

JAN 20 2026

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

MENDOCINO RAILWAY,

Plaintiff-Appellant,

v.

JOHN MEYER,

Defendant-Respondent.

After a Published Opinion by the Court of Appeal
First Appellate District, Division One
Appellate Court Case No. A168497 & A168959

Appeal From Mendocino County Superior Court
Hon. Jeanine Nadel
Superior Court No. SCUKCVED202074939

PETITION FOR REVIEW

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I. PETITION FOR REVIEW

To the Honorable Chief Justice of the California Supreme Court, and the Associate Justices of the Supreme Court of California:

John Meyer, defendant and respondent, respectfully petitions for review of the decision of the Court of Appeal, Numbers A168497 and A168959, First Appellate District, Division One (per Humes, P.J.), that was originally filed on December 9, 2025, and that became final and certified for publication on January 7, 2026.

II. ISSUES PRESENTED FOR REVIEW

This petition presents two important questions of constitutional and statutory law on which direct conflict exists in the decisional authority regarding the right to take property by eminent domain:

(1) Can property be taken by eminent domain if the proposed stated purpose is a public activity, but the unstated primary objective of the private business is private gain and not public need?

Mendocino Railway (“MR”) operates a tourist excursion train for sightseeing purposes in Mendocino County. (RT 126:25-127:15, 322:13-16, 328:21-24, 525:10-17.) On December 22, 2020, MR filed its complaint in this action to take John Meyer’s (“Meyer”) 20 acre property (“Meyer Property”) allegedly for the “construction and maintenance of its rail facilities related to

[MR's] ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto.” (CT 1-2.)

In *City & County of San Francisco v. Ross* (1955) 44 Cal 2d 52, 54 (“*Ross*”), the City of San Francisco sought to acquire by eminent domain a site that would subsequently be leased to private individuals who would build a parking structure in accordance with the city’s specifications and operate parking and other facilities. The city intended to allow a portion of the ground floor frontage of the proposed building to be leased and occupied by retail stores. The total floor space to be occupied by such retail commercial activity was estimated by the city to be no more than four percent (4%) of the building. (*Id.*, at 58-59.)

The court in *Ross* concluded that the “Constitution does not contemplate that the exercise of the power of eminent domain shall secure to private activities the means to carry on a private business whose primary objective and purpose is private gain and not public need.” (*Id.*; *Council of San Benito County Governments v. Hollister Inn, Inc.* (2012) 209 Cal. App. 4th 473, 494.)

The appellate court’s decision subject to review here stated:

“The trial court implicitly found Meyer had met his burden of proof, ruling that because ‘the income generated from the Skunk Train excursion service is 90% of [Mendocino Railway]’s revenue’ it could

‘easily find that [Mendocino Railway]’s primary objective is to obtain property to serve the excursion service.’ Based on this finding, the court concluded Mendocino Railway ‘cannot exercise the power of eminent domain to carry on its private business activities.’ Although the court began this section by ‘[a]ssuming’ Mendocino Railway ‘has public utility status,’ for the purpose of eminent domain analysis, this finding is based on the same rationale for its determination that Mendocino Railway is not a public utility— i.e. that any public use is incidental to its private activities.

This interpretation is contrary to established law. It is the character of the use, not its extent, which determines whether it is public. (*Laguna Drainage Dist. v. Charles Martin Co.* (1904) 144 Cal 209, 217-218; *People ex rel. Department of Public Works v. Lagiss* (1963) 223 Cal. App. 2d 23, 38.) In other words, it is not necessary that a significant portion of the community enjoy the use. (*Laguna Drainage Dist. v. Charles Martin Co.*, at pp. 217-218.) Rather the law simply requires that all citizens in a given community, who are capable of enjoying the use, have an equal right to do so. (*San Joaquin & Kings River Canal & Irrigation Co. v. Stevenson* (1912) 164 Cal. 221, 229.) The intended use must be the intended object (*Lorenz v. Jacob* (1883) 63 Cal. 73, 74), but incidental private benefit does not disqualify a use as a public use. (*Redevelopment Agency v. Rados Bros.* (2001) 95 Cal. App. 4th 309, 315.) Stated differently, the primary purpose cannot be to promote private enterprise, or to accomplish a purpose the primary nature of which is not public under the pretext that it is. (See, e.g. *County of San Mateo v. Coburn* (1900) 130 Cal. 631, 634.)” (Appellate Decision p. 26.)

The appellate court's decision in this action directly contradicts the holding in *Ross*, because the appellate court's decision effectively assumes that a project for a public purpose will not be used primarily for private gain. The appellate court's decision does not evaluate whether the exercise of the power of eminent domain shall secure to private activities the means to carry on a private business whose primary objective and purpose is private gain and not public need, rather it looks to whether all citizens in a given community, who are capable of enjoying the use, have an equal right to do so.

The appellate court's decision should be reviewed because it has created a conflict and muddled the law as it relates to a purported public project that will primarily result in private gain. The appellate court's decision reflects that a taking is allowed if a project has any public purpose, as such public purpose shall trump private gain.

(2) Can a plaintiff in an eminent domain action make a completely new and distinct plan for its project after the project has already been evaluated under Code of Civil Procedure § 1240.030, and after an eminent domain action has already been filed?

“The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established: (a) the public interest and necessity require the project; (b) the project is planned or located in the manner that will be most

compatible with the greatest public good and the least private injury; (c) the property sought to be acquired is necessary for the project.” (Code of Civil Procedure § 1240.030.)

In this case, MR analyzed various potential project sites in accordance with Code of Civil Procedure § 1240.030 for the construction of a train station, maintenance facility, *campground*, *pool*, and *recreational vehicle camping area*, and then just before trial completely changed its site plan to construct a railroad transload facility for freight, a maintenance yard, depot, offices and a natural habitat preserve.

The appellate court’s decision disregards the fact that the project plan was completely revamped after the action was filed. If a project plan can be completely changed right before trial without reevaluating the potential sites and issues in accordance with Code of Civil Procedure § 1240.030, then one must ask, what is the Legislature’s purpose for requiring a plan and such statutory analysis prior to taking a property?

III. FACTUAL AND PROCEDURAL STATEMENT OF THE CASE

MR filed its complaint this action on December 22, 2020, to take John Meyer’s (“Meyer”) 20 acre property (“Meyer Property”) allegedly for the “construction and maintenance of its rail facilities related to [MR’s] ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto.” (CT 1-2.)

MR's Operation Of The Line.

MR is a privately held California corporation that was formed in 2004. (CT 1318.) MR purchased its railroad line out of bankruptcy in 2004, and it is commonly referred to as the California Western Railroad ("CWR") or the "Skunk Train." (RT 61:20-62:3, 63:3-7, 64:14-65:6, 154: 8-20; CT 1341.) MR operates the CWR as a tourist excursion train for sightseeing purposes in Mendocino County. (RT 126:25-127:15, 322:13-16, 328:21-24, 525:10-17.)

In 2015 there was a landslide in a tunnel that prevents trains from running the full length of the line between Willits and Fort Bragg. (RT 95:19-101:4, 344:11-17.) One of MR's sightseeing train leaves the station in Willits and heads west approximately 7.5 miles on the line and then returns to the Willits station. (RT 326:21-327:13, 525:10-17, 525:10-17.)

MR also operates a different sightseeing train that leaves a station in Fort Bragg and travels to the east 3.5 miles on the line and then returns to Fort Bragg. (RT 319:12-26.) The trains respectively leaving Willits and Fort Bragg do not transport passengers to a different location. (RT 324:6-17, 327:3-14.)

MR offers round trip commute services to a limited number of families that own property on the line and their guests, but MR does not offer commute services to the public at large. (RT 916:12-918:2; CT 1233-1256.) MR has freight tariffs posted for the line from Willits to Fort Bragg, even though a

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train cannot travel from Willits to Fort Bragg, or vice versa, due to the tunnel collapse. (RT 95:19-101:4, 344:11-17, 919:28-920:27; CT 959-966.) The tariffs also reference costs for interchanging cars from other lines, which also cannot occur due the 1998 safety moratorium on the only adjoining line. (RT 95:19-101:4, 344:11-17, 919:28-920:27; CT 959-966.)

Robert Pinoli's Initial Trial Testimony

MR's Chief Executive Officer Robert Pinoli ("Pinoli") initially testified that MR believes that it is "without question" a "railroad corporation" and "common carrier." (RT 519:20-25.) MR also considers itself a "public utility" because it is a "common carrier." (RT 520:13-28.)

Pinoli testified that MR operates railroad commuter passenger and freight services between Fort Bragg and Willits, and has offered these services since 2004. (RT 695:28-696:16.)

Pinoli's Trial Testimony After The Case Was Reopened

After the close of testimony, Meyer obtained a copy of the "Employer Status Determination For Sierra Entertainment and Mendocino Railway" issued by the Railroad Retirement Board on September 28, 2006 ("the Retirement Board Decision"). (CT 1917-1920.) Meyer requested that the court reopen the case, and the court subsequently heard additional testimony from the parties related to the issues discussed in the Retirement Board Decision.

(CT 1140-1141.)

The Retirement Board Decision contradicted the initial trial testimony of Pinoli regarding MR's alleged status as a common carrier, its alleged transportation of freight, its alleged transportation of passengers, and its alleged connection to the interstate railroad system. (CT 1917-1920.)

