

FILED

10/20/2022

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

Jess, Dorothy

DEPUTY CLERK

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO, TEN MILE BRANCH**

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

Plaintiff,

vs.

**MENDOCINO RAILWAY and DOES
1-10, inclusive,**

Defendants,

**CALIFORNIA COASTAL
COMMISSION,**

Intervenor.

Case No.: 21CV00850

**MINUTE ORDER GRANTING
CALIFORNIA COASTAL
COMMISSION'S MOTION FOR
LEAVE OF COURT TO INTERVENE**

On September 8, 2022, the California Coastal Commission (hereinafter, the Commission) filed a motion for leave of court to intervene in the above-captioned case. The motion came on for hearing in the Ten Mile Branch of the Mendocino County Superior Court at 2:00 p.m. on October 20, 2022, the Hon. Clayton L. Brennan presiding. The Commission appeared through counsel, Deputy Attorney General, Patrick Tuck.

Defendant Mendocino Railway appeared through counsel, attorney Paul J. Beard II. Plaintiff, the City of Fort Bragg appeared through counsel, Krista MacNevin Jee.

Defendant, City of Fort Bragg, has no objection to the intervention and supports the Commission's request to intervene.

The court, having considered all the pleadings and papers filed herein, and the oral arguments of counsel, hereby grants the motion to intervene and grants the California Coastal Commission's request for leave to file the proposed complaint in intervention attached to its motion filed September 8, 2022.

The action filed by the City of Fort Bragg seeks an injunction ordering that Defendant Mendocino Railway must comply with the City's ordinances, regulations, and authority. The City also seeks a judicial declaration that the Railway is not exempt from the City's laws and authority. The California Coastal Commission is the state agency responsible for administering the Coastal Act. Plaintiff, City of Fort Bragg, implements the permitting requirements of the Coastal Act via the City's Local Coastal Program ("LCP").

The Commission, like the City of Fort Bragg, seeks a judicial declaration that the development activities of Mendocino Railway in the coastal zone of the City of Fort Bragg are properly subject to the City's LCP permitting requirements, as well as any applicable provisions of the Coastal Act. Further, based on the Mendocino Railway's alleged ongoing unpermitted development activities in the coastal zone, the Commission seeks injunctive relief and civil penalties related to Mendocino Railway's purported violations of the Coastal Act.

Code of Civil Procedure section 387, subdivision (d)(1)(B) requires courts to allow a non-party to intervene where the party "claims an interest relating to the property or transaction that is the subject of the action," where the non-party "is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties." CCP § 387(d)(1)(B). Further, mandatory intervention pursuant to CCP § 387(d)(1)(B) is to be "liberally construed in favor of intervention." (*Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th, 560, 572, quoting *Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1200.)

The Court finds that the Commission readily meets the requirements for mandatory intervention. There is no question that the Commission has a strong interest in the subject of this litigation. Specifically, the relevant allegations are that Mendocino Railway has undertaken unpermitted development activities within the Coastal Zone in violation of the City's LCP and the Coastal Act. The Commission is the statewide entity responsible for ensuring compliance with the Coastal Act. The City's LCP is simply designed to implement the Coastal Act's coastal zone permitting requirements. The Commission still retains ultimate decision-making authority regarding any development subject to the Coastal Act. As the Commission notes in their reply brief,

“... [t]he California Supreme Court described, “[an] action taken under a locally issued permit is appealable to the [Commission. Thus, ‘[u]nder the Coastal Act’s legislative scheme,... the [local coastal program] and the development permits issued by local agencies pursuant to the Coastal Act are not solely a matter of local law, but embody state policy. In fact, a fundamental purpose of the Coastal Act is to ensure that the state policies prevail over the concerns of local government.” (Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles (2012) 55 Cal.4th 783, 794, citing to Pub. Resources Code § 30603, and quoting Charles A. Pratt Construction Co., Inc. v. California Coastal Com. (2008) 162 Cal.App.4th 1068, 1075.

In addition, the Commission’s interest in the litigation is further demonstrated by its initiation of an enforcement action against Mendocino Railway as evidenced by the Notice of Violation attached as Exhibit A to the Declaration of Josh Levine.

Finally, the City of Fort Bragg, pursuant to Public Resources Code Section 30810 has requested that the Commission be the primary enforcer of the LCP with respect to Mendocino Railway as set forth in the declaration of Josh Levine. The fact that the City of Fort Bragg has sought the Commission’s assistance is hardly surprising, and further militates toward granting the request for intervention. The City of Fort Bragg simply hopes to rely on the Commission’s expertise as it relates to enforcement of all aspects of the Coastal Act.

The Coastal Act gives the Commission the primary responsibility for enforcing the Act’s provisions and provides that the Commission shall “*assist local governments* in exercising [their] planning and regulatory powers and responsibilities” under the Act. (Pub. Resources Code §§ 30330, 30336.) Thus, the Legislature also recognizes the Commission’s expertise and its key role in ensuring that the Coastal Act is properly implemented on both a state and local level.

Finally, as the Commission notes in its citation to *Arakaki v. Cayetano* (9th Cir. 2003) 324 F.3d 1078, 1086, “if an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.” The Commission’s ultimate objective is to obtain a ruling that its authority to implement and enforce the Coastal Act, with regard to Mendocino Railway’s use and development of its property, is not preempted under state or federal law. The Commission, by way of the Second Cause of Action to its Complaint, further seeks to be awarded penalties and damages for the Railway’s alleged prior and ongoing violations of the Coastal act—remedies that fall outside the scope of the City’s lawsuit. Accordingly, the Commission’s interest in the litigation, while substantively aligned with the City of Fort Bragg’s interest, is not identical to it.

As noted in the pleadings, the Commission’s burden of showing inadequacy of representation is “minimal” and is satisfied if the Commission can demonstrate that

representation of its interest “may be” inadequate. (*Citizens for Balance Use v. Montana Wilderness Ass’n* (9th Cir. 2011) 647 F.3d 893, 898. Here, the City has requested the Commission to assume primary control over enforcement of the Coastal Act regarding the Railway’s development activities within the coastal zone. Implicit in this request is an admission that the City is unable to adequately represent the Commission’s interests. Further, because the interests of the City and the Commission are only aligned but not identical, the City will not be able to obtain a full resolution of the dispute between the Commission and the Railway.

Given the above considerations, this court finds that any presumption of adequate representation of the Commission by the City has been overcome.

The Court further finds that granting the Commission leave to intervene will not substantially enlarge the issues in the litigation. Mendocino Railway has already alleged defenses involving both state and federal pre-emption. Thus, regardless of whether the Commission is permitted to intervene or not, any factual disputes related to those issues will still need to be addressed by the court.

In sum, the central question in the City of Fort Bragg’s lawsuit and the Commission’s proposed complaint in intervention is the authority of the City and Commission to regulate the activities of Mendocino Railway within the coastal zone. If the Commission were forced to bring a separate action against Mendocino Railway, the same issues regarding the scope of permitted regulation and the applicability of any state or federal preemption defenses, will remain central in either case. Accordingly, the court finds that the interests of judicial economy and “prevent[ing] a multiplicity of suits arising out of the same facts, while protecting the interests of those affected by the judgment” favor permitting the Commission to intervene. (*Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1203.)

For the reasons set forth above, the court grants the Commission’s motion for leave to intervene on the side of Plaintiff herein, City of Fort Bragg, and file its proposed complaint in intervention.

SO ORDERED.

DATED: 10/21/2022



CLAYTON L. BRENNAN
Judge of the Superior Court