

From: [Jacob Patterson](#)
To: [Lemos, June](#)
Subject: Public Comment -- 3/14/22 CC Mtg., Item No. 5H
Date: Monday, March 14, 2022 12:55:34 PM

City Council [via BCC],

I am glad an actual letter has been added to the agenda materials for Consent Calendar Item 5H, a proposed letter to the Coastal Commission, since there wasn't anything when the agenda was originally published. I reviewed the proposed letter and have an observation about the City's positions as currently drafted. In it, you (potentially) proclaim "Mendocino Railway has stated in its loan application that it would like to bring new rail service to prime coastal property and to re-establish tracks within a historical footprint. This plan does not take into account the years of community planning efforts to determine future reuse of the former mill site, as well as the community's involvement with the extensive environmental cleanup that continues to take place under the oversight of California's Department of Toxic Substances Control. We do not want to see Mendocino Railway circumvent the local planning process and ignore local oversight and community input by simply activating a federal loan to intensify train operations."

Although I understand where this sentiment is coming from, what this statement appears to ignore is that the local planning process doesn't necessarily have to involve the City of Fort Bragg directly. I am concerned that the City is taking such hard-line positions with the Skunk Train and their potential development partners that you risk alienating them completely so they feel they have no choice to bypass the City of Fort Bragg's planning processes and develop a specific plan or plans independently and then bring those plans directly to the voters through a ballot initiative rather than wasting time trying to participate directly with the City as an organization. The City's local planning authority is delegated from the superior authority of people of Fort Bragg so the people can always choose to reclaim the mechanisms to exercise that authority and just do it themselves rather than relying on the City's own long-range planning processes. Any potential applicant or landowner could choose to use various tools and mechanisms to achieve their objectives and not all of them involve the City directly. Of course, any changes enacted that way would likely still be subject to Coastal Commission review and approval but I think your hard-line positions risk cutting the City out of the local planning process and I don't think that could possibly be your intent. Please consider these issues as you make decisions like whether or not to approve this letter or potentially revise it.

As usual, this email public comment should not be interpreted as me providing any legal advice on this matter to anyone and you would need to consult with the City's legal team about the availability of the ballot initiative process for long-range planning purposes, like adoption of specific plans or LCP and general plan amendments.

Regards,

--Jacob

From: [Jade Tippett](#)
To: [Lemos, June](#)
Subject: Attachment for 3-14-22 City Council Meeting
Date: Monday, March 14, 2022 1:10:23 PM
Attachments: [City Council Letter 3-14-22.pdf](#)

Please attach the following letter to the Agenda Packet for this evening's City Council Meeting.

Also, I cannot find on the new website where I can sign up to speak during the comments section of the meeting. What is the current procedure to sign up to comment?

Thank you,

--j

Jade Tippett
236 Park Street
Fort Bragg, CA 95437
[707.489.4986](tel:707.489.4986) (Cell)

"Once in a while,
You get shown the light,
In the strangest of places
If you look at it right."
-- Robert Hunter

James Jade Tippett
236 Park Street
Fort Bragg, CA 95437

March 14, 2022

City Council of the City of Fort Bragg
416 North Franklin Street
Fort Bragg, CA 95437

Re: Mendocino Railway

Gentlepeople:

Several weeks ago, in a conversation with Chris Hart on social media, I asked him, “What would you be willing to give up in order to gain the City Council’s support of Mendocino Railway’s RRIF [Railroad Rehabilitation Infrastructure Fund] application?” The response...crickets...

Michael Hart in 2016, before a group of young entrepreneurs explained why he invests in railroads, “I started buying railroads back in the 1990’s. I like them because they are a great way of acquiring real estate. Once you have a railroad, you have the right of eminent domain. You are not subject to a lot of laws that other companies are. You are exempt from the Subdivision Map Act [Govt. Code § 66410 et seq.]. There’s a lot of cool things that railroads have going for them.” <https://youtu.be/t45Cskl3B2o?t=381>

The City has already sued Mendocino Railway, challenging their status as a Class III railroad with the California Public Utilities Commission, the subject of tonight’s Closed Session Agenda item.

The City Council will also be considering, I am told by Mayor Bernie Norvell, a letter to the California Coastal Commission, objecting to the short timeline of a request filed with the Coastal Commission on behalf of Mendocino Railway by the law firm of Baker & Miller, of Washington, D.C., urging the Coastal Commission to accept a Categorical Exclusion Worksheet. This Categorical Exclusion Worksheet alleges that some \$21 million in work Mendocino Railway is proposing, including running a mile of rail out onto the Headlands at Glass Beach, with a turntable and station at the end “[does] not individually or cumulatively have a significant effect on the human environment and ... generally [does] not require the preparation of either an environmental impact statement (EIS) or an environmental assessment (EA). Decisions to prepare EAs and IESs are made by FRA.”