The Retirement Board Decision states the following:

- “Since Mendocino Railway’s only access to the railroad system is over this line, that access is currently unusable. Mendocino’s ability to perform common carrier services is thus limited to the movement of goods between points on its own line, a service it does not perform.” (CT 1917.)

- “Since Mendocino reportedly does not and cannot now operate interstate commerce, the Board finds that it is not currently an employer under the Acts. If Mendocino commences operations, the Board will revisit this decision.” (CT 1917.)

After the trial was reopened Pinoli testified:

“Q. Would it be correct to state that Mendocino Railway has not performed common carrier services between the timeframe of 2004 when it purchased the railroad, the California Western Railroad, and January 1st, 2022?

Pinoli: A. That is correct.” (Underlining added, RT 866:6-11.)

“Q. All right. So based upon your statement, effectively Mendocino

Railway does not believe it became a common carrier until January 1, 2022; is that correct?

A. When it took over the operations from Sierra Northern Railway?

Q. That's correct.

A. Yes.

Q. Yes?

A. Yeah." (RT 1004:17-25.)

Pinoli also testified that no revenue was generated in 2020¹ from the transport of freight or passengers, specifically stating:

"Q. So it is your understanding that in 2020, 90 percent of - - approximately 90 percent of the revenue that Mendocino Railway received was due to excursion services.

Pinoli: A. Approximately." (RT 926:26-927:2.)

"Q. Okay. So in the remaining ten percent that wasn't due to excursions, where did that revenue come from?

Pinoli: A. Leases and easements." (RT 927:11-14.)

Pinoli was questioned on whether that same breakdown in income between MR's excursion services and leases and easements would apply to the last 10 years of MR's operations, and Pinoli would not comment on the financials of the company given that he did not have them in front of him. (RT

¹ This action was filed on December 22, 2020 (CT 14.)

928:18-23.) Although MR has the burden of proof in this action, Pinoli testified that MR did not present its financials at the trial. (RT 928:18-929:1)

The Retirement Board's finding that MR was not a common carrier was also confirmed by MR's attorney in a letter written to the Railroad Retirement Board dated April 27, 2022², in which MR's attorney stated that "MR believes that it has become a 'carrier' under the Act effective January 1, 2022." (CT 1921-1926.)

The 2020 Site Plan

The plan for the project when this action was filed consisted of MR taking the Meyer Property for the purpose of constructing a train station, maintenance facility, *campground*, *pool*, and *recreational vehicle camping area*. (CT 1660, 1666-1668, 1685-1690; RT 456:5-457:28.)

Pinoli testified that in 2020 MR did not have a plan in place at the time it decided to move forward with taking the Meyer Property by eminent domain. (RT 267:2-16.) The only conceptual preliminary site plan for the Meyer Property that was prepared as of the date of the filing of the complaint on December 22, 2020, reflected the development of a station/store, long-term RV rental park, *campground*, and parking ("2020 Plan"). (RT 463:13-25, CT

² MR's letter to the Retirement Board was written just four months before the trial in this action, and approximately 16 months after the complaint was filed. (CT 1921.)

14,1660.)

Pinoli testified that the operation of a campground and RV park is not consistent with the operation of a railroad. (RT 518:13-15.)

The 2022 Site Plan

MR created a new preliminary site plan for the Property in June 2022. (RT 265:27-266:23; CT 1156.) This new plan was prepared 18 months after MR's complaint was filed in this action and only about two months before the trial began ("2022 Plan"). (RT 265:27-266:23, 513:16-19; CT 1156.) The 2022 Plan completely removed the campground, RV park, and pool, and the new plan provided for the construction of a "maintenance facility and yard," "rail transload facility," "natural habitat preserve," "depot and offices," and "parking." (CT 1156.)

The 2022 Plan depicts the train maintenance facility right next to two residential houses, one of which is owned by Meyer. (CT 1156; RT 516:14-19.) Pinoli admitted that the idling and operation of trains is loud, but also testified that the maintenance facility and the operation of such trains directly behind the residences would have no real impact on the residents. (CT 1156; RT 517:8-24.)

MR's Evaluation Of The Properties For The Project.

MR's evaluation of the Meyer Property and the other potential property

sites for the project were thoroughly discussed in emails by MR's management in 2020 over the course of seven months. (RT 443:19-444:1, CT 1765-1789; CT 1765-1794.)

MR began evaluating the Meyer Property for the project on May 14, 2020. (CT 1765-1789.) By June 26, 2020, the two main sites that MR was evaluating for the project were the Meyer Property and the nearby KOA campground property. (RT 435:13-21, CT 1787.) The major focus of the evaluation of the KOA campground property and the Meyer Property was whether each could be used as a campground/RV park, and the financial return and return on investment. (RT 448:13-449:10, CT 1686-1687, 1779-1780.)

On July 19, 2020, Mike Hart ("Hart"), who is Pinoli's boss, personally sent out an email that provided an overview of the financial evaluation of the KOA campground property and Meyer Property. (RT 456:5-14, CT 1686-1687, 1779-1780.) Hart's July 19th email with the conceptual plan included the following evaluation of the two sites:

"The math: So if KOA owners would sell for \$4M rather than \$5M they indicated with Robert, we would have to adjust the Meyer property to match in value. We would deduct the \$400,000 to purchase. We would then have \$3,600,000 to recreate the same power, water, sewer and roads infrastructure etc. IF WE WANTED TO RUN THE RV PARK! To build 93 spaces on average would cost just under \$2M based on average RV park costs. We would then have \$1.6 M to

cover the cost of a new pool, amenities, landscaping, main road, etc. . . . My opinion is that they Meyer property is a HUGE advantage for us as we would end up with new infrastructure designed in a way that helps our operation for the same or potentially lower cost.” (CT 1687.) At the time that Hart was making the 2020 Plan and coming up with the improvements he was not evaluating the impact that the project may have on Meyer, or whether or not the use of the Property was for the greatest public good or even for railroad purposes. (RT 459:18-460:14.) The main focus was how to efficiently grow the organization. (RT 460:10-17.)

On July 21, 2020, which was just two days after Hart’s evaluation of the KOA campground property and Meyer Property and the circulation of a conceptual map, MR began evaluating whether MR should engage an attorney to potentially take the Property by eminent domain. (RT 470:12-472:25, CT 1771-1772.) Hart referenced in an email that this could be a “test case,” in which MR could test whether it could in fact take property through the eminent domain process. (RT 470:12-472:25, CT 1771-1772.)

The Trial Court’s Decision

The parties participated in a five day bench trial in Mendocino County Superior Court. (CT 2036.) On April 19, 2023, the trial court issued its “Decision After Trial,” which stated:

“Plaintiff in this action has the burden of proof to establish its legal status a public utility. There is no dispute that the only

evidence of railroad income during the relevant time was and is earned from the excursion services only. MR concedes that the excursion service does not fall under the category of ‘transportation’ and does not qualify MR as a public utility.” (CT 2040.)

The trial court found that “MR may be able to obtain public utility status in the future but [the] court is not convinced that such status is appropriate at this time based on the evidence provided by MR at trial.” (CT 2040.)

The trial court evaluated the eminent domain requirements and found that the acquisition of the Property “would enhance the operations of MR’s excursion service that admittedly does not fall within the definition of transportation. MR cannot exercise the power of eminent domain to carry on its private business activities.” (CT 2041.)

The trial court found that “the proposed use of the property also conflicts with the statutory requirements of public use and least private injury.” (CT 2041.) There was no evidence of an actual plan for development or funding for the Project, thereby violating the holding in *City of Stockton v. Marina Towers LLC* (2009) 171 Cal. App. 4th 93, 113, which states that an “adequate project description is essential to the three findings of necessity that are required to made in all condemnation cases.” (CT 2042.)

The trial court found that “Pinoli’s testimony that there would be no

real impact on the residents is simply insufficient.” (CT 2042.) The court stated that “the credibility of the testimony is questionable when the initial plan prepared at the time the complaint was filed included a campground.” (CT 2042.) The trial court also questioned the credibility of the “late hour evidence” of the 2022 Plan which “was done presumably to satisfy the requirements of the statute.” (CT 2042.)

The trial court found the analysis lacking as it relates to the impact that the maintenance and transload facility would have on residents (including Meyer) living directly adjacent to the proposed site. (CT 2042.) The decision states “that MR did not meet its burden to establish that the current site plan supports a project that is planned or located in the matter that will be most compatible with the greatest public good and least private injury which is required by statute and case law.” (CT 2042.)

The Appellate Court’s Decision

The appellate court applied the substantial evidence standard. In applying the substantial evidence standard, the appellate court generally views the evidence in the light most favorable to respondent. (*Turman v. Turning Point, Inc.* (2010) 191 Cal. App. 4th 53, 58.) It accepts respondent’s evidence as true, resolves all conflicts in the evidence in respondent’s favor, and draws all favorable inferences that reasonably

may be drawn. (*Estate of Leslie* (1984) 37 Cal. 3d 186, 201.) Further, the appellate court cannot reweigh the evidence. (*In re E. B.* (2010) 184 Cal. App. 4th 568, 578.) Even if the court believes the evidence to be in appellants' favor, it cannot reverse the judgment on that basis. (*Albaugh v. Mount Shasta Power Corp.* (1937) 9 Cal. 2d 751, 773.)

