with other provisions of the Coastal Act, including potential requirements for mitigation and the payment of penalties. **In order to ensure no further harm to coastal resources and to avoid the potential for continuing accrual of penalties, please cease all unpermitted development immediately and respond by August 26, 2022.**

While we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address violations of the Coastal Act including the following:

Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who undertakes development in violation of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who “knowingly and intentionally” performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 per violation for each day in which each violation persists.

Sections 30821 and 30821.3 authorize the Commission to impose administrative civil penalties in an amount of up to \$11,250 per violation of the Coastal Act, for each day that each violation persists. The administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.

Finally, Section 30812 authorizes the Executive Director to record a Notice of Violation against any property determined to have been developed in violation of the Coastal Act. If the Executive Director chooses to pursue that course, you will first be given notice of the Executive Director's intent to record such a notice, and you will have the opportunity to object and to provide evidence to the Commission at a public hearing as to why such a notice of violation should not be recorded. If a notice of violation is ultimately recorded against your property, it will serve as notice of the violation to all successors in interest in that property.

I look forward to hearing from you by **Friday, August 26, 2022**. If you have any additional questions or concerns, please contact me at (707) 826-8950, by email at joshua.levine@coastal.ca.gov, or by writing to the address in the letterhead above.

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Violation File No. V-1-22-0070- Mendocino Rail Roundhouse

August 10, 2022

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Sincerely,

A handwritten signature in black ink, appearing to read 'JL', with a long horizontal flourish extending to the right.

Josh Levine

North Coast District Enforcement Analyst

Cc: Lisa Haage, Chief of Enforcement
Aaron McLendon, Deputy Chief of Enforcement
Alex Helperin, Assistant General Counsel
Melissa Kraemer, North Coast District Manager
Sarah McCormick, City of Fort Bragg, Assistant to the City Manager

SER-009

EXHIBIT D

SER-010

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

MENDOCINO RAILWAY,
Petitioner,
v.
SUPERIOR COURT FOR THE
COUNTY OF MENDOCINO,
Respondent;
CITY OF FORT BRAGG,
Real Party in Interest.
A165104
Mendocino County No. 21CV00850

BY THE COURT:*

The court has carefully considered the parties' briefing regarding the propriety of writ review. Writ review could be found appropriate under *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 913 & fn. 17, which differs from the present matter in some important respects, but the court retains discretion to decide whether writ review is appropriate in this particular case. The court determines the circumstances of this case warrant a denial of extraordinary writ review. The factors asserted by petitioner in favor of writ review—to the extent the court finds them persuasive—are outweighed by other considerations, including but not limited to the desirability of reviewing these issues after development of a more complete factual record in the superior court, petitioner's failure to persuasively

* Before Simons, Acting P.J., Burns, J., and Wiseman, J. (Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

demonstrate as a factual matter that it will suffer cognizable irreparable harm absent writ review and lacks other adequate remedies at law, and the lack of a showing that resolution of the issues will impact (significantly or otherwise) any other cases. (*Babb v. Superior Court* (1971) 3 Cal.3d 841, 851; *James W. v. Superior Court* (1993) 17 Cal.App.4th 246, 252; *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1269, 1271-1274; *Los Angeles Gay & Lesbian Center v. Superior Court* (2011) 194 Cal.App.4th 288, 299-300; *Ordway v. Superior Court* (1988) 198 Cal.App.3d 98, 101, fn. 1, disapproved on other grounds, *Knight v. Jewett* (1992) 3 Cal.4th 296; *Lamadrid v. Municipal Court* (1981) 118 Cal.App.3d 786, 789 [“It is well established that the court in which extraordinary review is sought has discretion to gauge the potential adequacy of subsequent . . . review on a case-by-case basis.”].) The court further observes that “[t]he Court of Appeal is generally in a far better position to review a question when called upon to do so in an appeal instead of by way of a writ petition,” since on “appeal, the court has a more complete record, more time for deliberation and, therefore, more insight into the significance of the issues.” (*Omaha Indemnity Co.*, *supra*, 209 Cal.App.3d at p. 1273.)

