



CITY OF FORT BRAGG

Incorporated August 5, 1889

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November 22, 2021

VIA EMAIL AND U.S. MAIL

The Honorable Carlos Monje
Under Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Mendocino Railway RRIF Loan Application

Dear Under Secretary Monje:

Although we have not received a copy of the application materials, it recently came to our attention that the Mendocino Railway has an outstanding application for a Railroad Rehabilitation & Improvement Financing loan (RRIF). The City of Fort Bragg (City) does not support Mendocino Railway's application and does not believe that its application is forthright or that granting the loan is in the best interest of our town.

The City of Fort Bragg is a small coastal community of 7,300 residents perched on the bluff tops overlooking the Pacific Ocean in northern Mendocino County. For well over a century, the town was dominated by the timber industry and the Timber Mill which was located on approximately 425 acres of ocean front property. For most of its existence, the Timber Mill was the primary employer in town and at its peak operations employed 2,000 local individuals. Closure of the Timber Mill by Georgia-Pacific, LLC (GP) in 2002 was devastating to the community in terms of the loss of good paying blue collar jobs with benefits. The possible silver lining was redevelopment of that Mill Site coastal property and an opportunity to diversify the local economy. This of course could only happen after the necessary clean up and remediation of the brownfield site left by the mill and early train operations on the site.

Located approximately 165 miles north of San Francisco and 185 miles west of Sacramento, Fort Bragg, while quite small, is the largest city on the coast between San Francisco and Eureka. The remoteness of Fort Bragg is one of its greatest assets. The

natural landscape is beautiful. The air is clean, the ocean wild, and traffic is a non-issue. From grants and donations, the City acquired 104 acres of parkland along the bluff tops of the former Mill Site and completed construction of a multiuse trail in 2018. The Coastal Trail created public access to 3.5 miles of scenic coastline and is value added for local residents and visitors alike. The City donated 11.5 acres of that coastal property to the [Noyo Center for Marine Science](#)¹. The Noyo Center is designing a marine science facility for that property devoted to innovative scientific research, hands-on education, and collaboration. The facility is part of transforming the former industrial Mill Site so that Fort Bragg is something other than a former mill town.

The City has also developed a “Blue Economy” movement which is about sustainable use of the ocean resources for economic growth, improved livelihoods and jobs, and healthy marine ecosystems. The Blue Economy offers a path for considering economic development and ocean health as compatible positions; emerging when economic activity is in balance with the long-term capacity of ocean ecosystems to remain resilient and healthy. This is an innovative sector that encompasses a broad range of activities from traditional ocean sectors to new businesses focused on ocean resiliency, and includes activities related to climate change, fisheries, renewable energy, tourism and transportation.

The City was in discussions with Georgia Pacific to purchase a portion of the Mill Site, as the home base for its Blue Economy, including ocean water intake/discharge infrastructure to support aquariums and research at the Noyo Center’s Ocean Science Facility and a “Blue Economy Innovation Cluster.” City Council has also been in active conversations with the Tribal Council of Sherwood Valley Band of Pomo to partner in future reuse of the former Mill Site. The City was poised to lay the foundations for housing, good paying jobs, and to perform the final remediation of Operable Unit E – specifically, the ponds and open space located in the center of the site. This project included removing the dam and beach berm, returning the tidal estuary, restoring wetlands and daylighting Maple and Alder Creeks in the process.

Prior to discussions about acquiring the southern Mill Site property, the City and Georgia Pacific had conversed regarding Georgia Pacific donating the parcels on and surrounding Pudding Creek. The City had pulled together a group of entities interested in removing the remaining dam and restoring the creek so that the property could be used as a public open space or park with trails. The group included the City of Fort Bragg, The Nature Conservancy (TNC), Trout Unlimited, California Department of Fish and Wildlife (CDFW), National Oceanic and Atmospheric Administration (NOAA) and California State Parks. By owning this property, Mendocino Railway can limit access to this scenic area to those who purchase tickets on its excursion train.

