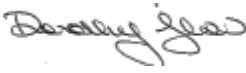


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ROB BONTA
Attorney General of California
DAVID G. ALDERSON
Supervising Deputy Attorney General
PATRICK TUCK
Deputy Attorney General
State Bar No. 305718
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 879-1006
Fax: : (510) 622-2270
E-mail: Patrick.Tuck@doj.ca.gov
*Attorneys for Intervenor
California Coastal Commission*

**NO FEE REQUIRED PURSUANT
TO GOVERNMENT CODE
SECTION 6103**
ELECTRONICALLY FILED
10/13/2022 11:35 AM
Superior Court of California
County of Mendocino

By:
Dorothy Jess
Deputy Clerk



SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MENDOCINO

CITY OF FORT BRAGG,

Plaintiff,

v.

MENDOCINO RAILWAY,

Defendant,

CALIFORNIA COASTAL COMMISSION,

Intervenor,

Case No. 21CV00850
**CALIFORNIA COASTAL
COMMISSION'S REPLY IN SUPPORT
OF ITS MOTION TO INTERVENE**

Date: October 20, 2022
Time: 2:00 p.m.
Dept: Ten Mile Branch
Judge: The Honorable Clayton L.
Brennan
Trial Date: June 21, 2023
Action Filed: October 28, 2021

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
Introduction	5
Argument	5
I. The Commission Fulfills All of the Requirements for Mandatory Intervention	5
A. The Commission Has an Interest in the Railway’s Property and the Transaction Being Litigated	5
B. The Disposition of this Action in the Absence of the Commission Will Impair and Impede Its Interests.....	7
C. The City is Unable to Adequately Represent the Commission’s Interests	8
II. The Commission Also Fulfills All of the Requirements for Permissive Intervention	11
Conclusion.....	13

1 **TABLE OF AUTHORITIES**

2

3 **CASES** **Page**

4 *Arakaki v. Cayetano*

5 (9th Cir. 2003) 324 F.3d 1078 (*May 13, 2003*) 10, 11

6 *Benjamin ex rel. Yock v. Department of Public Welfare of Pennsylvania*

7 (3d Cir. 2012) 701 F.3d 938..... 10, 11

8 *California Physicians' Service v. Superior Court*

9 (1980) 102 Cal.App.3d 91 7

10 *Charles A. Pratt Construction Co., Inc. v. California Coastal Com.*

11 (2008) 162 Cal.App.4th 1068 (*June 9, 2008*)..... 6, 9

12 *Citizens for Balanced Use v. Montana Wilderness Ass'n*

13 (9th Cir. 2011) 647 F.3d 893..... 10

14 *City of Dana Point v. California Coastal Com.*

15 (2013) 217 Cal.App.4th 170 (*July 10, 2013*) 9

16 *F.T.C. v. Johnson*

17 (8th Cir. 2015) 800 F.3d 448..... 11

18 *Kaczorowski v. Mendocino County Board of Supervisors*

19 (2001) 88 Cal.App.4th 564..... 8

20 *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*

21 (2012) 55 Cal.4th 783 6

22 *Pappas v. State Coastal Conservancy*

23 (2021) 73 Cal.App.5th 310 (*Jan. 25, 2022*) 13

24 *Sagebrush Rebellion, Inc. v. Watt*

25 (9th Cir. 1983) 713 F.2d 525..... 10

26 *Simpson Redwood Co. v. State of California*

27 (1987) 196 Cal.App.3d 1192..... 12

28 *Southwest Center for Biological Diversity v. Berg*

(9th Cir. 2001) 268 F.3d 810..... 10

STATUTES

California Coastal Act *passim*

TABLE OF AUTHORITIES
(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

Code of Civil Procedure	
§ 387.....	6, 13
§ 387, subd. (d)(1)(B)	11
§ 387, subd. (d)(2).....	11
Fort Bragg Municipal Code, Title 17	8
Public Resources Code	
§ 30330.....	7, 10
§ 30336.....	7, 10
§ 30519.....	8
§ 30603.....	6, 8
§ 30625.....	8
§ 30810.....	9
COURT RULES	
Federal Rules of Civil Procedure	
Rule 24	10
OTHER AUTHORITIES	
Black’s Law Dictionary	7