Common Carrier Public Utility Status

The appellate court determined that MR met its burden of proving that it is more likely than not a common carrier public utility. (Appellate Decision p. 24.) The appellate court stated that MR's tariffs established that passenger and freight service was available to the public. (Appellate Decision p. 24.) The decision provided that "[a]lthough the tariffs do not prove that Mendocino Railway actually rendered passenger or freight services, such proof was not required. Rather, what is required is showing of the public's unconditional right to use the CWR. (*See Story v. Richardson* (1921) 186 Cal. 162, 167.)" (Appellate Decision p. 20-21.)

The appellate court's decision failed to acknowledge that MR did not offer passenger service to the public, rather it only offered passenger service to certain named families and their guests that own property on the line.

The appellate court also found that in 1998 the California Public Utilities Commission (“CPUC”) made findings of fact in a CPUC decision which established that MR’s predecessor in interest was a common carrier and public utility under California law, which is indicative of MR’s public utility status. (Appellate Decision p. 23.)

Eminent Domain Analysis

The appellate court’s decision stated in part the following with respect to the eminent domain requirements of Code of Civil Procedure § 1240.030:

Public Interest

“The trial court implicitly found Meyer had met his burden of proof, ruling that because ‘the income generated from the Skunk Train excursion service is 90% [Mendocino Railway]’s revenue’ it could ‘easily find that [Mendocino Railway]’s primary objective is to obtain property to serve the excursion service.’ Based on this finding, the court concluded Mendocino Railway ‘cannot exercise the power of eminent domain to carry on its private business activities.’ Although the court began this section by ‘[a]ssuming’ Mendocino Railway ‘has public utility status,’ for the purpose of eminent domain analysis, this finding is based on the same rationale for its determination that Mendocino Railway is not a public utility—i.e. that any public uses is incidental to its private activities.

This interpretation is contrary to the established law. It is the character of the use, not its extent, which determines whether it is

public. (*Laguna Drainage Dist. v. Charles Martin Co.* (1904) 144 Cal 209, 217-218; *People ex rel. Department of Public Works v. Lagiss* (1963) 223 Cal. App. 2d 23, 38.)” (Appellate Decision p. 26.) The primary purpose cannot be to promote private enterprise, or to accomplish a purpose the primary nature of which is not public under the pretext that it is. (See, e.g. *County of San Mateo v. Coburn* (1900) 130 Cal. 631, 634 [where ‘it is clear that it is for a private purpose, the legislative declaration will be of no avail’]; [*City & County of San Francisco v. Ross* (1955) 44 Cal. 2d 52, 59 [‘percentage area to be used for other commercial activity is small enough to be merely an incident to the parking activity and not in itself enough to invalidate the whole plan, nevertheless it aids in characterizes the whole operation as a private one for private gain’].)” (Appellate Decision p. 26-27.)

“The finding of public use has sufficient support in the declaration of the Legislature (see Pub. Util. Code, § 611), which is not overcome by the fact that the acquisition may also incidentally benefit Mendocino Railway’s private business activities. Should the proposed development violate any provisions of the law of the Constitution by furthering a purely private endeavor— i.e., campgrounds, retail space, etc.— Meyer’s remedy is an action attacking the future development and not in an attempt to defeat a proper acquisition of property for a valid purpose. (See *County of Los Angeles v. Anthony* 224 Cal. App. 2d [(1964) 103,] 107)” (Appellate Decision p. 28.)

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Location

“Proper location is based on two factors: public good and private injury. Accordingly, the condemnor’s choice is correct and proper unless another site would involve an equal or greater public good and a lesser private injury. A lesser public good can never be counter-balanced by a lesser private injury to equal a more proper location. [Citation.] Nor can equal public good and equal private injury combine to make the condemnor’s choice an improper location.’ (*SFFP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal. App. 4th 452, 470-471, fn. omitted.)” (Appellate Decision p. 28-29.)

“The record reflects Mendocino Railway compared numerous locations and concluded Meyer’s property was the most suitable. In other words, the selection of the property was proper because there was no other site with an equal or greater public good. (*SFFP v. Burlington Norther & Santa Fe Ry. Co., supra*, 121 Cal. App. 4th att pp. 470-471, fn. omitted.)” (Appellate Decision p. 30.)

Necessity of Property

“The property sought to be acquired’ must be ‘necessary for the project.” (Code of Civ. Proc., § 1240.030, sub. (c).) ‘This aspect of necessity includes the suitability and usefulness of the property for the public use. [(See *City of Hawthorne v. Peebles* [(1959)] 166 Cal. App. 2d 758, 763".)] (Appellate Decision p. 31.)

“[T]he trial testimony established that there are several key site requirements for construction of the project including that the property be approximately 20 acres in size, relatively level, located along Mendocino’s rail line, near the City of Willits, and adjacent to

a highway. Meyer's property is the only property identified by Mendocino Railway as having these features and being suitable for the Project. Accordingly, we conclude Mendocino Railway met its burden of establishing by a preponderance of the evidence that it has complied with the statutory requirements for eminent domain." (Appellate Decision p. 31.)

Appellate Court Disposition And Subsequent Motions

On December 9, 2025, the appellate court filed its initial unpublished opinion which reversed the judgment in favor of Meyer and reversed the related attorney fee award. The matter was remanded for further proceedings regarding the amount of compensation to be paid to Meyer for the taking of his property, and MR was entitled to receive its costs on appeal.

Meyer petitioned the court to order a rehearing of its decision in this matter pursuant to California Rules of Court 8.268(a)(1), which was denied.

Mendocino Railway filed a request under California Rules of Court, rule 8.1120, to have the opinion published in the Official Reports, and the court found good cause under rule 8.1105, and granted the request. The appellate opinion was officially filed and certified for publication on January 7, 2026, and both the opinion and order to publish are attached.

IV. ARGUMENTS IN SUPPORT OF REVIEW

A. The Appellate Court's Decision Holds That A Taking Is Allowed If A Project Has A Public Purpose, As Any Public Purpose Shall Trump A Private Gain.

California's Constitution Art. I, § 19(a) and Civil Procedure § 1240.010, require that the exercise of eminent domain be only for "public use." "The Constitution does not contemplate that the exercise of the power of eminent domain shall secure to private activities the means to carry on a private business whose primary objective and purpose is private gain and not public need." (*Council of San Benito County Governments v. Hollister Inn, Inc.* (2012) 209 Cal. App. 4th 473, 494, quoting *City & County of San Francisco v. Ross* (1955) 44 Cal. 2d 52.)

The California Supreme Court has stated that "public use" within the meaning of California's Constitution "is defined as a use which concerns the whole community or promotes the general interest in its relation to any legitimate object of government." (*Council of San Benito County Governments v. Hollister Inn, Inc.* (2012) 209 Cal. App. 4th 473, 494, quoting *Bauer v. County of Venura* (1955) 45 Cal 2d 276, 284.) Additionally, "[t]o make a use public in character, a duty must fall on the person or corporation holding the property appropriated by eminent domain to furnish the public with the use intended and the public must be entitled to use or enjoy the property taken." (*Id.*)

“The statutory authorization to utilize the power of eminent domain for a given ‘use, purpose, object, or function’ constitutes a legislative declaration that the exercise is a ‘public use.’” (*City of Oakland v. Oakland Raiders* (1982) 32 Cal. 3d 60, 69.)

The question as to whether the land was to be devoted to a public use, as distinguished from private purposes or to accomplish some purpose which is not public in character, is a proper issue for judicial determination. (*Council of San Benito County Governments v. Hollister Inn, Inc.* (2012) 209 Cal. App. 4th 473, 494; *Dept. Of Public Works v. Largiss* (1963) 223 Cal. App. 2d 23, 39.)

“A railroad corporation may condemn any property *necessary for the construction and maintenance of its railroad.*” (Public Util. Code § 611, italics added.) The Law Revision Commission Comments for Public Utilities Code § 611, state that this statute “would not, however, permit condemnation by a railroad corporation of land to be used for example, as an industrial park.” Similarly, it is reasonable to assume, that section 611 would not permit the condemnation of land by a railroad corporation for the construction of a private campground, RV park, or for a private excursion service.

In *City & County of San Francisco v. Ross*, supra, at 54, the City of San Francisco sought to acquire by eminent domain a site that would subsequently be leased to private individuals who would build a parking structure in accordance with the city's specifications and operate parking and other facilities. The city intended to allow a portion of the ground floor frontage of the proposed building to be leased and occupied by retail stores. The total floor space to be occupied by such private retail commercial activity was estimated by the city to be no more than four percent (4%) of the building. (*Id.*, at 58-59.)

In *Ross* it was argued that "there is a clear taking of private property for private purposes and [it is] so interwoven with an otherwise questionable exercise of eminent domain as to characterize the whole taking as one without authority." (*Id.*, at 59.) The court in *Ross* concluded that the "Constitution does not contemplate that the exercise of the power of eminent domain shall secure to private activities the means to carry on a private business whose primary objective and purpose is private gain and not public need." (*Id.*; *Council of San Benito County Governments v. Hollister Inn, Inc.* (2012) 209 Cal. App. 4th 473, 494.)

