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8 *California Coastal Commission*

By: 
Dorothy Jess
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**NO FEE REQUIRED PURSUANT
TO GOVERNMENT CODE
SECTION 6103**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MENDOCINO

11 TEN MILE BRANCH

13 **CITY OF FORT BRAGG,**

14 Plaintiff,

15 v.

17 **MENDOCINO RAILWAY,**

18 Defendant,

20 **CALIFORNIA COASTAL COMMISSION,**

21 Intervenor.

Case No. 21CV00850

COMPLAINT IN INTERVENTION

Judge: The Honorable Clayton L.
Brennan

Dept: TM

Trial Date: June 21, 2023

Action Filed: October 18, 2021

23 **COMPLAINT IN INTERVENTION**

24
25 By leave of court, the California Coastal Commission (“Commission”) files this complaint
26 and intervenes in this action. In its complaint filed on October 28, 2021, Plaintiff City of Fort
27 Bragg (“City”) seeks an injunction ordering that Defendant Mendocino Railway (“Railway”)
28 must comply with the City’s ordinances, regulations, jurisdiction, and authority.

1 The City also seeks a judicial declaration that the Railway is not a public utility exempt
2 from those local laws and regulations. As set forth below, the Commission joins with the City in
3 the relief it seeks against the Railway that is specific to the Commission’s interest in protecting
4 the coast and in upholding laws enacted to protect coastal resources.

5 The Commission alleges as follows:

6 1. As shown by the facts alleged below, the Commission has a right to intervene in this
7 matter pursuant to Code of Civil Procedure section 387, subdivision (d)(1)(B) because: (1) the
8 Commission has a direct interest in this action; (2) adjudication of the parties’ claims in the
9 Commission’s absence will impair its ability to protect that interest; and (3) the Commission’s
10 interest is not adequately represented by the existing parties. Alternatively, the Commission
11 should be permitted to intervene pursuant to subdivision (d)(2) of section 387 because of its direct
12 and immediate interest in the action, and that its reasons for intervening outweigh any opposition
13 by the existing parties. Moreover, the Commission’s intervention request is timely, will not delay
14 the matters before the Court, nor enlarge the issues before the Court. Specifically, the
15 Commission’s direct and immediate interest is in obtaining clarity and relief regarding the
16 Railway’s contentions that its activities in the coastal zone are exempt from the Commission’s
17 and City’s authority, regulations, and enforcement under the Coastal Act and the City’s Local
18 Coastal Program.

19 2. The California Coastal Commission is a state agency created by Public Resources
20 Code section 30300 of the California Coastal Act of 1976. (“Coastal Act”) (Pub. Resources Code,
21 § 30000-30900.) The Commission has the authority and responsibility pursuant to Public
22 Resources Code section 30330 to take any action necessary to carry out the provisions of the
23 Coastal Act, including the filing of lawsuits. (See Pub. Resources Code, § 30334.)

24 3. The Commission is charged with administering the Coastal Act and its policies,
25 including a permitting system for any proposed development in the “coastal zone.” (Pub.
26 Resources Code, § 30600.) The Commission is the original permitting authority, but local
27 governments with territory within the coastal zone are required to develop Local Coastal
28 Programs (LCPs) to implement the Coastal Act. Once the Commission certifies the local

1 government's LCP, the local government reviews development applications and issues permits
2 for development in the coastal zone. (See Pub. Resources Code, §§ 30600, subd. (d), 30500, and
3 30519.) The Commission nonetheless remains authorized to take action to enforce any
4 requirements of a certified LCP and the applicable provisions of the Coastal Act, particularly
5 when the local government requests that the Commission do so. (See Pub. Resources Code, §
6 30810, subd. (a)(1).) The Commission further retains appellate authority over many coastal
7 development permit (CDP) decisions rendered by the City. (See City's LCP, § 17.92.040.)