As you likely know, Mendocino Railway owns a scenic excursion train sentimentally known as the “[Skunk Train](#)”² that operates from a train station located in the City of Fort

¹ <https://noyocenter.org/about/>

² <https://www.skunktrain.com/>

Bragg. Since the 1980s, the Skunk Train has operated primarily as an excursion train between Fort Bragg and Willits. The Skunk Train's mascot is a cartoon skunk dressed in a conductor's outfit and the train station carries a line of merchandise marketed for tourists to the City. In 2016, the tunnel between Fort Bragg and Willits collapsed and has been closed since. Excursion trips now originate from Fort Bragg and head east for several miles then return by putting the train in reverse and back tracking the same route. A similar "there and back again" route occurs on the Willits leg, where the train heads west stopping in North Spur before the collapsed tunnel and then returns to the Willits station.

The short excursion is popular with visitors, as are the railbikes that allow tourists to pedal the tracks themselves along the scenic Pudding Creek or along the Noyo River through the Redwoods. For many years, the City of Fort Bragg has supported the Skunk Train operation and recognized the Skunk Train's contribution to our local economy provided by the excursion train trips that attract tourists to our community. This support included submitting BUILD grant applications, for three years in a row, on behalf of the Skunk Train in hopes of repairing the tunnel and reinstating the excursion trips all the way to Willits.

However, the Fort Bragg City Council does not support Mendocino Railway's current RRIF loan application as it perpetuates the falsehood that the railway is a common carrier public utility, which allows it to strategically claim exemption from local and state regulations and use powers such as eminent domain to diversify its holdings well beyond railroad operations. On August 11, 2021, Mendocino Railway filed an Eminent Domain Complaint in Mendocino Superior Court against Georgia-Pacific LLC (Case No. 21CV00595). The action was brought to condemn 210 acres of coastal property, the former Timber Mill Site, and approximately 62 acres of property running along both the north and south banks of Pudding Creek. Both properties are located within Fort Bragg City limits.

This is in addition to the approximately 77 acres of coastal property on the northern portion of the Mill Site that it acquired from Georgia-Pacific in June of 2019. That property is contiguous to the Skunk Train's Fort Bragg Train Station, Round House and other operational facilities.³ The Mendocino County Assessor's Office lists the value of the transaction at \$1.5 million. The existing Fort Bragg Train Station, Round House and other operational facilities sit on little more than 4 acres of land.

The 77 acres remain undeveloped, except for a 70,000 square foot drying shed, the only remaining structure from the Mill Site. In Mendocino Railway's 2021 eminent domain complaint, the public interest and necessity was stated as "required in furtherance of Plaintiff's current ongoing and future rail operations and all uses necessary and

³ Mendocino County Assessor's Office lists the three parcels purchased by Mendocino Railway from Georgia Pacific on June 20, 2021 at a total acreage of 172 and a value of \$18.8 million. The Mendocino Railway reported the acreage at approximately 77 and the discrepancy is due to the refusal of Mendocino Railway to submit a lot line adjustment for the purchase of a portion of parcel # (APN) 008-020-17-00.

convenient thereto.”⁴ The northern portion of the Mill Site acquired in 2019 increased the land available to Mendocino Railway for rail operations by a factor of 19 times raising the question why the excursion train would need the additional 272 acres (an increase 87 times the current facilities) acquired by the condemnation action for current ongoing and future rail operations?

On November 19, 2021, the City was informed by Georgia-Pacific that it had settled the eminent domain lawsuit brought by Mendocino Railway by agreeing to the condemnation. As a result of condemnation, Mendocino Railway was able to acquire prime ocean front and creek side property.

The City believes that Mendocino Railway wants to develop the coastal and creek side property with little or no local or state regulatory oversight. The Mendocino Railway’s Fall 2021 newsletter, Volume 1, Issue I, “The Little Stinker,” also delivered on November 19, 2021, describes its plans for the 77 acres on the northern portion of the Mill Site.

“[T]he Skunk Train is excited to unveil its land use plan for the Fort Bragg Mill Site. This is a once-in-a-generation project, completely reimagining one of the California Coast’s most striking stretches of oceanfront land. The vision and scope of the New Mill Site is staggering, incorporating tiered housing, an oceanfront hotel, sprawling open space preserves, the central Railroad Square, an oceanfront rail expansion, a flagship restaurant, commercial space, and an educational historic park.”