The appellate court stated in its decision here:

"The trial court implicitly found Meyer had met his burden of proof, ruling that because 'the income generated from the Skunk

Train excursion service is 90% [Mendocino Railway]’s revenue’ it could ‘easily find that [Mendocino Railway]’s primary objective is to obtain property to serve the excursion service.’ Based on this finding, the court concluded Mendocino Railway ‘cannot exercise the power of eminent domain to carry on its private business activities.’ Although the court began this section by ‘[a]ssuming’ Mendocino Railway ‘has public utility status,’ for the purpose of eminent domain analysis, this finding is based on the same rationale for its determination that Mendocino Railway is not a public utility– i.e. that any public uses is incidental to its private activities..

This interpretation is contrary to established law. It is the character of the use, not its extent, which determines whether it is public. (*Laguna Drainage Dist. v. Charles Martin Co.* (1904) 144 Cal 209, 217-218; *People ex rel. Department of Public Works v. Lagiss* (1963) 223 Cal. App. 2d 23, 38.) In other words, it is not necessary that a significant portion of the community enjoy the use. (*Laguna Drainage Dist. v. Charles Martin Co.*, at pp. 217-218.) Rather the law simply requires that all citizens in a given community, who are capable of enjoying the use, have an equal right to do so. (*San Joaquin & Kings River Canal & Irrigation Co. v. Stevenson* (1912) 164 Cal. 221, 229.) The intended use must be the intended object (*Lorenz v. Jacob* (1883) 63 Cal. 73, 74), but incidental private benefit does not disqualify a use as a public use. (*Redevelopment Agency v. Rados Bros.* (2001) 95 Cal. App. 4th 309, 315.) Stated differently, the primary purpose cannot be to promote private enterprise, or to accomplish a purpose the primary nature of which is

not public under the pretext that it is. (See, e.g. *County of San Mateo v. Coburn* (1900) 130 Cal. 631, 634".) (Appellate Decision p. 26.)

“Mendocino Railway’s stated intention is to acquire the property to assist in commuter and freight services, by improving its facilities. Under such circumstances, the finding of public use has sufficient support in the declaration of the Legislature (see Pub. Util. Code, § 611), which is not overcome by the fact that the acquisition may also incidentally benefit Mendocino Railway’s private business activities. Should the proposed development violate any provisions of the law of the Constitution by furthering a purely private endeavor—i.e., campgrounds, retail space, etc.—Meyer’s remedy is an action attacking the future development and not in an attempt to defeat a proper acquisition of property for a valid purpose. (See *County of Los Angeles v. Anthony*, *supra*, 224 Cal. App. 2d at p. 107)” (Appellate Decision p. 27.)

The trial court decision stated that the “income generated from the Skunk Train excursion service is 90% of MR’s revenue. The court can easily find that MR’s primary objective is to obtain property to serve the excursion service. No explanation was offered to distinguish the private operations from the ‘proposed’ freight and passenger enhancements.” (CT 2041.)

The taking of the Property to start a freight operation and/or commuter passenger service on MR’s isolated 40 mile long line makes no financial or logistical sense. MR cannot transport freight or passengers

on full length of its own line, and it also cannot transport freight or passengers on the adjoining NCRA rail line. (RT 95:19-101:4, 336:19-26, 344:11-17, 919:28-920:27.)

There are no communities to transport passengers or freight to, other than Willits and Fort Bragg, and MR cannot transport anything between these two towns because of the collapsed tunnel in the middle of the line. (RT 95:19-101:4, 336:19-26, 344:11-17, 919:28-920:27, CT: 1756.) MR's proposed plan is in essence, to operate a freight and commuter passenger line to nowhere. (CT: 1756.) Even if MR is able to ever repair the tunnel, the freight and passenger service will pale in comparison to MR's private excursion business, due to MR's high freight tariffs and its short and isolated line operating between two small towns 30 miles apart. (RT 95:19-101:4, 336:19-26, 344:11-17, 919:28-920:27, 919:28-921:26; CT: 1756.)

Given these limiting factors, it is readily apparent that the public use of the transportation of freight and passengers will not be significant, and that MR's established private excursion business will remain the primary use made of the line and Meyer Property. The trial court was correct when it stated in its decision that "it can easily find that MR's primary objective is to obtain the property to serve the excursion service." (CT 20141.)

MR's use of the Meyer property for its excursion service will not be incidental as reflected in the appellate court's decision.

MR will use the property to be taken by eminent domain for its significant private excursion business. The appellate court's decision in this action directly contradicts the holding in *Ross, supra*, at 58-59, that the "Constitution does not contemplate that the exercise of the power of eminent domain shall secure to private activities the means to carry on a private business whose primary objective and purpose is private gain and not public need."

The appellate court's decision reflects that any taking is allowed if a project has any public purpose, as it will trump a private gain. This court should review the appellate court decision to support uniformity of decision or to settle an important question of law pursuant to California Rules of Court, rule 8.500(b)(1).

B. A Plan Is Required For A Project Evaluation Pursuant To Code of Civil Procedure § 1240.030, And It Cannot Be Substantially Changed After An Action Is Filed.

"The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established: (a) the public interest and necessity require the project.; (b) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;

(c) the property sought to be acquired is necessary for the project.”
(Code of Civil Procedure § 1240.030.)

“[A]n *adequate project description* is essential to the three findings of necessity that are required to be made in all condemnation cases. Only by ascertaining what the project is can the governing body make those findings.” (*City of Stockton v. Marina Towers LLC* (2009) 171 Cal. App. 4th 93, 113; *Cincinnati v. Vester* (1930) 281 U.S. 439, 448, italics added.)

“[A] public agency has no right to condemn in the absence of evidence to support the findings of necessity, and such evidence cannot exist without a sufficient project description.” (*City of Stockton v. Marina Towers, supra*, at 115; *Redevelopment Agency v. Norm’s Slauson* (1985) 173 Cal. App. 3d 1121, 1129.)

In *SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal. App. 4th 452, 469-470 (“*SFPP*”), the court analyzed the meaning of Code of Civil Procedure § 1240.030(b), which requires that the project be “planned or located in the manner that will be most compatible with the greatest public good and the least private injury.” “This limitation which involves essentially a comparison between two or more sites, has also been described as ‘the necessity for adopting a *particular plan for a given public improvement.*’” (*Id.* at 470, italics added.)

A "finder of fact inquiring into the greatest public good and least private injury should consider all the facts and circumstances." (*Id.* at 473.) The *SFPP* court stated that "[t]he words 'most', 'greatest' and 'least' are comparative terms that relate to both the plans and the location of the project." (*Id.* at 469.) The *SFPP* court explained that these "comparative terms cannot be applied in the abstract, instead they unambiguously show the Legislature's intent that the condemner's proposed location be compared with other potential locations to see how those other locations compare in effect on the public good and private injury resulting project." (*Id.* at 470; *People v. Chevalier* (1959) 52 Cal. 2d 299, 307.)

There was no specific description or plans for the project when MR began the eminent domain process, and no plan was ever provided to Meyer. (RT 505:27-508:8.) The only conceptual drawing in place for the Meyer Property as of the date of filing of the complaint depicted a *station/store, campground, and long-term RV park*. (CT 1660, 1666-1668, 1685-1690; RT 456:5-457:28.)

MR's evaluation of the potential project sites was based upon whether or not the different sites were conducive to camping, RV vehicle parking, and use as an excursion service, which are all private uses. (CT 1660, 1666-1668, 1685-1690; RT 455:13-458:18.) Such private uses are not

compatible with properly evaluating whether alternate locations are better, that is, compatible with the greatest public good and the least private injury. The 2020 Plan and uses for the project site were also significantly modified under MR's new 2022 Plan.

MR developed the 2022 Plan immediately before the trial in June 2022, and the new plan provided for the construction of station offices, freight transloading facility, and a train maintenance facility right next to two residential houses, one of which is owned by Meyer. (CT 1156; RT 516:14-19.) The trial court found that the 2022 Plan with a maintenance facility right next to two residences is not consistent with planning the project for the greatest public good and the least private injury. (CT 1156, 2042.)

The Appellate Court's decision states:

“At trial, Meyer sought to prove the real purpose of Mendocino Railway's acquisition of his property was for private purposes— expansion of its excursion services— without any relation to the expansion of its commuter and freight services. In support of this position, Meyer submitted Mendocino Railway's initial conceptual drawing for the property, which included a station/store, campground, and long-term recreational vehicle park. . . .

The trial court gave little weight to the June 2022 site plan because it was not prepared until 18 months after the eminent domain action was filed and it was ‘considerably different from the original

conceptual drawing.’ The court also found there was ‘no evidence of an actual plan for development or funding of the project’, which had the effect of leaving Meyer in the dark in terms of what is being planned for his property. . .” (Appellate Decision p. 27.)

MR’s evaluation of the potential project sites based upon a plan for campsites, RV parking, and a pool violate the requirements under Code of Civil Procedure § 1240.030 because the evaluation focused on the sites and issues that were conducive to developing a private campground rather than developing the site for railroad purposes. The fact that MR subsequently modified its site plan to provide for freight loading facilities does not rectify its eminent domain evaluation failures.