The basis of the Baker & Miller letter is questionable assertion that Mendocino Railway is a federal railroad, covered by the Interstate Commerce Commission Termination Act (ICCTA) of 1995, which provides “Federal Preemption,” the basis on which Mendocino Railway has denied the jurisdiction of Mendocino County and the City of Fort Bragg regarding toxic spills, building restoration, improvement and construction, and other

Phone: 707.463.3741 • Mobile: 707.489.4986
Email: jade@mcn.org

activities that would potentially impact public health and safety, and the safety of emergency services personnel like our local firefighters.

The City's lawsuit against Mendocino Railway, arguing that Mendocino Railway fails to qualify as a public utility under the California Public Utilities Commission, includes some persuasive arguments that Mendocino Railway should also not qualify as a Federal railroad under ICCTA, as it neither carries passengers, nor freight, from one place to another, and is not connected to the interstate rail system. The City's briefs include several Surface Transportation Board decisions supporting that argument.

However, the venue to make such an argument seems to me to be before the Federal Courts and the Surface Transportation Board itself, not in Mendocino County Superior Court. For this reason, I would suggest that the City take parallel action in Federal Court, challenging Mendocino Railway's status as a Federal Railway.

I would also suggest that should Mendocino Railway and their principals, Chris and Mike Hart agree in a Consent Decree accepted by the Mendocino County Superior Court to:

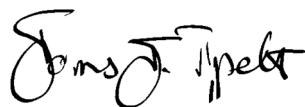
1. Forever abandon and foreswear any assertion or coverage under the ICCTA, as it affords preemption from local and state regulation, within the City Limits of Fort Bragg and within Mendocino County,
2. Agree to submit to a full and complete planning process involving extensive and ongoing community participation,
3. Agree to submit to full and extensive jurisdiction and code enforcement by all local, county and state agencies, including the California Coastal Commission and the Department of Toxic Substances Control for the clean-up of the GP Mill Site.

...that the City should relent and support Mendocino Railway's RRIF application, for the purpose of re-establishing a rail link between Willits and Fort Bragg.

In the coming years, as we transition away from fossil fuels to save our planet and our coastline, humanity will need to shift from individual to collective forms of transportation and shipment of goods and materials. Rail, fully utilized, is the most energy efficient form of transportation we know. Unfortunately, in order to utilize rail to serve the Mendocino Coast, we need to rein in the avarice and entitlement of the current owners of the railroad and put a container of local control on their dreams and intentions, to establish a balance of interests going forward.

Thank you.

Sincerely,



Jade Tippett

From: [Daney Dawson](#)
To: [Lemos, June](#)
Subject: Comments for public record
Date: Monday, March 14, 2022 1:10:50 PM

Regarding item #s 5H 22-119 and 9A 22-121 on tonight's agenda:

As a person who works, shops, and recreates in Fort Bragg, and lives near the city but not in it, I strongly support any and all efforts by the City of Fort Bragg to hold Sierra Energy/Sierra Railway accountable for all legal requirements relating to development, including the unethical and possibly illegal "taking" by eminent domain, and any and all environmental mitigation necessary before any development permits are granted. I fully support their petition to the Coastal Commission.

Daney Dawson

March 14, 2022

VIA EMAIL

City Council Members
City of Fort Bragg
Emails, below

ITEM 5H (CONSENT)

Re: *Item 5H, Proposed Letter to the California Coastal Commission*

Dear City Council Members,

We represent Mendocino Railway. We have reviewed a draft letter to the California Coastal Commission that the City's public-relations firm has drafted for consideration on the consent calendar at today's City Council meeting following only a few hours' public notice. The draft intentionally misrepresents the railway's continued status as a common carrier railroad¹ and pleads with the Coastal Commission to "exercise its full authority to require the Mendocino Railway to comply with California's Coastal Act for any of its planned development." We urge each member to consider the serious consequences of its campaign to discredit Mendocino Railway as a public utility and federally regulated railroad, of which the City's draft letter is just one example.