8 4. The Commission has certified the City of Fort Bragg's LCP. Pursuant to the Coastal
9 Act and the City's LCP, "development" is broadly defined and includes the Railway's recent
10 replacement of a roundhouse (which remains ongoing) and storage shed within the coastal zone
11 of the City, as well as the Railway's recent lot line adjustment. (See section 30106 of the Coastal
12 Act and sections 17.71.045(B)(1) and 17.100.020(A) of the City's LCP; see also *La Fe, Inc. v.*
13 *Los Angeles County* (1999) 73 Cal.App.4th 231, 240 ["development," as defined in section
14 30106, includes lot line adjustments"].) These development activities, as well as other activities
15 undertaken by the Railway, and far more substantial activities the Railway is threatening to
16 undertake, all require a CDP from the City pursuant to the City's LCP and the Coastal Act. (See
17 Pub. Resources Code, §§ 30106, 30810.) The Railway disputes this requirement and has not
18 obtained CDPs for the replacement of the roundhouse or its other development activities in the
19 coastal zone of the City, and the Railway has indicated that it plans to undertake much more
20 extensive development on the coastal zone property that it recently acquired, without stating that
21 it will always seek a CDP or other authorization before doing so. The Railway claims that the
22 permitting requirements in the Coastal Act and the City's LCP for these activities are preempted
23 by state and federal law.

24 5. In July 2022, the City asked the Commission to assume primary responsibility for
25 enforcing the Railway's violations of the Coastal Act and LCP with respect to the Railway's
26 replacement of the roundhouse and other actions in the coastal zone. The Commission
27 subsequently sent the Railway a Notice of Violation letter, dated August 10, 2022, describing and
28 notifying the Railway of its violations. As discussed in the Notice of Violation letter, the

1 Commission disagrees with the Railway's alleged preemption from the CDP requirements of the
2 Coastal Act and the City's LCP.

3 6. Because the Railway's unpermitted land use activities threaten the "quality of the
4 coastal zone environment and its natural and artificial resources," its assertion that no coastal
5 development permits are required for any of its activities in the coastal zone is in direct conflict
6 with the Coastal Act, the City's LCP, and the mission and authority of the Commission. (Pub.
7 Resources Code, § 30001.5; see also City of Fort Bragg LCP, § 17.71.045(B)(1) [requiring a
8 coastal development permit for "any development in the coastal zone"].)

9 7. Pursuant to Public Resources Code section 30805, "[a]ny person may maintain an
10 action for the recovery of civil penalties provided for in Section 30820 or 30821.6." "Person" is
11 defined in Public Resources Code section 30111 and includes "any utility, and any federal, state,
12 local government, or special district or an agency thereof." As an agency of the state, the
13 Commission may properly maintain an action for the recovery of civil penalties under the Coastal
14 Act. As provided in Public Resources Code section 30820, subdivision (a)(1), "[c]ivil liability
15 may be imposed by the superior court . . . on any person who performs or undertakes
16 development that is in violation of [the Coastal Act] . . . in an amount that shall not exceed thirty
17 thousand dollars (\$30,000) and shall not be less than five hundred dollars (\$500)." Subdivision
18 (b) of that same section 30820 provides that "[a]ny person who performs or undertakes
19 development that is in violation of [the Coastal Act] . . ., when the person intentionally and
20 knowingly performs or undertakes the development in violation of [the Coastal Act] . . ., may, in
21 addition to any other penalties, be civilly liable in accordance with this subdivision." Such civil
22 liability "may be imposed by the superior court in accordance with this article for a violation as
23 specified in this subdivision in an amount which shall not be less than one thousand dollars
24 (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day for each day in which the
25 violation persists." (*Id.*) Finally, Public Resources Code section 30822 specifically allows the
26 Commission to maintain an additional action for an award of exemplary damages "[w]hen a
27 person has intentionally and knowingly violated any provision of [the Coastal Act]," the amount
28 of which is to be determined by the court. (Pub. Resources Code, § 30822.)