The evaluation of potential sites for a significantly different use and for private purposes contradicts the foundational requirements of eminent domain law. If a project plan can be completely changed right before trial without reevaluating the potential sites in accordance with Code of Civil Procedure § 1240.030, then there really is no reason for the Legislature to require a plan or the evaluation required by Code of Civil Procedure § 1240.030.

V. CONCLUSION


The appellate court’s decision conflicts with established law by allowing for the taking of property for private gain if the taking is for any

alleged public purpose, and it also fails to require a proper plan or evaluation per Code of Civil Procedure § 1240.030. As set forth above, this Court should grant review of the instant matter to settle and important question of law in order to protect and preserve important constitutional rights and the statutory laws that apply to the taking of property by eminent domain.

DATED: January 14, 2026.

Respectfully submitted,

MANNON, KING, JOHNSON & WIPF, LLP


Stephen R. Johnson
Attorney for Respondent John Meyer

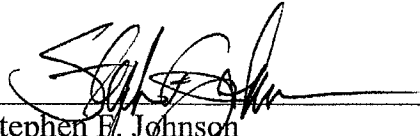
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CERTIFICATE OF COMPLIANCE

I, Stephen F. Johnson, hereby certify that the foregoing Petition For Review is proportionally spaced, has typeface of 13 points or more, and contains 7,099 words.

DATED: January 14, 2026.

MANNON, KING, JOHNSON & WIPF, LLP



Stephen F. Johnson
Attorney for Respondent John Meyer

Document received by the CA Supreme Court.

Filed 1/7/26

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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

MENDOCINO RAILWAY,
Plaintiff and Appellant,
v.
JOHN MEYER,
Defendant and Respondent.

A168497, A168959

(Mendocino County
Super. Ct. No. SCUK-CVED-
2020-74939)

ORDER CERTIFYING OPINION
FOR PUBLICATION AND
DENYING REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT*:

The opinion in the above-entitled matter, filed on December 9, 2025, was not certified for publication in the Official Reports. After this court's review of appellant Mendocino Railway's request under California Rules of Court, rule 8.1120, and good cause established under rule 8.1105, it now appears that the opinion should be published in the Official Reports, and it is so ordered.

Respondent's petition for rehearing is denied.

Date: 01/07/2026

Humes P.J.

* Humes, P.J., Langhorne Wilson, J., and Smiley J. participated in the decision.

Document received by the CA Supreme Court.

Mendocino Railway v. Meyer (A168497, A168959)

Trial Court: Mendocino County Superior Court

Trial Judge: Hon. Janine Nadel

Counsel:

California Eminent Domain Law Group, Glenn Lawrence Block;

Pierson Ferdinand, Paul James Beard, II, for Plaintiff and Appellant.

Mannon, King, Johnson & Wipf, Stephen Francis Johnson, for

Defendant and Respondent.

Filed 12/9/25

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

MENDOCINO RAILWAY,
Plaintiff and Appellant,
v.
JOHN MEYER,
Defendant and Respondent.

A168497, A168959

(Mendocino County
Super. Ct. No. SCU-K-CVED-
2020-74939)

Plaintiff Mendocino Railway appeals from the judgment following a multi-day bench trial in which the trial court ruled Mendocino Railway did not qualify as a public utility with the power of eminent domain—and even if it had public utility status—it failed to meet the statutory requirements of eminent domain. (See Pub. Util. Code, § 611; Code Civ. Proc., § 1240.030.) Concluding the trial court erred in its interpretation of the relevant law and in its application of the facts to the law, we reverse.¹

¹ On January 30, 2025, we granted motions for leave to file amicus curiae briefs submitted by the California Coastal Commission and the American Short Line and Regional Railroad Association. We deferred ruling on the California Coastal Commission's request for judicial notice pending the resolution of this appeal. We now deny that request on the grounds that the documents requested for notice are not relevant to resolution of this appeal.

BACKGROUND

A. Eminent Domain Action

In 2020, Mendocino Railway filed an action seeking to acquire by eminent domain a 20-acre undeveloped parcel (the property) in Willits, California owned by John Meyer. Mendocino Railway's railroad runs along the southern boundary of the property. The stated purpose of the acquisition is the "construction and maintenance of rail facilities related to" Mendocino Railway's "ongoing and future freight and passenger rail operations" (the project).

Mendocino Railway avers it is "a California railroad corporation organized and existing under the laws of the State of California and is authorized by law to exercise the power of eminent domain to acquire private property for public use" under California Constitution, Article I, section 19; Public Utilities Code sections 229, 230, 611 and 7526, subdivision (g); and Code of Civil Procedure section 1230.010 et seq.

B. Evidence at Trial

The sole witness at trial was Robert Pinoli, the President and Chief Executive Officer of Mendocino Railway.

Origins of Rail Service Along the California Western Railroad

The California Western Railroad (CWR) consists of a 40-mile stretch of railway between Fort Bragg and Willits. The CWR was built in 1885 as a means to haul redwood trees to a lumbermill in Fort Bragg. However, it has "provided significant passenger service since 1912" and "remains a vital link between Willits and the coastal communities." Early in its history, CWR began providing passenger excursion services which later became known as the "Skunk Train."

Document received by the CA Supreme Court.

Mendocino Railway's Acquisition of CWR

In 2002, California Western Railroad, Inc. (CWRR), the then-owner of CWR, filed for Chapter 11 Bankruptcy under Subchapter IV (Railroad Reorganization). (See 11 U.S.C. § 1161 et seq.) Sierra Railroad Company (SRC), a holding company without common carrier status successfully bid to acquire the assets of CWR. SRC then formed Mendocino Railway, also a holding company, to purchase CWR's assets. Mendocino Railway initially intended to operate CWR with the help of its affiliated entities, Sierra Northern Railway (SNR), Midland Railroad Enterprises Corporation (MREC), and Sierra Entertainment (a tourism entertainment and passenger operations company) (SE); SNR, MREC, and SE are subsidiaries of SRC. In 2004, the Surface Transportation Board (STB) approved Mendocino Railway's purchase of CWR as a Class III regulated railroad.²

Passenger Commuter and Excursion Services

Pinoli testified that affiliated-entity SE provided passenger commuter service and excursion service on behalf of Mendocino Railway from 2004 until 2008. Starting in 2008, Mendocino Railway itself began providing commuter passenger service and excursion services. Mendocino Railway provided its published tariffs regarding passenger fares from 1993 to 2021, which listed CWR's prior owner and Mendocino Railway as the issuers and passenger service providers. Pinoli explained that tariffs are "a way for the railroad to make its services available to the public". Pinoli testified that passenger rail service remains currently available with no foreseeable stoppage.

Freight Service

² The STB divides railroads into three categories based on their operating revenues; Class III railroads have the smallest operating revenues. (See 49 U.S.C. § 20102; 49 C.F.R. § 1201.1-1.)

Pinoli testified that SNR provided freight services on Mendocino Railway's behalf from 2004 until 2021. He explained that by 2021 SNR was "simply just too busy" to offer services at such a "remote location" and as a result, Mendocino Railway took over the freight services. Even before Mendocino Railway assumed the freight services from SNR, from 2020 to 2021 Mendocino Railway transported aggregate and steel structures for Trout Unlimited in connection with two streambed restoration projects along the CWR line; the freight transportation for Trout Unlimited was for compensation. While Mendocino Railway provided transportation for Trout Unlimited, its "freight train was made a priority, and the railroad's excursion schedule was halted to yield to the freight operations of the railroad."

Pinoli testified that Mendocino Railway had no intention to cease its freight services.

Access to Interstate Rail System

At the Willits end of the CWR line, there is a depot located on the Northwestern Pacific (NWPY) track, on which Mendocino Railway has trackage rights. The CWR line connects to the NWPY track, which connects to the Union Pacific Railroad mainline. However, maintenance issues has kept the NWPY line closed, resulting in a stoppage of freight services. Although there is "no longer direct connection to the rest of the country through the NWPY track, Amtrack allows" Mendocino Railway "to have access" to the Union Pacific Railroad mainline.

Tunnel Collapse

In 2015, the CWR line was severed when one of its tunnels collapsed. Pinoli testified that even with the tunnel collapse, Mendocino Railway has still been able to offer and perform non-excursion passenger and freight transportation on either side of the tunnel. He further explained the tunnel

collapse “hasn’t stopped the railroad from getting people to their remote residences or summer camps” or “transporting goods and services to property owners along the route.”

Allocation of Revenue

Pinoli testified that as of 2020, 90% of Mendocino Railway’s revenue came from the excursion train activities. The other 10% of Mendocino Railway’s income came from leases and easements. When asked whether this 90/10 allocation generally represented the last ten years, Pinoli explained he did not have Mendocino Railway’s financial statements in front of him and he did not want to speculate. When further asked why he did not have the financial information with him, Pinoli explained that Mendocino Railway was not asked to provide such information. He further indicated: “If the Court felt it were necessary, then we would be happy to provide that information.”

Need for Expansion

Pinoli testified that Mendocino Railway lacks adequate maintenance or repair facilities, yard space, equipment storage space, or dedicated areas for freight operations at the Willits end of the CWR line. As a result, Mendocino Railway’s maintenance and repair activities take place at temporary facilities and outdoors on the tracks at that end. Acquisition of the property would allow Mendocino Railway to fully operate its freight rail services with storage yards, maintenance, and repair shops, transload facilities, rail car storage capacity, and a passenger depot.