In light of the court’s decision, as well as the parties’ agreement that the California Public Utilities Commission (CPUC) should not be considered a real party in interest to this proceeding, and the lack of a response filed by the CPUC to this court’s May 4, 2022 order served on that entity, the court does not take any further action regarding that issue.

The previously issued stay is dissolved.

Date: 06/09/2022

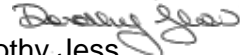
Simons, Acting P.J.

EXHIBIT G

SER-013

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County of Mendocino

By: 
Dorothy Jess
Deputy Clerk

5 Attorneys for Plaintiff
6 CITY OF FORT BRAGG

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MENDOCINO

11 CITY OF FORT BRAGG, a California
12 municipal corporation,

13 Plaintiff,

14 v.

15 MENDOCINO RAILWAY AND
16 DOES 1-10, inclusive

17 Defendants.

Case No. 21CV00850

**OPPOSITION OF CITY OF FORT BRAGG
TO NOTICE OF RELATED CASE**

JUDGE: Hon. Clayton Brennan
DEPT.: Ten Mile

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE SECTION 6103

19 Plaintiff City of Fort Bragg (“City”) hereby opposes the Notice of Related Case filed by
20 Mendocino Railway (“MR”) in the above-captioned matter (the “City Action”) and in *Mendocino*
21 *Railway v. John Meyer, et al.*, Mendocino County Superior Court Case No. SCU-K-CVED-2020-
22 74939 (the “Meyer Action”), and submits the following opposition thereto:

MEMORANDUM OF POINTS AND AUTHORITIES

24 **I. INTRODUCTION.**

25 MR has belatedly filed a Notice of Related case in the *Meyer* and *City* Actions. The cases
26 are not related *at all*, even if there could potentially be one similar issue that might be decided in
27 each. Indeed, the parties are not the same, and nearly all the facts, the underlying subject matter,
28 and the overall legal claims are all completely unrelated. Even as to the one issue that *may* be

OPPOSITION OF CITY OF FORT BRAGG TO NOTICE OF RELATED CASE

1 similarly presented, there would be no substantial conservation of judicial or other resources, and
2 there are other significant reasons why the cases are not sufficiently related and/or there would be
3 severe detriment to the parties from the transfer of the *City* Action. This includes the fact that the
4 *Meyer* Action is currently set for trial and the City could not timely or adequately participate in
5 that trial. Further, the Notice appears to be merely an exercise in forum shopping by MR.

6 Thus, the Notice of Related Case should be denied. In the alternative, assuming *arguendo*
7 that the Court were to find that any issues would overlap in the Actions – although that is highly
8 speculative, the Court can, at the most under the circumstances presented, informally coordinate
9 some aspects of the Actions, without transfer of the *City* Action and/or disruption of the set trial
10 in the *Meyer* Action.

11 **II. STATEMENT OF FACTS.**

12 The *Meyer* action is an eminent domain action filed by MR against John Meyer and
13 others, relating to specific property *not* within the City of Fort Bragg, but within the City of
14 Willits (APN 038-180-53).¹ MR's Complaint in the *Meyer* Action was filed on December 22,
15 2020, and has been pending a year and a half.

16 In fact, it is currently scheduled for a bifurcated trial on July 11, 2022. The issues in the
17 first part of the bifurcated trial relate to the authority of MR to exercise eminent domain, and
18 whether there is sufficient justification for public use and necessity of the particular proposed
19 uses MR's intends or proposes for the specific property in Willits, and alternative properties, at
20 issue in the *Meyer* Action. (See *Meyer* Action Complaint, at ¶¶ 6-8; Motion to Bifurcate and
21 Specially Set Bench Trial, filed on or about April 14, 2022.) In the second portion of the
22 bifurcated trial, the just compensation would need to be determined, if any. Notably, this is a jury
23 question, whereas all issues in the *City* Action are issues to be determined by the Court, not a
24 jury.

