

Potomac LAW GROUP

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December 2, 2021

The Hon. Bernie Norvell
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437

Sent via email Bnorvell2@fortbragg.com

Re: Disparagement of Mendocino Railway

Dear Mayor Norvell:

We represent Mendocino Railway and write you regarding the City of Fort Bragg's false and misleading comments regarding not only our client's business practices, but also its recent application to the Department of Transportation ("DOT") for a RIFF loan.

As you are aware, Mendocino Railway is a longstanding and respected member of the Fort Bragg community, a member of the community that has worked hand-in-hand with the City to ensure that the former Georgia-Pacific millsite is developed in a manner that benefits the entire community.

Our client has been made aware that the City has recently begun making knowingly false and disparaging remarks about Mendocino Railway and its past, current, and future operations, plans, and conduct. The City has also gone out of its way to interfere in Mendocino Railway's application for a RRIF loan, which is pending before the DOT, to, among other things, reopen its collapsed tunnel. The City's actions – unless immediately remedied – risk exposing it to costly legal action.

Mendocino Railway fully respects, supports, and encourages legitimate free speech and a fair voice on matters that are important to and impact the Fort Bragg community. Moreover, as repeatedly shown through its words and actions, Mendocino Railway is genuinely concerned about the success and well-being of the community and has, on multiple

occasions, attempted to engage the City in as transparent and responsible a manner as possible.

However, the City's recent statements and actions regarding Mendocino Railway have overstepped the accepted boundaries of commentary and opinion and crossed into a space which is both intolerable and actionable.

For example, the City in its recent letter seeking to derail Mendocino Railway's loan application asserts that Mendocino Railway's application "perpetuates the falsehood that the railway is a common carrier public utility . . ." (November 22, 2021 letter to DOT Under Secretary Monje, at page 3). This alleged "falsehood" is, however, demonstrably undercut and belied by the City's own internal legal opinions, correspondence, and filed legal pleadings. Indeed, the City has absolute and actual knowledge that Mendocino Railway is in fact a recognized common carrier public utility subject to the jurisdiction of both the California Public Utilities Commission and the Federal Surface Transportation Board. (*See, e.g.,* Letter of January 17, 2019 from R. Hildebrand, City of Fort Bragg City Attorney, to California Coastal Commission, citing opinion letter from D. Stewart at PUC confirming that Mendocino Railway is in fact recognized by the PUC as a regulated railroad and public utility). To brazenly state, or even to imply, otherwise constitutes a knowing and intentional misrepresentation designed to deliberately damage Mendocino Railway's reputation and commercial prospects. In fact, the entire gist of the City's letter – that Mendocino Railway is engaged in a campaign to deceive the DOT into somehow improperly granting it a loan – appears to be spun from the City's false premise and surrounded by a host of assorted and collateral misrepresentations, all of which the City could easily have determined to be false had the City bothered to do so.

The City's unjustified anger and newfound hostility towards Mendocino Railway in the wake of our client's settlement with Georgia-Pacific is manifest. And it has become increasingly clear – as revealed by Vice Mayor Morsell's comments during City Council meetings and her current media tour – that the City and certain of its Councilmembers have conspired with other entities, governmental and otherwise, in an unprotected effort to retaliate against Mendocino Railway because of Mendocino Railway's acquisition of property from Georgia-Pacific that the City had failed to acquire for itself during the prior 17 years that the property was available for purchase. *See, e.g.,* Eric Ting, *'We're f-ked': A popular Northern California tourism spot's 'land grab' ignites fight with town*, SFGate, December 1, 2021 (containing Vice-Mayor Morsell's admission that: "The deed signed over and it's done,"... "We're f—ked on that, 270 acres have been grabbed, and we have no legal mechanism to block that at this point because it was ceded by Georgia-Pacific."). *See, also,* Vice-Mayor Morsell's admission during the November 22, 2021 City Council meeting that the City decided to withdraw its support for Mendocino Railway's loan application, and to actively oppose that application, not because the City opposed the reopening of Mendocino Railway's tunnel but because the City was upset that "Mendocino Railway . . . submitted an eminent domain claim on 272 acres in our town."

The City's attempts to lend credence and support to its false and defamatory agenda by encouraging others to ape the City's position is misleading and operates only to both spread the City's initial deceit and subject several of the City's partners, such as Friends of the Eel River, and Humboldt Trails Council, to shared legal exposure for their perpetration of the City's falsehoods.

Characterizing knowingly false statements as "opinion" or "for the good of the community" cannot shield the City and its Councilmembers from liability. Such deliberately false and misleading communications may give rise to claims against both for defamation, false light, trade libel, interference with contractual relations, and prospective economic advantage.

While Mendocino Railway takes these violations seriously and will resort to litigation if necessary, we remain hopeful we can amicably de-escalate this matter. To that end, we demand that the City:

1. Cease and desist from all further communications disparaging or defaming Mendocino Railway – both directly and through innuendo and implication;
2. Retract its erroneous letter to the DOT, and its unfounded opposition to Mendocino Railway's RIFF loan application, and immediately send a letter to the DOT correcting its misrepresentations;
3. Immediately notify all entities known to the City to have written to the DOT in reliance on the City's statements to clarify that the City was mistaken in its facts and that any letters based on or citing those misrepresentations and false characterizations should be retracted;
4. Dismiss its Complaint in the recently filed declaratory judgment action; and
5. Cease and desist from all further efforts to harass Mendocino Railway.

Upon completion of the above, Mendocino Railway would welcome the opportunity to meet with the City to discuss the best way forward for the millsite project in a manner that benefits both Mendocino Railway and the entire Fort Bragg community.

We look forward to the City's anticipated cooperation in this matter and trust that the City will not continue on its current path such that we will be required to take legal action to enforce our client's rights and to prevent further willful defamation of Mendocino Railway. Our client remains hopeful that it can work with the City for a better Fort Bragg. Nevertheless, the foregoing is not intended as a comprehensive statement of Mendocino Railway's rights or position, and nothing herein shall be deemed as a waiver of the same.

Very truly yours,

/ Todd S. Bontemps /

Todd S. Bontemps

cc:

Tabatha Miller, City Manager

Christopher Meazell, Esq., Potomac Law Group

Torgny Nilsson, Esq., General Counsel