The Project

Pinoli testified that Mendocino Railway undertook an extensive search, investigation, and analysis of several potentially suitable locations for the project, evaluating six other sites in addition to the property. In its search,

Mendocino Railway considered various factors and site characteristics, including but not limited to size, shape, location, and topography. Mendocino Railway also evaluated the private impacts of acquiring the property such as displacement of residential or commercial occupants.

Pinoli explained the property was the only site that met the key requirements for the project. The property is a relatively level, undeveloped, 20-acre parcel located along Mendocino Railway's main line near Willits, with good accessibility to a highway. Also, Meyer initially indicated a willingness to sell.

An early rendering of the site plan included a campground, pool, and recreational vehicle camping area. Pinoli explained the campground idea came from "one individual in our organization," who was "a very energetic entrepreneur." He further explained that the idea was suggested during the COVID-19 pandemic, when creation of outdoor spaces was prevalent. Pinoli, however, emphasized that "campgrounds are not something that we have an interest in." He added that campgrounds are not part of what Mendocino Railway does [a]nd it's certainly not a part of what Mendocino Railway is going to do." Pinoli further stressed, "I serve as the president and chief executive officer of our company. And while I do have board members and colleagues that I work with and collaborate with, the decisions of the company stop with me. [¶] I grew up in this community. I'm four generations into this community, and I've spent 30 years -- I have spent my entire career dedicated to the preservation of a railroad that was founded in 1885. [¶] I'm entrusted with this legacy operation. I'm not going to say something today, and do something different tomorrow. We will not be building a campground."

An updated site plan from 2022 omits the campground and recreation vehicle park. The updated site plan includes a “maintenance/repair facilities and yard”, “rail transload facility”, “natural habitat preserve”, “depot and offices”, and “parking.” The 2022 site plan depicts the train maintenance facility next to two residential houses, one of which Meyer owns. Pinoli explained the maintenance facility would be a “completely enclosed” and “indoor facility.” The work that would be done on the rail cars would occur inside the facility. Pinoli did not believe the repair work “would be . . . any noisier than the highway traffic adjacent to [the] houses.” He did admit, however, that the idling and operation of trains is loud, but believed the maintenance facility and the operation of such trains directly behind the residences would have no real impacts on the residents living there. When asked whether it was possible to move the maintenance facility farther away from the houses, Pinoli indicated he would need to review any such change and discuss it with Mendocino Railway’s engineers.

Community Interest

Mendocino Railway presented letters from potential customers expressing interest for transloading services at Willits. These customers included Flow Beds, North Coast Brewing Company, Geo Aggregates, Redwood Coast Fuels (and other natural gas companies), and Lyme Redwood Forest Company (and other timber companies). Pinoli explained that the letters had been part of Mendocino Railway’s grant applications in 2018, 2019, and 2020.

Pinoli further testified that Mendocino Railway had worked “with other common carrier public utilities in the past, specifically, . . . [¶] . . . [¶]. . . the Mendocino Transportation Authority”—the local bus service. As part of that program, bus passengers could ride the train with certain passes.”

Public Utilities Commission Reports Regarding Mendocino Railway's Predecessor

January 21, 1998 Decision

On January 21, 1998, the California Public Utilities Commission (CPUC) made certain findings about Mendocino Railway's predecessor, CWRR. (*Matter of California Western Railroad, Inc.* (1998) 78 Cal. P.U.C. 2d 292 (*January 21, 1998 CPUC Decision*)). CWRR sought deregulation of its excursion service. (*Id.* at *1.) CWRR also sought CPUC approval to "reduce its commuter service." (*Id.* at *2.) In granting the application, the CPUC found that "[i]n providing its excursion service, CWRR is not functioning as a public utility . . . [¶] . . . [¶] . . . [W]e conclude that CWRR's excursion service should not be regulated by the [CPUC]." (*Id.* at *8.) The CPUC, however, recognized that CWRR also provided "passenger and freight operations" in addition to the excursion service. (*Ibid.*) The CPUC left the proceeding "to consider CWRR's request to reduce its commuter service." (*Id.* at *11.)

May 21, 1998 Decision

On May 21, 1998, the CPUC rendered a decision on CWRR's motion to withdraw its request to reduce commuter service on the CWR line. (*Matter of California Western Railroad, Inc.* (1998) Cal. P.U.C. Dec. No. 98-05-054 (*May 21, 1998 CPUC Decision*)). The CPUC reiterated that CWRR "transports passengers and freight between Fort Bragg and Willits" and "serves a few communities" in between. (*Id.* at *2.) The CPUC noted the "passenger service" was "[i]n addition" to the excursion service. (*Ibid.*) In granting CWRR's request to withdraw its request to reduce commuter service, the CPUC explained it was "in the best interest of passengers . . . us[ing] CWRR's service." (*Id.* at *4.)

Document received by the CA Supreme Court.

August 6, 1998 Decision

On August 6, 1998, the CPUC approved CWRR's request for approval of certain stock transactions. (*Matter of California Western Railroad, Inc.* (1998) 81 Cal. P.U.C. 2d 514 (*August 6, 1998 CPUC Decision*). In it, the CPUC noted that "[b]efore a public utility may issue stocks and certificates, it must obtain an order from this Commission authorizing the issue." (*Id.* at *10–11.) In its "findings of fact," the CPUC found CWRR "is a common carrier railroad engaged in interstate commerce," and "operates railroad passenger and freight services between Fort Bragg and Willits, California." (*Id.* at *17.) In its "conclusions of law," the CPUC held: "[CWRR] is a public utility within the meaning of Section 216(a) of the P[ublic] U[tilities] Code 216(a)." (*Id.* at *21.)

Staff Attorney Letter Regarding Mendocino Railway

Meyer introduced an August 12, 2022 letter from a CPUC staff attorney opining that Mendocino Railway was not a public utility. The staff attorney relied on the *January 21, 1998 CPUC Decision* regarding CWRR's deregulation request for its excursion services.

Railroad Retirement Board Decision

After the close of testimony, Meyer obtained a copy of the "Employer Status Determination For Sierra Entertainment and Mendocino Railway" that was issued by the Railroad Retirement Board (RRB) on September 28, 2006. The trial court granted Meyer's request to reopen the case and additional testimony related to this decision was presented. The RRB determined neither Mendocino Railway nor its affiliate SE qualified as a railroad "employer" obligated to pay into the federal railroad retirement fund. The decision rested primarily on the grounds that public passenger excursion tours "within one state" did not constitute rail transportation. In making this

determination, the RRB noted that due to structural problems there had been “no service” for approximately 10 years on Mendocino Railway’s line that “connects to another railway line”. Since Mendocino Railway’s access line was “unusable”, the RRB determined Mendocino Railway’s “ability to perform common carrier services is thus limited to the movement of goods between points on its own line, a service it does not perform.”

C. Trial Court’s Ruling

The trial court concluded Mendocino Railway was not a public utility entitled to eminent domain—and even if it had public utility status, it failed to meet the statutory requirements of the eminent domain law. Citing the *January 21, 1998 CPUC Decision*, the court determined that Mendocino Railway’s excursion services did not confer public utility status. The court was not persuaded by Mendocino Railway’s status as a Class III regulated railroad; rather, that designation “relates to . . . safety regulations” and did not elevate Mendocino Railway to a public utility.

The court further determined Mendocino Railway was not a common carrier because from the time of its acquisition of the CWR line through 2022, it “did not actually perform carrier services.” To the extent freight and passenger services allegedly were performed by affiliated entities, Mendocino Railway “did not offer evidence in the form of contracts with the affiliated entities, operating agreements, ledgers, receipts, payments etc.”

In making these determinations, the court relied, in part, on the 2006 RRB decision, which the court interpreted as finding Mendocino Railway “was not a common carrier performing freight and passenger services between the time of its acquisition in 2004” through 2022 when it took over operations from SNR “and to date.”

With respect to Mendocino Railway's revenue, the court stated "[t]here is no dispute that the only evidence of railroad income during the relevant time was and is earned from excursion services only." The court added that Mendocino Railway conceded "excursion service does not" constitute "transportation" and, as such, this service did not bestow public utility status.

The court gave little weight to the letters from local businesses expressing an interest in obtaining freight services once they become available. Any freight service from Fort Bragg to Willits could not occur until the tunnel was repaired and there was no specific time frame for completing the repairs. It was also unclear whether Mendocino Railway had the available funds to complete the necessary repairs "anytime soon." The court added the letters were of limited value because they had been "purposely solicited" by Mendocino Railway "in connection with a grant application to obtain funds from the federal government to improve its line for freight services."

Despite the court finding Pinoli to be an otherwise credible and knowledgeable witness, the court "was not persuaded by Pinoli's testimony alone[,] that Mendocino Railway had provided passenger service to residents along the route between Fort Bragg and Willits. Citing the best evidence rule, the court indicated that Pinoli failed to provide "written documentation in the form of ticket receipts, ledgers evidencing income, contracts with Mendocino Transit Authority, and contracts for freight transportation."