1 to modify buildings on its property within the City.) To say that the “subject of this action” is
2 “not any property and not any transaction” is an incomprehensibly narrow reading of the City’s
3 Complaint, the statutory language of Code of Civil Procedure section 387, and the Commission’s
4 instant Motion to Intervene. (Opposition to Motion to Intervene (“Opposition”), at p. 4.) As the
5 City states in its complaint, the “City is entitled to a declaration of its rights and authority to
6 exercise local control/regulation over the [Railway’s] **property**” and seeks a judicial
7 determination that the Railway must “make safe the dangerous building on its **property**, and to
8 comply with the City Land Use and Development Codes.” (City’s Complaint, at ¶¶ 15-16,
9 emphasis added.) Much of the Railway’s property where these unpermitted activities are
10 occurring also lies within the coastal zone and is subject to the Commission’s authority under the
11 California Coastal Act (“Coastal Act”). (See Memorandum of Points and Authorities in Support
12 of Commission’s Motion, at p. 5.) Therefore, this action explicitly involves the Railway’s
13 property and how it is being used, and both the City and the Commission have an interest in
14 regulating the Railway’s use and development of that property. To say otherwise ignores the
15 entire history of this action and one of the key reasons it exists in the first place.

16 Additionally, the Commission has an overarching protectable interest in the regulation of
17 development, partly through the consideration and issuance of local coastal development permits,
18 in the coastal zone. As the California Supreme Court described, “[a]n action taken under a locally
19 issued permit is appealable to the [C]ommission. Thus, ‘[u]nder the Coastal Act’s legislative
20 scheme, . . . the [local coastal program] and the development permits issued by local agencies
21 pursuant to the Coastal Act are not solely a matter of local law, but embody state policy. In fact, a
22 fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns
23 of local government.’” (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los*
24 *Angeles* (2012) 55 Cal.4th 783, 794, citing to Pub. Resources Code, § 30603, and quoting *Charles*
25 *A. Pratt Construction Co., Inc. v. California Coastal Com.* (2008) 162 Cal.App.4th 1068, 1075,
26 *as modified on denial of reh’g* (June 9, 2008), internal citations omitted.) As discussed in the
27 Commission’s Motion, the Commission issued a Notice of Violation to the Railway in August,
28 pertaining to the Railway’s failure to obtain required coastal development permits for ongoing

1 development of its property. (See Exhibit A to Declaration of Josh Levine (“Levine Decl.”), filed
2 with the Commission’s Motion, at pp. 2-3.) The issuance of that Notice of Violation demonstrates
3 that the Commission has a specific and immediate interest in the development of the property at
4 the heart of this matter and has taken an active role in enforcing the Coastal Act’s requirements as
5 they relate to that property.

6 Along with the subject of the Railway’s property itself, the Commission also has an interest
7 in the “transaction being litigated,” i.e., the Railway’s unpermitted actions on its property in the
8 coastal zone and related violations of state and local laws, from which both the Commission’s and
9 the City’s causes of action have arisen. (*California Physicians’ Service v. Superior Court* (1980)
10 102 Cal.App.3d 91, 96-97, quoting Black’s Law Dictionary [a “transaction” is “[s]omething
11 which has taken place, whereby a cause of action has arisen.”].) In sum, the Commission has a
12 specific, direct, and immediate interest relating both to the Railway’s property at issue and the
13 transactions that have taken place on that property from which the City’s and Commission’s
14 causes of action have arisen.

15 **B. The Disposition of this Action in the Absence of the Commission Will**
16 **Impair and Impede Its Interests**

17 A ruling in the Railway’s favor, in the absence of the Commission, would likely prevent the
18 City from implementing its Local Coastal Program (LCP) as to the use and development of the
19 Railway’s properties in the coastal zone and would leave unresolved whether the Commission
20 retains its authority to enforce the Coastal Act with regard to that coastal zone property’s use and
21 development. Such a result would impair and impede the Commission’s statutory duty to
22 administer and enforce the Coastal Act as to those properties. The Commission has “the primary
23 responsibility for the implementation of the provisions of [the Coastal Act],” but recognizing the
24 relationship between the Commission and local governments in this realm, the Coastal Act further
25 provides that “[t]he [C]ommission shall, to the maximum extent feasible, assist local governments
26 in exercising the planning and regulatory powers and responsibilities provided for by [the Coastal
27 Act] where the local government elects to exercise those powers and responsibilities and requests
28 assistance from the commission . . .” (Pub. Resources Code, §§ 30330, 30336.)