25 MR filed the Notice of Related Case in both Action on or about June 22, 2022.

26 ///

27 _____
28 ¹ The Court is requested to take judicial notice of its own records in both the *Meyer* and the *City*
Actions. Cal. Evid. Code § 452 (d)(1). - 2 -

1 **III. THE TWO ACTIONS ARE NOT SUFFICIENTLY RELATED AND/OR THERE**
2 **IS OTHERWISE NO VALID BASIS FOR FINDING THE ACTIONS RELATED**
3 **AND/OR TO TRANSFER THE CITY’S ACTION.**

4 All parties have a duty to provide notice of “related cases” “no later than 15 days after the
5 facts concerning the existence of related cases become known.” Cal. Rules Ct., Rule 3.300 (b)-
6 (e). “Related cases” are those which:

- 7 (1) Involve the same parties and are based on the same or similar claims;
8 (2) Arise from the same or substantially identical transactions, incidents, or events
9 requiring the determination of the same or substantially identical questions of law or
10 fact;
11 (3) Involve claims against, title to, possession of, or damages to the same property; or
12 (4) Are likely for other reasons to require substantial duplication of judicial resources if
13 heard by different judges.

14 As noted above, the cases do *not* involve the same parties, the same claims or the same
15 property. Further, the overall claims in the Actions are not similar at all, and do not arise from
16 the same or substantially identical transactions, incidents, or events, or involve the same or
17 substantially identical questions of law or fact. Indeed, the Actions involve completely unrelated
18 facts, in that the *Meyer* Action pertains to a single property in the City of Willits, and MR’s
19 purported need for that specific property as justification for eminent domain, whereas the *City*
20 Action involves MR’s activities within the City of Fort Bragg, and the condition of MR’s
21 property/ies within the City and/or MR’s activities and the applicability of certain local regulatory
22 authority over the same. The fact that one legal issue *may* be decided in each case is an
23 inadequate basis to delay and disrupt the *Meyer* Action and/or to truncate the City’s ability to
24 adequately and timely participate in the trial already set in that action for July 11th.

25 In fact, as noted in MR’s Motion to Bifurcate, MR asserted that the eminent domain action
26 is entitled to priority; thus, it seems proper that the trial already set should proceed as scheduled,
27 without delay. If, however, the *City* Action were to be transferred, such action would seem to
28 require that either the City be required to participate in a trial already set, or the *Meyer* Action
entirely consumed, since its commencement, solely with MR’s demurrer. MR acknowledged in

1 its Motion to Bifurcate that it would, in fact, be prejudiced, if the right-to-take objections were not
2 expeditiously determined as to that specific property as part of the *Meyer* Action.

3 Furthermore, it is not clear that either of the Actions will *necessarily* involve the legal
4 issue of whether MR is a public utility, in that that is only one issue in the *City* Action, and MR's
5 eminent domain power as to the property in the *Meyer* Action may not even touch on the issue of
6 MR's status.

7 Thus, even though Defendant Meyer does raise the issue of whether MR is a common
8 carrier railroad entitled to exercise eminent domain in his Amended Answer, Defendant Meyer
9 also raises the following issues: whether the complaint sufficiently describes MR's necessity for
10 the property, the nature of the rail projects for which condemnation is being sought, the specific
11 nature of the public use proposed by condemnation of the property, whether the proposed use is
12 most compatible with the greatest public good, etc.; as well as asserting other unrelated
13 affirmative defenses such as: failure to state a claim, lack of power of eminent domain
14 specifically "for the purposes stated in the complaint," that "[t]he state purpose is not for public
15 use," that MR "does not intend to devote the Property to the stated purpose," that "[t]here is no
16 reasonable probability that Plaintiff will devote the Property to the stated purposes within seven
17 (7) years, or such other longer period as is reasonable," that "[p]ublic interest and necessity do not
18 require the proposed Project," that "[t]he proposed Project is not planned or located in the manner
19 that will be most compatible with the greatest public good and least private injury," and that
20 "[t]he Property [or all of the Property] is not necessary for the proposed Project." (*See* Defendant
21 John Meyer's First Amended Answer to Complaint for Eminent Domain, filed on or about May
22 27, 2022 in the *Meyer* Action, at ¶¶ 4-10; pp. 4-5.) There are a whole host of legal issues that
23 could well obviate any need for the overall public entity status of MR to ever be decided in the
24 *Meyer* Action.