The court further concluded that Mendocino Railway failed to meet the statutory requirements of eminent domain. The court found the acquisition of the 20-acre site would "enhance the operations" of Mendocino Railway's "excursion service" which generated 90% of its revenue. The court stated it could "easily find" that Mendocino Railway's "primary objective" was to

“obtain the property to serve the excursion service.” As such, the court concluded Mendocino Railway “cannot exercise the power of eminent domain to carry on its private business activities.” The court further noted that “[n]o explanation was offered to distinguish the private operations from the ‘proposed’ freight and passenger enhancements.”

The court determined Mendocino Railway’s proposed use of the property “conflicts with the statutory requirements of public use and least private injury.” Of particular concern were the “seven months of internal” emails, reflecting that the “original conception” of the project included a campground and recreational vehicle park, as well as a train station. The court was dubious of the 2022 site plan, which was not prepared until 18 months after Mendocino Railway filed the eminent domain action. The court noted the site plan “is considerably different from the original conceptual drawing.” Additionally, the court found there was “no evidence” of an “actual plan” for development of or funding for the project, which included: (1) development of maintenance and depot facilities on the Willits end; and (2) creation of a transload facility. The court “questione[d] the credibility of the late hour evidence of a site drawing[,] [p]articularly . . . when a transload facility was added” even though Mendocino Railway was aware that “freight transportation could not happen until ‘Tunnel No. 1’ was available.” Additionally, “[n]o evidence was presented to establish whether or when the tunnel would be available for use.”

Finally, the court also questioned the credibility of Pinoli’s testimony, given “the initial plan prepared at the time the complaint was filed included a campground.” The court opined that the revised site plan, which eliminated the initial concept, was done “in preparation for trial” and “done presumably to satisfy the requirements of the statute.” Also “lacking” was

“an analysis . . . as to the impact the maintenance and transload facility would have on the residents (including Meyer) living directly adjacent to the proposed 20 acre site.” The court found “Pinoli’s testimony that there would be no real impact on the residents simply insufficient.” Without such information, the court was “unable to determine if the project would impose a greater injury to the residents.” Accordingly, the court determined Mendocino Railway “failed to meet its burden of establishing that its attempt to acquire Meyer’s property through eminent domain is supported by constitutional and statutory powers.”

D. Mendocino Railway’s Motion to Reopen Trial

Prior to the entry of judgment, Mendocino Railway moved to reopen the trial to introduce a newly issued decision from the RRB.³ In its May 2, 2023 determination, the RRB determined that Mendocino Railway became a railroad “employer” obligated to pay into the federal railroad retirement fund as of January 1, 2022, when it assumed “freight maintenance and operations authority from its affiliate [SNR]” and “took over direct responsibility for fulfilling its common carrier obligations, as well as conducting transload services from [SNR].” The RRB reported that an attorney representing Mendocino Railway indicated that Mendocino Railway “has been a common carrier subject to [STB] jurisdiction since 2004, but it did not take full responsibility for its carrier obligations until January 2022.” The RRB clarified: “Prior to the 2004 acquisition, the entity operating the rail line was

³ On October 1, 2024, Mendocino Railway filed a supplemental request for judicial notice regarding the May 2, 2023 determination by the RRB that we deferred pending resolution of this appeal; we now deny this request on the grounds that the document requested for notice is irrelevant to our resolution of this appeal. For the same reasons, we deny Mendocino Railway’s original request for judicial notice filed on September 30, 2024.

also a covered employer . . . In 2006, the [RRB] found that Mendocino [Railway] was not an employer . . . because it was not operating in interstate commerce . . . In fact, until January 1, 2022 Mendocino [Railway] was meeting its common carrier obligations through the affiliate arrangement” with SNR.

The court denied the motion.

DISCUSSION

Mendocino Railway asserts that reversal is required because it “abundantly established that it is—both under the applicable law and facts—a common-carrier public utility railroad entitled to exercise eminent domain” to acquire Meyer’s property.

A. Role of the Trial Court, Standard of Review, and Burden of Proof

In eminent domain actions, all issues except the sole issue relating to compensation are to be tried by the court; the court is to consider all issues of law and mixed issues of law and fact. (Cal. Const., art. I, § 19; *City of Fremont v. Fisher* (2008) 160 Cal.App.4th 666, 678.)

“Questions of fact concern the establishment of historical or physical facts; their resolution is reviewed under the substantial-evidence test. Questions of law relate to the selection of a rule; their resolution is reviewed independently. Mixed questions of law and fact concern the application of the rule to the facts and the consequent determination whether the rule is satisfied. If the pertinent inquiry requires application of experience with human affairs, the question is predominantly factual and its determination is reviewed under the substantial-evidence test. If, by contrast, the inquiry requires a critical consideration, in a factual context, of legal principles and their underlying values, the question is predominantly legal and its

determination is reviewed independently.” (*Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888.)

We conclude the question before us is predominately a legal one because it involves a critical consideration, in a factual context, of the legal requirements for establishing public utility status and satisfaction of the eminent domain law. (See *Crocker National Bank v. City and County of San Francisco, supra*, 49 Cal.3d at p. 888; see also *City of Perris v. Stamper* (2016) 1 Cal.5th 576, 594 [“Such questions belong to the trial court even when answering them may require the court to examine factual circumstances— i.e., when the legal question is really a “ ‘mixed issue[] of law and fact where the legal issues predominate’ ”].)

As the proponent of the eminent domain action, Mendocino Railway had the burden of proving at trial that it qualifies as a public utility entitled to take Meyer’s property and that it has satisfied the statutory requirements of the eminent domain law. (See *San Bernardino County Flood Control Dist. v. Grabowski* (1988) 205 Cal.App.3d 885, 898.) Generally, the applicable standard of proof in civil cases is the preponderance of the evidence standard, which means showing the existence of the fact in dispute “is ‘more likely than not.’” (*Masellis v. Law Office of Leslie F. Jensen* (2020) 50 Cal.App.5th 1077, 1093; Evid. Code, § 115.) Having found no authority warranting a deviation from the generally applicable standard of proof, we conclude Mendocino Railway had the burden of presenting sufficient evidence to prove it is more likely than not a common carrier public utility and that it satisfied the statutory requirements for eminent domain. (See *Robinson v. Superior Court* (2023) 88 Cal.App.5th 1144, 1161 (*Robinson*) [preponderance of evidence standard applicable in eminent domain action].)

B. General Principles of Eminent Domain

“Under the federal and state Constitutions, private property cannot be ‘taken’ for public use without the payment of ‘just compensation.’ (U.S. Const., 5th Amend.; Cal. Const., art. I, § 19, subd. (a).) ‘The Fifth Amendment’s takings clause, made applicable to the states through the Fourteenth Amendment, does not prohibit the taking of private property.’” (*Lafayette Bollinger Development LLC v. Town of Moraga* (2023) 93 Cal.App.5th 752, 776, fn. omitted.)⁴ Rather, it places two conditions—a public use and payment of just compensation—on the exercise of the power. (U.S. Const., 5th & 14th Amends.; Cal. Const., art. I, § 19; *City of Oakland v. Oakland Raiders* (1982) 32 Cal.3d 60, 64.) “When properly exercised, that power affords an orderly compromise between the public good and the protection and indemnification of private citizens whose property is taken to advance that good.” (*City of Oakland v. Oakland Raiders*, at p. 64.)

The instant appeal is concerned with the first condition—whether the taking of Meyer’s property is for public use. As the trial court determined Mendocino Railway did not satisfy this initial condition, the issue of just compensation was not reached. There appears to be no dispute among the parties that Meyer would be entitled to payment of just compensation in the event Mendocino Railway is able to establish it has authority to take the property and that the proposed taking is for public use. The amount and type of such just compensation would be considered in a separate proceeding. (See, e.g., *San Diego Metropolitan Transit Development Bd. v. Price Co.* (1995) 37 Cal.App.4th 1541, 1545.)

C. Authority to Take Private Property

⁴ Generally, the federal and California constitutional provisions are construed congruently. (*Jackpot Harvesting Co., Inc. v. Superior Court* (2018) 26 Cal.App.5th 125, 155, fn. 11.)

The power of eminent domain may be exercised “*only by a person authorized by statute* to exercise the power of eminent domain to acquire such property for that use.” (Code Civ. Proc., § 1240.020, italics added.) The Law Revision Commission’s comment to Code of Civil Procedure section 1240.020 states that “[p]rivately owned public utilities may condemn for utility purposes” (*Robinson, supra*, 88 Cal.App.5th at p. 1159.)

Public Utilities Code section 610 states: “This article applies only to a corporation or person that is a public utility.” The Law Revision Commission’s comment to this section makes clear that the right of eminent domain extends only to public utilities as defined in Public Utilities Code section 216 and not to entities that are not subject to regulation and rate control. (Cal. Law. Revision Com. com., 57 Pt. 2 West’s Ann. Pub. Util. Code (2025 ed.) foll. § 610, p. 266.)

