

FILED

09/14/2022

KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MENDOCINO

Jess, Dorothy

DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA,

IN AND FOR THE COUNTY OF MENDOCINO, TEN MILE BRANCH

CITY OF FORT BRAGG, a California)
Municipal corporation,)

Plaintiff,)

MENDOCINO RAILWAY, and DOES)
1-10, inclusive.)

Case No.: 21CV00850

ANSWER OF JUDGE CLAYTON
L. BRENNAN TO MENDOCINO
RAILWAY'S STATEMENT OF
DISQUALIFICATION

C.C.P. § 170.3

I, Clayton L. Brennan, declare as follows:

1. I am a Superior Court Judge assigned to the Mendocino County Superior Court, Ten Mile Branch.
2. I am the judge assigned to the above-captioned case City of Fort Bragg v. Mendocino Railway, Mendocino County Superior Court Case No.: 21CV00850.
3. The instant action involves the City of Fort Bragg's request for declaratory relief that defendant, Mendocino Railway, is subject to the City of Fort Bragg's regulatory authority regarding the railroad's building and/or development plans within the city limits.
4. Defendant, Mendocino Railway, previously filed a motion to strike and demurrer to the complaint on January 14, 2022. The pleadings from the

- law and motion proceedings included an amicus brief filed by the County of Mendocino. The County's Amicus Brief was aligned with the interests of the City of Fort Bragg as indicated in its statement that "[T]he County wishes to make the Court aware that, based on the allegations in the Complaint and the County's own experience, the Railway or its staff may have a mistaken belief that the status as a public utility renders them completely immune to State and local law when enforced by local officials.
5. This court overruled the demurrer and denied the motion to strike by written order on April 28, 2022.
 6. The matter was set for trial on June 21 2023 at a case management conference conducted on September 1, 2023.
 7. The Case Management Statement filed by the City of Fort Bragg on August 25, 2022 indicated that the California Coastal Commission would be filing a motion to intervene in the case. Although the California Coastal Commission had not yet intervened at the time of the Case Management Conference, I disclosed that I currently have matters pending before the California Coastal Commission related to my personal residence.
 8. Specifically, I own real property located in the Mendocino Coastal Zone which falls under the jurisdiction of the California Coastal Commission. I am currently seeking a Coastal Development Permit ("CDP") to build my personal residence and other buildings on my property.
 9. The California Coastal Commission has already approved the first of two coastal development permits related to my project. The first permit involved changing the size and location of the "building envelope" (i.e. the specific area within the property where development is allowed). This initial permit application, because it constituted an amendment of an existing permit obtained by one of the former owners of my property, was reviewed and approved directly by Coastal Commission staff. The approval of this initial CDP became final on or about February 22, 2022.
 10. My second CDP application is currently pending. This second CDP application seeks approval of the actual building plans for the project. Unlike the first CDP application, this second CDP application is not being reviewed directly by the California Coastal Commission Staff. Rather, it is being reviewed by the Mendocino County Department of Planning and Building Services in its capacity as the Local Coastal Plan Administrator.
 11. The County of Mendocino has not yet scheduled a hearing or filed a staff report and recommendation regarding the approval of my project. Before that happens, the County must collect input it has solicited from the many other entities with interests, or regulatory authority, regarding development

within the coastal zone. The County will then use the input from these stakeholders for its staff's analysis of my project. The relevant stakeholders include the following agencies: Mendocino County Planning Department, Mendocino County Department of Transportation, Mendocino County Department of Environmental Health, Mendocino County Building Department, Mendocino County Assessor, Archaeological Commission—Sonoma State University, CALTRANS, California Department of Forestry/CALFIRE-Land Use, California Department of Fish & Wildlife, California Coastal Commission, California Department of Parks & Recreation District, US Department of Fish & Wildlife Services, Cloverdale Rancheria, Redwood Valley Rancheria, Sherwood Valley Band of Pomo Indians, and Fort Bragg Rural Fire District.

- 12. I do not believe that the fact that I have a Coastal Development Permit Application pending before Mendocino County warrants my disqualification pursuant to California Code of Civil Procedure § 170 et seq.**
- 13. The direct review of my project by the California Coastal Commission has been completed. The only approval remaining on my project resides with the County of Mendocino in its capacity the Local Coastal Plan Administrator. Mendocino County is not a party to the relevant lawsuit.**
- 14. For the purpose of considering Mendocino Railway's disqualification request, I will assume that the California Coastal Commission's motion to intervene is granted.**
- 15. It is true that the Coastal Commission can provide input and commentary to the County of Mendocino regarding any requirements or conditions they may require for my project's compliance. If that occurs, the County would then consider that commentary and incorporate it into the staff report and recommendation. The staff report and recommendation is ultimately presented to the County Board of Supervisors for action at a public hearing where my permit application granted or denied. It appears to me to be far-fetched, and entirely without any supporting factual basis, that the Coastal Commission would make objections to my project to exact favorable treatment in this lawsuit. There is no reason to believe the California Coastal Commission would attempt to exercise undue influence on the court, and further any objections they make, especially any specious objections, would come under scrutiny at an open and public hearing.**
- 16. If the logic of Mendocino Railway is accepted, this court would be disqualified from hearing litigation involving any of the sixteen entities listed above in paragraph 11, simply because I have building permit application on file with Mendocino County. The Railway's concerns are simply too speculative and overbroad.**

17. Finally, it is true that the Coastal Commission has final say over any objection or appeal that might arise from the County of Mendocino's approval or denial of my project. At this point, however, the County of Mendocino has not even prepared its staff report concerning my project and has not acted to approve or deny my permit application. No hearing date has been set, and it is unknown when any hearing on my project will be scheduled. There is no appeal regarding my project currently before the California Coastal Commission, and it is entirely speculative if my project will ever come before the Coastal Commission for that reason.

18. I do not believe that the simple fact that I have sought a building permit should be grounds for my disqualification, or that it reasonably raises questions regarding my impartiality.

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

Dated: _____

9/14/2022



CLAYTON L. BRENNAN
Judge of the Superior Court