25 Moreover, the City has information from legal counsel for the California Coastal
26 Commission that -- now that the demurrer issue in the *City* Action has been conclusively
27 determined, the Commission intends to consider intervening in the *City* Action at its upcoming
28 July meeting. This intended consideration is not anticipated to occur until *after* the set trial in the

1 *Meyer* Action, which again would either impair the normal progression of the City Action, or
2 would require delay in the *Meyer* Action.

3 In addition, MR has significantly delayed in filing its Notice of Related Case. Despite the
4 fact that MR itself is a party to *both* actions, MR notably did not file the Notice of Related Case,
5 despite having notice of the contents of the *City* Action in or about November 2021 when it was
6 served. As noted above, MR was required to file its Notice of Related Case within *15 days* of its
7 knowledge of the two purportedly related cases, or in or about *December 2021*. Interestingly,
8 MR did not immediately file the Notice of Related Case. Indeed, it did not even just belatedly
9 file the Notice of Related Case at some reasonable time thereafter.

10 Instead, it waited until its demurrer was heard in the Ten Mile Branch by the Honorable
11 Clayton L. Brennan, after His Honor had already expended judicial resources carefully
12 considering one of the same legal issues that MR now claims that Court should be saved from
13 utilizing further judicial resources to potentially decide further. And, MR *still* did not file its
14 Notice even after that ruling issued by the Superior Court. MR also did not file the Notice after
15 the denial by the Court of Appeal of MR's Petition for Writ of Mandate.

16 In fact, MR waited until just after filing its Petition for Review with the Supreme Court --
17 apparently as an insurance policy so that MR could try to obtain a different ruling than the one
18 already issued *against* it by the Court in the *City* Action. It waited until just prior to all of its
19 appeal options had expired before filing the Notice. One of the very purposes of the Notice of
20 Related Case process is to avoid just such forum shopping.

21 In the alternative, assuming *arguendo* that the Court were to find that any issues may
22 potentially overlap in the Actions, it can, at most, informally coordinate some aspects of the
23 Actions, without transfer of the *City* Action and/or disruption of the set trial in the *Meyer* Action.

24 **IV. CONCLUSION.**

25 For all of the foregoing reasons, in response to the Notice of Related Case, the Court
26 should find that the cases are not related, since the Actions only *potentially* involve one
27 underlying issue identified by MR, whereas the two Actions otherwise are dissimilar in all other
28 respects. There would be no real conservation of judicial resources, and there would only be the

1 “avoid[ance] [of] *potentially* conflicting rulings” – which may never actually materialize. There
2 would also seem to be significant disruption of the *Meyer* Action, which is already set for an
3 upcoming trial date, and which would have to, either be delayed, as to an action entitled to
4 priority, or the City would have inadequate time to fully prepare and participate in that trial.
5 Further, the *City* Action may involve other parties unrelated to the *Meyer* Action. Taken together,
6 all of these circumstances require that the cases be found not related, and/or that the *City* Action
7 not be transferred because the Actions are not properly joined together in the same court. In the
8 alternative, the Court should, at most, informally coordinate some limited aspects of the Actions,
9 without transfer.

10 Dated: June 27, 2022

JONES MAYER

11
12 By: 

13 _____
14 Krista MacNevin Jee,
15 Attorneys for Plaintiff,
16 CITY OF FORT BRAGG
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1 *Fort Bragg v. Mendocino Railway*
2 *Case No. 21CV00850*

3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA**)

5 **COUNTY OF ORANGE**) ss.

6 I am employed in the County of Orange, State of California. I am over the age of 18 and
7 not a party to the within action. My business address is 3777 North Harbor Blvd. Fullerton, Ca
8 92835. On June 27, 2022, I served the foregoing document(s) described as **OPPOSITION OF
9 CITY OF FORT BRAGG TO NOTICE OF RELATED CASE**, on each interested party **listed
10 below/on** the attached service list.