1 The City has requested such assistance and the Commission has accepted primary
2 enforcement authority regarding the City’s LCP as it pertains to the Railway. (See Levine Decl.,
3 at ¶ 2, & Exh. A.) A ruling invalidating or impairing the enforcement provisions in the City’s
4 LCP would also impair and impede the Commission’s ability to enforce the Coastal Act via the
5 City’s LCP, as well as the Commission’s statutory duty to implement the Coastal Act. (See
6 Levine Decl., ¶2 & Exh. A. at p. 2; see also *Kaczorowski v. Mendocino County Board of*
7 *Supervisors* (2001) 88 Cal.App.4th 564, 569 [discussing how the Commission is involved in the
8 certification of, any amendments to, and appeals regarding a local government’s LCP; that the
9 Commission may even review some development permit applications de novo, “as if no local
10 governmental unit was previously involved;” and finding that the Commission was therefore an
11 indispensable party].)

12 **C. The City is Unable to Adequately Represent the Commission’s Interests**

13 In its Opposition, the Railway mistakenly conflates the objectives of the City and the
14 Commission as it relates to this matter. The City seeks in its complaint to foreclose the Railway’s
15 argument that its purported public utility status preempts the City’s enforcement of its ordinances
16 and regulations, which include its Land Use and Development Codes. (City’s Complaint, at ¶16;
17 Prayer, at ¶¶ 1-2.) While the City’s Land Use and Development Codes include its LCP
18 (incorporated in Title 17 of the Fort Bragg Municipal Code), which was certified by the
19 Commission and is designed to implement the Coastal Act’s permitting procedures for
20 development on property in the coastal zone within the City of Fort Bragg, the Commission
21 retains ultimate authority on appeal of many coastal development permit decisions by the City.
22 (Pub. Resources Code, §§ 30519, 30603.) Additionally, “any two members of the Coastal
23 Commission” may bring an appeal of many coastal development permit application decisions by
24 the City to the Commission for review and final determination under the Coastal Act. (See Pub.
25 Resources Code, § 30625 [“. . . any appealable action on a coastal development permit . . . for any
26 development by a local government . . . may be appealed to the commission by an applicant, any
27 aggrieved person, or any two members of the commission . . .”].) The Commission’s enduring
28 appellate authority and ability to accept primary enforcement responsibility even where, as here,

1 the City's LCP has been certified, reflects the universal understanding that "[t]he Commission has
2 the ultimate authority to ensure that coastal development conforms to the policies embodied in the
3 state's Coastal Act." (*City of Dana Point v. California Coastal Com.* (2013) 217 Cal.App.4th 170,
4 186, *as modified on denial of reh'g* (July 10, 2013); see also *Charles A. Pratt Construction Co.,*
5 *Inc., supra*, 162 Cal.App.4th at pp. 1075-76 [discussing the Commission's continuing authority
6 over the development of the coast: "[It] does not mean that, once the LCP is certified, it becomes
7 a matter of local law. The city's actions in implementing the LCP, as well as any coastal
8 development permit issued by the city, are still subject to Commission review."].)

9 Further, pursuant to Public Resources Code section 30810, the Coastal Act provides that the
10 Commission may directly enforce the permitting provisions of the Coastal Act in specific
11 situations, including upon request from the local government, or where the local government fails
12 to act "regarding an alleged violation which could cause significant damage to coastal resources."
13 (*Id.*) Here, because the Railway has persisted in violating the City's LCP and is engaging in
14 activities that may threaten the coastal zone, the City has requested that the Commission assume
15 primary administrative enforcement responsibility with regard to those violations by the Railway.
16 (See Motion to Intervene, at p. 3.) And the Commission has assumed such responsibility. (See
17 Levine Decl., Exh. A.) The City's request that the Commission assume primary administrative
18 enforcement responsibility demonstrates that the City also does not believe it can adequately
19 represent the Commission's interests in enforcing the Coastal Act as it pertains to the Railway's
20 activities in the coastal zone, hence the inclusion of the Commission's second cause of action in
21 its proposed complaint in intervention. Because the Commission has officially assumed that
22 enforcement responsibility, and the Railway has already indicated its intent to resist such
23 enforcement by the Commission, the City alone will not be able to obtain a resolution of the
24 dispute between the Commission and the Railway, and cannot adequately represent the
25 Commission's interests in this matter.

26 In its Opposition, the Railway also seeks to discount the Commission's extensive expertise
27 in administering and enforcing the Coastal Act, but the Ninth Circuit has found expertise that is
28 distinct from existing parties is a relevant factor in determining if the requirements for

1 intervention are met. (See *Sagebrush Rebellion, Inc. v. Watt* (9th Cir. 1983) 713 F.2d 525, 528.)
2 The Coastal Act gives the Commission the primary responsibility for enforcing the Act's
3 provisions, and provides that the Commission shall "assist local governments in exercising [their]
4 planning and regulatory powers and responsibilities" under the Act. (Pub. Resources Code, §§
5 30330, 30336.) By doing so, the Legislature recognized the Commission's expertise and its key
6 role in ensuring that the Coastal Act is properly implemented on both a state and local level. Such
7 expertise and participation by the Commission would likely be useful to the Court as this case
8 proceeds.