By sprinkling tourist train rides into the development plans, the Railway appears to be ready to claim that its actions fall under that of a common carrier for transportation. As a common carrier, Mendocino Railway asserts that it is not subject to local and state regulations.⁵ In its demurrer to Georgia-Pacific’s affirmative defenses to the eminent domain action for the 272 acres, Mendocino Railway asserts it “is a federally regulated railroad and, as such CEQA [California Environmental Quality Act] is preempted and CEQA is not applicable.”⁶ The 272 acres, just acquired by condemnation, is subject to additional remedial action for the Operable Unit E under the California EPA’s Department of Toxic Substances Control’s (DTSC) Remediation Order HAS-RAO-06-07-150. If the Mendocino Railway does not consider the 272 acres subject to California environmental law, who is responsible for the final clean up?

Development without local zoning or environmental regulation is not in the best interests of the City. Georgia-Pacific reported spending more than \$50 million and almost 20 years

⁴ *Mendocino Railway v. Georgia –Pacific LLC*, Mendocino County Superior Court Case No. 21CV00595.

⁵ Letter dated April 9, 2020 from Paul J. Beard II, counsel for Mendocino Railway: “As we believe the federal preemption of Mendocino Railway’s rail-related work on its properties is supported by black-letter law, we ask that the Coastal Commission confirm that it agrees with the analysis and conclusions contained in this letter.” Letter dated November 2, 2020 from CA Coastal Commission to Paul Beard II: “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 the federal consistency review by the Commission. Your letter has not changed our position on these matters.”

⁶ *Mendocino Railway v. Georgia –Pacific LLC*, Mendocino County Superior Court Case No. 21CV00595.

on cleanup of the former Mill Site, which is not yet complete. It is unimaginable that Mendocino Railway intends to use this coastal property for current ongoing and future rail operations. The City of Fort Bragg is 1,869 acres or just 2.9 square miles. That would mean that nearly 15% (272+4 acres) of the land in the City will be converted to railway operations. What could it possibly haul from Willits to Fort Bragg to make this viable? If this is true, the City's treasured Coastal Trail would be bordered by a freight railroad. The best and most valuable use of this property is not as railroad operations.

As pointed out in the letter from the Friends of the Eel River, a plan to haul rock from the Eel River canyon to ship from Fort Bragg is not viable. The Noyo Harbor, which supports a small fishing industry, is not a deep water port and cannot accommodate barges or ships of any substantial size. For example, the Coast Guard's small boat station located in the Harbor is limited to boats up to 47 feet, despite the fact that it services 120 miles of northern California coast. Even if the Noyo Harbor could accommodate freight ships, the harbor is not accessible from Mendocino Railway's property, which means the freight would need to be unloaded from the train and transferred by truck to the harbor then reloaded onto ships. This seems impractical at best.

That said, Mendocino Railway could acquire, through purchase or condemnation, the already developed property between to extend the train tracks to the harbor. A final ludicrous option is for Mendocino Railway to build an entirely new port off of the property acquired from Georgia-Pacific, but this would require access over, under or through the City's beloved Coastal Trail that runs the length of the coastal bluffs. Of course any of these scenarios could only be possible if the development is not subject to local regulation, California environmental law or the state's Coastal Act.

On October 28, 2021, the City filed a complaint for declaratory and injunctive relief against Mendocino Railway, in Mendocino County Superior Court (Case No. 21CV00850) seeking a declaration that the railway is not a public utility and does not qualify as a federally regulated common carrier providing transportation. The local three-mile Skunk Train excursion service is not transportation or a public utility. The proposed repair of the collapsed tunnel, rebuilding of the North Coast Railroad Authority (NCRA) line and active freight and passenger service is simply a ruse to hold onto the designation as a common carrier so that Mendocino Railway can develop the 350 acres in Fort Bragg without having to comply with state and local regulation.

The railway's application and its efforts to obtain rights to the NCRA line are not for true rail operations but a way to hold onto the powers afforded a federally regulated railway that is connected and part of the national railway system. In conclusion, the Fort Bragg City Council does not support Mendocino Railway's Railroad Rehabilitation & Improvement Financing loan and encourages the Department of Transportation to review the application materials closely and consider the input from other agencies and organizations.

November 22, 2021
Mendocino Railway RRIF Loan Application
Page 6

Respectfully,

Bernie Norvell
Mayor

Jessica Morsell-Haye
Vice Mayor

Teresa K. Albin-Smith
Councilmember

Lindy Peters
Councilmember

Marcia Rafanan
Councilmember