11 Paul J. Beard, II
12 Fisherbroyles LLP
13 4470 W. Sunset Blvd., Suite 93165
14 Los Angeles, CA 90027
15 T: (818) 216-3988
16 F: (213) 402-5034
17 Email: paul.beard@fisherbroyles.com

18 (VIA MAIL) I placed the envelope for collection and mailing, following the ordinary
19 business practices.

20 I am readily familiar with Jones & Mayer’s practice for collection and processing of
21 correspondence for mailing with the United States Postal Service. Under that practice, it
22 would be deposited with the United States Postal Service on that same day with postage
23 thereon fully prepaid at La Habra, California, in the ordinary course of business. I am aware
24 that on motion of the parties served, service is presumed invalid if postal cancellation date
25 or postage meter date is more than one day after date of deposit for mailing affidavit.

26 XX (VIA ELECTRONIC SERVICE) By electronically transmitting the document(s) listed
27 above to the e-mail address(es) of the person(s) set forth above. The transmission was
28 reported as complete and without error. See Rules of Court, Rule 2.251.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on June 27, 2022 at Fullerton, California.



WENDY A. GARDEA
wag@jones-mayer.com

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

MENDOCINO RAILWAY

Plaintiff(s)

v.

JACK AINSWORTH, in his official capacity as Executive Director of the California Coastal Commission; CITY OF FORT BRAGG

Defendant(s)

Civil Action No. 1:22-cv-04597-RMI

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Jack Ainsworth Executive Director California Coastal Commission 455 Market Street Suite 300 San Francisco, CA 94105

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Paul Beard II FisherBroyles LLP 4470 W. Sunset Blvd., Suite 93165 Los Angeles, CA 90027 Email: paul.beard@fisherbroyles.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 8/10/2022



CLERK OF COURT

Mark B. Busby

Thelma Nudo

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 1:22-cv-04597-RMI

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Jack Ainsworth Executive Director California Coastal Commission was received by me on *(date)* 08/10/2022.

I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____, a person of suitable age and discretion who resides there, on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* Melanie Wong, Chief of Human Resources authorized person to accept service of process, who is designated by law to accept service of process on behalf of *(name of organization)* Jack Ainsworth Executive Director California Coastal Commission at 455 Market Street, San Francisco, CA 94105 at 4:05 p.m. on *(date)* 08/11/2022 ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 167.51.

I declare under penalty of perjury that this information is true.

Date: August 18, 2022

Valerie Martin

Server's signature

Valerie Martin, Registered California Process Server

Printed name and title

811 Wilshire Boulevard, Suite 900, Los Angeles, CA 90017

Phone No.: (213) 623-3979

Registration No.: 1543 / County: ALAMEDA

Server's address

Additional information regarding attempted service, etc:

In addition to the SUMMONS, the following were also served: 1) COMPLAINT; 2) CIVIL COVER SHEET; 3) ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE AND ADR DEADLINES; 4) SUPPLEMENTAL STANDING ORDER OF MAGISTRATE JUDGE ROBERT M. ILLMAN DURING THE COVID-19 EMERGENCY (MAY 29, 2020); 5) SETTLEMENT CONFERENCE STANDING ORDER OF JUDGE ILLMAN (May 10, 2019); 6) GENERAL STANDING ORDER OF MAGISTRATE JUDGE ROBERT M. ILLMAN (August 12, 2019); 7) STANDING ORDER FOR ALL JUDGES OF THE NORTHERN DISTRICT OF CALIFORNIA - CONTENTS OF JOINT CASE MANAGEMENT STATEMENT; 8) Consenting to the Jurisdiction of a Magistrate Judge Brochure; 9) NOTICE OF ASSIGNMENT OF CASE TO A UNITED STATES MAGISTRATE JUDGE FOR TRIAL

CERTIFICATE OF SERVICE

Case Name: **Mendocino Railway v. Jack
Ainsworth, et al.**

No. **23-15857**

I hereby certify that on November 6, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

APPELLEE JACK AINSWORTH'S SUPPLEMENTAL EXCERPTS OF RECORD VOLUME 1 OF 1

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 6, 2023, at Sacramento, California.

Bryn Barton
Declarant

/s/ Bryn Barton
Signature