9 Of note, while the Railway spends considerable time in its Opposition citing to federal
10 cases (including those from the Third and Eighth Circuits) for the proposition that one party can
11 adequately represent a potential intervenor in specific situations, it fails to mention that "[t]he
12 burden of showing inadequacy of representation is 'minimal' and satisfied if the applicant can
13 demonstrate that representation of its interests 'may be' inadequate." (*Citizens for Balanced Use*
14 *v. Montana Wilderness Ass'n* (9th Cir. 2011) 647 F.3d 893, 898, quoting *Arakaki v.*
15 *Cayetano* (9th Cir. 2003) 324 F.3d 1078, 1086, *as amended* (May 13, 2003).) In *Arakaki*, the
16 Ninth Circuit explained that that Court "follows the guidance of Rule 24 advisory committee
17 notes that state that 'if an absentee would be substantially affected in a practical sense by the
18 determination made in an action, he should, as a general rule, be entitled to intervene.'" (*Arakaki*
19 *v. Cayetano* (9th Cir. 2003) 324 F.3d 1078, 1086, *as amended* (May 13, 2003), quoting *Southwest*
20 *Center for Biological Diversity v. Berg* (9th Cir. 2001) 268 F.3d 810, 822.) As discussed above,
21 an adverse ruling in the absence of the Commission would substantially affect its ability to
22 implement and enforce the Coastal Act as it pertains to the Railway's use and development of its
23 coastal zone property.

24 The Railway's citation to *Benjamin ex rel. Yock v. Department of Public Welfare of*
25 *Pennsylvania* (3d Cir. 2012) 701 F.3d 938, for the proposition that a government entity, as an
26 existing party, is an adequate representative, is misleading. In that case, the court referred to
27 situations of adequate representation "when the government is acting on behalf of a constituency
28 that it represents," not where a second governmental entity seeks to intervene to protect its own

1 interests in an action. (*Id.*, at p. 958 [Department of Public Welfare is an adequate representative
2 of individuals with intellectual disabilities under its care seeking to intervene]; see also *F.T.C. v.*
3 *Johnson* (8th Cir. 2015) 800 F.3d 448, 452, cited by the Railway [a class of would-be intervening
4 consumers is adequately represented by the Federal Trade Commission].) Here, the Commission
5 is a separate and distinct government entity, and the Commission is neither the City’s constituent
6 nor under its care.

7 In sum, the City’s ultimate objective is a confirmation of its authority to enforce all of its
8 local laws and regulations on the Railway. While related, the Commission’s ultimate objective is
9 to obtain a ruling that its authority to implement and enforce the Coastal Act with regard to the
10 Railway’s use and development of its property is not preempted under state or federal law, and
11 the Commission seeks penalties and damages for the Railway’s prior and ongoing violations of
12 the Coastal Act. These are not “the same ultimate objective[s]” and the Commission’s interest is
13 not “identical to that of [the City].” (*Arakaki, supra*, at p. 1086.) Any presumption of adequate
14 representation of the Commission by the City is easily overcome.

15 As the Railway states, the injunctive relief the City seeks is “to force Mendocino Railway
16 to submit to its LCP and other local laws, not the Coastal Act.” (Opposition at p. 6:1-2.) If taken
17 as true, the City cannot adequately represent the Commission’s interests in administering and
18 enforcing the Coastal Act. For this reason, as well as those set forth above, the Commission meets
19 all of the requirements for mandatory intervention under Code of Civil Procedure section 387,
20 subdivision (d)(1)(B).

21 **II. THE COMMISSION ALSO FULFILLS ALL OF THE REQUIREMENTS FOR PERMISSIVE**
22 **INTERVENTION**

23 Alternatively, the Commission also satisfies all of the requirements for permissive
24 intervention pursuant to Code of Civil Procedure section 387, subdivision (d)(2).

25 In its Opposition, the Railway argues that the Commission’s intervention would
26 “substantially enlarge the issues in this litigation,” and the Railway briefly touches on the
27 consideration of whether the Commission’s reasons for intervening outweigh the Railway’s
28 opposition to such intervention. Because the Commission already discussed how it satisfies the

1 relevant prongs in its Motion (see Memorandum of Points and Authorities in support the
2 Commission's Motion, at pp. 6-7), the Commission makes just a few additional points here.