1 8. As provided in Public Resources Code section 30001, subdivision (d), “future
2 developments that are carefully planned and developed consistent with the policies of [the Coastal
3 Act] are essential to the economic and social well-being of the people of this state and especially
4 to working persons employed within the coastal zone.” The Railway’s disregard for the Coastal
5 Act’s mandate, and the Railway’s attempts to skirt all state and local regulations and permitting
6 with regard to its development activities within the coastal zone of the City, is in violation of the
7 Coastal Act and jeopardizes the quality of the coast and the well-being of its residents.

8 9. After this court denied the Railway’s demurrer and the Court of Appeal denied its
9 writ, the Railway filed its Answer to the City’s Complaint on June 24, 2022, placing the City’s
10 claims at issue, and this court just set trial in this matter for June 2023. It is the Commission’s
11 understanding that no discovery has commenced and the instant matter remains in its earliest
12 stages. Therefore, the Commission’s intervention will not delay the orderly progression of this
13 case.

14 **FIRST CAUSE OF ACTION**

15 **Declaratory Judgment**

16 10. Intervenor California Coastal Commission realleges and incorporates by reference the
17 allegations in paragraphs 1 through 9 as if fully set forth herein.

18 11. Under the Coastal Act and the City’s LCP, development within the coastal zone of
19 the City requires application for and issuance of a permit from the City. (Pub. Resources Code, §
20 30600; City of Fort Bragg LCP, § 17.71.045.) Such development includes any “change in the
21 density or intensity of use of land” within the coastal zone under both the Coastal Act and the
22 City’s LCP. (Pub. Resources Code, § 30106; City of Fort Bragg LCP, § 17.71.045(B)(1).)

23 12. The Commission alleges that ongoing and proposed activities by the Railway within
24 the coastal zone of the City, including, but not limited to, alterations to structures, constitute
25 “development” under both the Coastal Act and the City’s LCP, and therefore require the Railway
26 to obtain a coastal development permit or other relevant Coastal Act authorization prior to
27 commencement of such activities.
28

1 13. The Railway has asserted that its activities and use of land within the coastal zone, as
2 alleged above, are not subject to the permitting requirements of the Coastal Act or the City’s
3 LCP. The Railway contends that state and federal law preempts these permitting requirements.

4 14. Therefore, there exists an actual controversy between the Commission and the
5 Railway as to whether the Railway’s development activities in the coastal zone are subject to the
6 Coastal Act and the City’s LCP.

7 15. It is necessary and appropriate for the Court to render a declaratory judgment that sets
8 forth the parties’ legal rights and obligations with respect to the California Coastal Act and the
9 City’s LCP. Among other things, such a judgment would inform the parties’ conduct in
10 connection with any present and future development by the Railway in the coastal zone, and the
11 Railway’s obligations with respect to the City’s permitting authority related to such development.

12 **SECOND CAUSE OF ACTION**

13 **Violation of the Coastal Act - Unpermitted Development In The Coastal Zone**

14 16. Intervenor California Coastal Commission realleges and incorporates by reference the
15 allegations in paragraphs 1 through 15 as if fully set forth herein.

16 17. The Railway continues to take actions in the coastal zone of the City that constitute
17 development under the Coastal Act and the City’s LCP without first applying for or obtaining a
18 coastal development permit.

19 18. The Commission and the City have informed the Railway that it must apply for
20 necessary permits for these development activities in the coastal zone, and the Railway has
21 refused to do so.

22 19. Therefore, the Railway has violated the permit requirements of the Coastal Act by
23 engaging in unpermitted development in the coastal zone. Consequently, the Railway is liable to
24 the Commission for civil penalties pursuant to Public Resources Code section 30820, subdivision
25 (a)(1) in an amount not to exceed thirty-thousand dollars (\$30,000).

26 20. The Commission is informed and believes, and on that basis alleges, that the Railway
27 knowingly and intentionally violated the permit requirements of the Coastal Act. Consequently,
28 the Railway is liable to the Commission for civil penalties pursuant to Public Resources Code

1 section 30820, subdivision (b) in an amount which is not less than one thousand dollars (\$1,000)
2 nor more than fifteen thousand dollars (\$15,000) per day for each day in which the violation
3 persisted and persists.