First, pleading with a state agency like the Coastal Commission to "exercise its full authority" over the railroad's rail-related activities is not only unbecoming for a local and sovereign government, but self-defeating as well. As the City knows from its historic opposition to Coastal Commission overreach (including with respect to Mendocino Railway's work), the Coastal Commission does not *need* the City's invitation to exert its "full authority" over activity in the Coastal Zone. And as the City *should* know, the Coastal Commission will stop at nothing to arrogate to itself all land-use power over activities even within the City's borders, leaving the City with no control or say of what happens within its jurisdiction. The City Council represents the *citizens of Fort Bragg*, not the interests of far-away bureaucrats in

¹ As recently as 2019, the City defended Mendocino Railway's status as a public utility, as well as a federally recognized railroad. And even in the recent Complaint the City filed against the railroad, the City conceded that that Mendocino Railway is "currently listed as a class III railroad by the California Public Utilities Commission ('CPUC'), and as such is subject to CPUC jurisdiction and has all legal rights of a public utility." Why the City is nevertheless publicly proclaiming the opposite is anyone's guess, but it appears from the City Council's public comments to be a direct reaction to the railroad's purchase of the former mill site from Georgia Pacific.

San Francisco. Has the Council considered whether the interests of its constituents are served by voluntarily ceding power to a such an all-consuming bureaucracy that has no regard for the economic or human development of Fort Bragg?

Second, we have discovered that some of the City’s Councilmembers have conflicts of interest that preclude their participation in the City’s campaign to undermine—and stop—Mendocino Railway’s activities within the City’s boundaries, including at the former mill site. In fact, the City Attorney has already warned one City Councilmember that she has “a potential conflict of interest” and should “step back” from mill site planning issues. Other City Councilmembers are in a similar position.

Third, the City’s intentional and very-public effort to undermine Mendocino Railway’s relationships with other agencies, current and future customers, and the general public continues to expose it to potential liability. Among other things, the City is intentionally interfering with prospective and current contractual relations. With every act having the purpose or effect of discouraging third parties from financing or otherwise engaging economically with Mendocino Railway, the City is committing a tort against the railroad, a tort that seems designed to benefit certain of the City’s sitting Councilmembers. *Settimo Associates v. Environ Systems, Inc.* (1993) 14 Cal.App.4th842, 845; *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126. Recall that actions taken by Councilmembers that financially interest them may expose said members to personal liability. Govt. Code § 91005(b) (“Any designated employee or public official specified in Section 87200, except an elected state officer, who realizes an economic benefit as a result of a violation of Section 87100 or of a disqualification provision of a conflict of interest code is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to three times the value of the benefit.”); *id.* § 87100 (“A public official at any level of state or local government shall not make, participate in making, or in any way attempt to use the public official’s official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.”).

Fourth, the City Council’s actions seem likely to damage not only Mendocino Railway’s interests but those of many other local businesses and their employees. The loan the City Council seeks to block would finance the repair of rails and a collapsed tunnel that even the City Council wants reopened. This loan would also allow for the restoration of the broken rail connection between Fort Bragg and Willits, a connection that disproportionately benefits Fort Bragg as 74% of passengers on the line depart from, stay in, dine in, and shop in Fort Bragg. Such a reconnection would fully restore Mendocino Railway’s ability to move freight between the two communities and improve Mendocino Railway’s ability to assist local environmental restoration programs and, in particular, U.S. Forestry Service programs that seek to mitigate the risk of forest fires. Blocking this loan would also prevent millions of dollars in labor and material being spent in the region, preventing the creation of new local jobs and added regional tax revenues. As revealed in a recent demographic analysis, Mendocino Railway has over the past five years generated more than \$67 million in visitor spending with other local merchants, restaurants, and lodges, as well as generating tax revenues for

community services, all numbers that Mendocino Railway has sought to increase while the City Council seems intent on decreasing them.

Given the City Council's erratic actions over recent months, Mendocino Railway has little hope of changing its behavior, including persuading the City to end its misinformation campaign. The City appears willing to do anything—including acting against its own and its constituents' interest by inviting a state agency to take over land-use authority—to hurt Mendocino Railway. But the City is on notice that its actions continue to damage its relationship with an important economic engine for the community, and will only expose it to liability down the road.

Very truly yours,



Paul J. Beard II
Attorney for Mendocino Railway

Cc: City Clerk, Email: Jlemos@fortbragg.com

Mayor Bernie Norvell
Email: BNorvell2@fortbragg.com

Vice Mayor Jessica Morsell-Haye
Email: Jmorsellhayes@fortbragg.com

Councilperson Tess Albin-Smith
Email: talbinsmith@fortbragg.com

Councilperson Lindy Peters
Emails: LPeters2@fortbragg.com

Councilperson Marcia Rafanan
Email: Mrafanan@fortbragg.com