3 The Commission's requested intervention and proposed causes of action arise out of the
4 same facts as the City's suit, involve the same parties and property, and will not enlarge the issues
5 of the existing litigation. The City seeks a determination that it may enforce its local laws and
6 regulations upon the Railway and its activities within the City, which include its Local Coastal
7 Program and coastal zone permitting process. The Commission seeks a related determination that
8 it may enforce the Coastal Act as it applies to Railway's use and development of its property
9 within the City which also lies within the coastal zone. Because the Railway has, and continues
10 to, violate the Coastal Act, the Commission also seeks penalties, an injunction, and damages for
11 those violations, if the Commission is permitted to intervene and its enforcement authority is
12 upheld. In addition, the Railway has already alleged purported defenses in its Answer involving
13 both state and federal preemption principles that will have to be addressed in this case, with or
14 without the Commission's involvement. (See Railway's Verified Answer to the City's Complaint,
15 Fourth Affirmative Defense.) Therefore, the Railway's claim in its Opposition that the
16 Commission's intervention "would also inject new factual disputes surrounding [the Railway's]
17 operation as a federally regulated railroad" is simply false. (Opposition at pp. 6-7.) The Railway
18 has already injected such factual disputes into this matter.

19 The Railway posits that the injunction requested by the Commission is far beyond the
20 City's requested relief, but such argument is meritless. The City also seeks injunctive relief
21 against the Railway, which would require the Railway to refrain from violating the City's laws
22 and regulations and bring its property and operations into compliance with those laws. (City's
23 Complaint, at ¶ 19.) The central question in the City's suit and the Commission's proposed
24 complaint in intervention is the authority the City and the Commission have to regulate the
25 activities of the Railway as it pertains to its property within the City and in the coastal zone,
26 respectively. The interests of judicial economy and "prevent[ing] a multiplicity of suits arising
27 out of the same facts, while protecting the interests of those affected by the judgment" favor
28 permitting the Commission to intervene. (*Simpson Redwood Co. v. State of California* (1987) 196

1 Cal.App.3d 1192, 1203.) If intervention were to be denied, the Commission would be forced to
2 bring a separate action against the Railway, and the same issues regarding the scope of permitted
3 regulation of the Railway would be the central focus of that suit as well, as would certainly be the
4 Railway's purported state and federal preemption defenses.

5 While the Railway seems to encourage the filing of a separate action by the Commission, in
6 contravention of the basic tenets of preserving judicial resources, obviating delays, and
7 preventing a multiplicity of suits, such argument is not sufficient opposition to outweigh the
8 Commission's direct and immediate interest in enforcing the Coastal Act and its intervention in
9 this matter. Because "courts should construe section 387 liberally in favor of intervention," and
10 the Commission has shown that it meets all of the requirements for both mandatory and
11 permissive intervention, the Commission's Motion to Intervene should be granted. (*Pappas v.*
12 *State Coastal Conservancy* (2021) 73 Cal.App.5th 310, 319, *as modified on denial of reh'g* (Jan.
13 25, 2022).)

14 CONCLUSION

15 For the foregoing reasons, the Commission requests that the Court grant its Motion to
16 Intervene.

17
18 Dated: October 13, 2022

Respectfully submitted,

19 ROB BONTA
20 Attorney General of California
21 DAVID G. ALDERSON
22 Supervising Deputy Attorney General



23
24 PATRICK TUCK
25 Deputy Attorney General
26 *Attorneys for Intervenor*
27 *California Coastal Commission*

26 OK2022303294
27 91549285.docx

**DECLARATION OF ELECTRONIC SERVICE VIA
ONE LEGAL**

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 13, 2022, I electronically served the attached **California Coastal Commission's Reply In Support Of Its Motion To Intervene** by ELECTRONIC TRANSMISSION—ONE LEGAL, addressed as follows:

KRISTA MACNEVIN JEE
JONES MAYER
kmj@jones-mayer.com
Attorneys for Plaintiff City of Fort Bragg

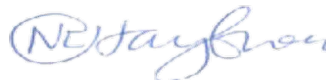
PAUL J. BEARD II
FISHERBROYLES, LLP
paul.beard@fisherbroyles.com
Attorneys for Defendant Mendocino Railway

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 13, 2022, at Oakland, California.

Najaree Hayfron

Declarant



Signature