4 21. The Commission is informed and believes, and on that basis alleges, that the Railway
5 intentionally and knowingly violated the permit requirements of the Coastal Act. Consequently,
6 the Railway is liable to the Commission for exemplary damages pursuant to Public Resources
7 Code section 30822, which are necessary to deter further violations by the Railway.

8 22. Unless and until the Railway is enjoined and restrained by order of this Court, the
9 Railway will continue to undertake unpermitted development in the coastal zone. This
10 unrestrained development will continue to threaten the delicate coastal ecosystem and the
11 residents of the coastal zone.

12 23. The Commission has no adequate remedy at law for the injuries being suffered and
13 may be suffered as a result of the Railway's conduct.

14 24. The Commission is entitled to an injunction restraining and preventing the Railway
15 from proceeding with any actions in the coastal zone of the City that constitute development
16 under the Coastal Act and the City's LCP without a coastal development permit.

17 **PRAYER FOR RELIEF**

18 Wherefore, the Commission prays for judgment as follows:

19 On the First Cause of Action:

20 1. For a declaration that the Coastal Act and the City's LCP apply to the Railway's
21 actions in the coastal zone of the City that constitute development under the Coastal Act and the
22 City's LCP;

23 2. For a declaration that the application of the Coastal Act and the City's LCP to the
24 Railway's actions in the coastal zone of the City that constitute development under the Coastal
25 Act and the City's LCP are not preempted by any state or federal law, including, but not limited
26 to, Public Utilities Code sections 701 and 1759, subdivision (a); sections 10102 and 10501,
27 subdivision (b) of Title 49 of the United States Code; and clause 2 of Article VI of the United
28 States Constitution.

1 On the Second Cause of Action:

2 3. For civil penalties pursuant to Public Resources Code sections 30805 and 30820 in an
3 amount to be determined by the court for the Defendant’s past and ongoing violations of the
4 Coastal Act;

5 4. For temporary, preliminary, and/or permanent injunctive relief requiring the Railway
6 to: (a) cease all actions taken by the Railway without a coastal development permit in the coastal
7 zone of the City that constitute development under the Coastal Act and the City’s LCP; (b) submit
8 an application to the City and obtain a permit or other authorization under the City’s LCP before
9 commencing or resuming any such development; and (c) comply with any other applicable
10 requirements in the Coastal Act and the LCP, including but not limited to mitigation of the
11 unauthorized development;

12 5. For exemplary damages pursuant to Public Resources Code section 30822, in an
13 amount to be determined by the court as necessary to deter further violations of the permit
14 requirements of the Coastal Act;

15 On All Causes of Action:

16 6. For all its costs of investigating and prosecuting this case, including expert fees,
17 reasonable attorney’s fees, and costs as provided in Code of Civil Procedure section 1021.8; and

18 7. For the Court to award such other and further relief as it may deem necessary and
19 proper.

20 Dated: October 27, 2022

Respectfully submitted,

21 ROB BONTA
22 Attorney General of California
23 DAVID G. ALDERSON
24 Supervising Deputy Attorney General



25 PATRICK TUCK
26 Deputy Attorney General
27 Attorneys for Intervenor
28 California Coastal Commission

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DECLARATION OF SERVICE BY E-MAIL

Case Name: ***City of Fort Bragg v. Mendocino Railway***

No.: **21CV00850**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter, my business address is: 1515 Clay Street, 20th Floor, P.O. Box 70550, Oakland, CA 94612-0550.

On October 27, 2022, I electronically served the attached **COMPLAINT IN INTERVENTION** by ELECTRONIC TRANSMISSION—ONE LEGAL, addressed as follows:

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When electronically filing the above-entitled document with One Legal, I simultaneously opted for electronic service of the same on Ms. MacNevin Jee and Mr. Beard at the email above. transmitting a true copy via electronic mail.

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 October 27, 2022, at Oakland, California.

Najaree Hayfron

Declarant



Signature