The definition of “public utility” includes “every common carrier . . . where the service is performed for, or the commodity is delivered to, the public or any portion thereof.” (Pub. Util. Code, § 216, subd. (a).) For purposes of the Public Utilities Code, a “common carrier” means “every person and corporation providing transportation for compensation to or for the public *or any portion* thereof,” including “[e]very railroad corporation”. (Pub. Util. Code, § 211, subd. (a), italics added.)⁵

Article XII, section 3 of the California Constitution provides the following definition of public utilities: “Private corporations and persons that

⁵ A “railroad corporation” is defined as “every corporation or person owning, controlling, operating, or managing any railroad for compensation within this State.” (Pub. Util. Code, § 230.) A “railroad” includes “every commercial, interurban, and other railway . . . owned, controlled, operated, or managed for public use in the transportation of persons or property.” (Pub. Util. Code, § 229.)

own, operate, control, or manage a line, plant, or system for the transportation of people or property . . . *directly or indirectly* to or for the public, and common carriers, are public utilities subject to control by the Legislature.” (Italics added.)

The Public Utilities Code similarly provides that “[w]hen any person or corporation *performs any service for, or delivers any commodity* to, any person, private corporation, municipality, or other political subdivision of the state, that in turn *either directly or indirectly, mediately or immediately, performs that service for, or delivers that commodity to, the public or any portion thereof*, that person or corporation *is a public utility* subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.” (Pub. Util. Code, § 216, subd. (c), italics added.) “ ‘Public or any portion thereof means the public generally, or any limited portion of the public, including a person, private corporation, municipality, or other political subdivision of the State, for which the service is performed or to which the commodity is delivered.’ ” (Pub. Util. Code, § 207.)

These “provisions make clear that a utility that has dedicated its property to public use is a public utility even though it may serve only one or a few customers or a utility that in turn serves the public. [Citations.] Subdivision (c) of [Public Utilities Code] section 216 also allays any doubt that a public utility that has been serving the public directly remains such even though it turns its distributing system over to a publicly or privately owned utility and thereafter limits its own business to supplying the utility that directly serves the public.” (*Richfield Oil Corp. v. Public Utilities Commission* (1960) 54 Cal.2d 419, 431 (*Richfield*)).

Under these statutes, the relevant question is not the number and type of customers but whether an entity has dedicated its services for public use.

(*Richfield, supra*, 54 Cal.2d at pp. 430–431; see *Unocal California Pipeline Co. v. Conway* (1994) 23 Cal.App.4th 331, 333, 334–335 (*Unocal*) [pipeline corporation could be public utility with power of eminent domain even if sole customer is parent company].) “The test . . . is whether the public has a legal right to the use, which cannot be gainsaid, or denied, or withdrawn at the pleasure of the owner.” (*Story v. Richardson* (1921) 186 Cal. 162, 167.) In other words, “[t]he essential feature of a public use is that it is not confined to privileged individuals, but is open to the indefinite public. It is this indefiniteness or unrestricted quality that gives it its public character.’” (*Ibid.*)⁶

Here, the trial court found Mendocino Railway is not a true public utility because it is primarily an excursion service, providing limited, if any, commuter and freight services. However, it is long been the rule that where the public nature of the business activity is established, it matters not that sales are to only a few customers or that the entity only indirectly serves the public by providing services through its affiliated entities: “[A] utility that has dedicated its property to public use is a public utility even though it may serve only one or a few customers or a utility that in turn serves the public.”

⁶ At oral argument, Meyer’s counsel focused on Pinoli’s testimony that Mendocino Railway had not performed common carrier public utility services from the time of its purchase of CWR in 2004 until January 1, 2022. Pinoli’s testimony, however, must be taken in context. Although he admitted Mendocino Railway had not initially performed passenger and freight services itself, it provided such services through its affiliated entities. Moreover, established case law makes clear that an entity’s public utility status is dependent on whether its property and/or services are *offered* to the public. (See *Richfield, supra*, 54 Cal.2d at p. 431; see also *Commercial Communications, Inc. v. Public Utilities Com.*, *supra*, 50 Cal.2d at p. 523.) Meyer’s counsel also attempted, without applicable authority, to quantify the *amount* of public use as being determinative of an entity’s common carrier public utility status. Again, this is not the test.

(*Richfield, supra*, 54 Cal.2d at p. 431; see also *Commercial Communications, Inc. v. Public Utilities Com.* (1958) 50 Cal.2d 512, 523 [“The fact that only a restricted portion thereof is eligible to apply for it is not determinative. It is offered to all of the public who may be eligible to apply for it. Dedication to a portion of the public will suffice.”].)

The trial court further determined that Mendocino Railway is not a public utility because it has never actually provided commuter and freight services itself but has relied on subsidiaries. Not only is there no authority cited supporting this proposition, but it is also contrary to established law. Both the California Constitution and the Public Utilities Code recognize a public utility may “either directly or indirectly” provide services to the public. (See Cal. Const., art. XII, § 3; Pub. Util. Code, § 216, subd. (c).) Moreover, our Supreme Court long ago recognized that a public utility retains its status even if it does not directly serve the public. (*Richfield, supra*, 54 Cal.2d at p. 431.)

The trial court also found Mendocino Railway’s failure to provide documentary evidence—contracts with the affiliated companies, ledgers, receipts, payments, etc.—substantiating its commuter and freight services, as a basis for determining it was not a public utility. However, we have found no authority supporting this position.⁷ In any event, Mendocino Railway provided its published tariffs regarding passenger and freight fares from 1993 to 2021. The tariffs demonstrate, in exhaustive detail, the listed services, routes, and fares associated with Mendocino Railway’s passenger and freight services available to the public. Although the tariffs do not prove

⁷ The best evidence rule precludes oral testimony to prove the contents of a writing. (Evid. Code, § 1523.) This rule, also known as the secondary evidence rule, has no application in this case. (See *Doe v. Regents of California* (2018) 28 Cal.App.5th 44, 57.)

that Mendocino Railway actually rendered passenger or freight services, such proof was not required. Rather, what is required is a showing of the public's unconditional right to use the CWR. (See *Story v. Richardson*, *supra*, 186 Cal. at p. 167.)

Based on the applicable law, we conclude Mendocino Railway established by a preponderance of the evidence that it is a common carrier public utility. The administrative decisions cited by the trial court are inapposite and do not compel a contrary conclusion.

For example, the 2006 RRB determination was limited to Mendocino Railway's status as an "employer[]" under the Railroad Retirement Act . . . and the Railroad Unemployment Insurance Act." Nothing in this decision, however, purports to address Mendocino Railway's common carrier status for purposes of the Public Utilities Code.

Similarly, inapposite is the *January 21, 1998 CPUC Decision*. That decision pertained to an application of CWRR, Mendocino Railway's predecessor, to deregulate its excursion service and reduce its commuter services to three days a week in the winter months. Nothing in that decision purported to repudiate CWRR's, let alone Mendocino Railway's, status as a public utility. Quite the contrary. The CPUC acknowledged in its decision that the CWRR provided more than just excursions, stating that "CWRR transports passengers and freight between Fort Bragg and Willits," as well. (*January 21, 1998 CPUC Decision*, *supra*, 78 Cal. P.U.C. 2d 292 at *2.) The CPUC further noted CWRR provided one round trip daily service, 362 days a year from Fort Bragg and Willits, "charg[ing] commutation fares and special intermediate point round-trip-ticket fares." (*Ibid.*) In granting the deregulation application, the CPUC determined: "In *providing its excursion service*, CWRR is not functioning as a public utility." (*Id.* at *8, italics added.)

The CPUC further ordered the proceeding to “remain open to consider CWRR’s request to reduce its commuter service. (*Id.* at *11.) When read in context, the decision stands for the unremarkable position that excursion services are not a public utility function—an issue that is not disputed in this case. (*Cf. City of St. Helena v. Public Utilities Com.* (2004) 119 Cal.App.4th 793, 802–803 [train providing purely sightseeing not a public utility], disapproved on another point in *Gomez v. Superior Court* (2005) 35 Cal.4th 1125, 1140.)

In addition to overemphasizing the importance of the *January 21, 1998 CPUC Decision*, the trial court also ignored two subsequent CPUC decisions.⁸ The first is the *May 21, 1998 CPUC Decision* concerning CWRR’s motion to withdraw its request to reduce commuter service. The decision reiterates that CWRR “transports passengers and freight between Fort Bragg and Willits,” and “serves a few communities” in between. (*May 21, 1998 CPUC Decision, supra*, Cal. P.U.C. Dec. No. 98-05-054 at *1–*2.) The decision makes clear that the railroad’s “passenger service” is “[i]n addition” to the excursion service. (*Ibid.*) The CPUC ultimately granted CWRR’s motion to withdraw its request to reduce commuter service, because “[g]ranting . . . CWRR’s motion” was “in the best interest of passengers which use CWRR’s service.” (*Id.* at *2–*3.)

Additionally, the *August 6, 1998 CPUC Decision* addressing stock issuance similarly affirms CWRR’s common carrier public utility status. As the decision notes, “[b]efore a public utility may issue stocks and stock certificates, it must obtain an order from this Commission authorizing the

⁸ The CPUC staff attorney letter cited by the trial court similarly relies on the *January 21, 1998 CPUC Decision*, without addressing the subsequent CPUC decisions.

issue . . . PU Code Section 818.”⁹ (*August 6, 1998 CPUC Decision, supra*, 81 Cal. P.U.C. 2d 514 at *10–*11.) CWRR made the application as a public utility, and the Commission accepted and adjudicated the application based on CWRR’s status as a public utility. (*Id.* at *12.) In its “findings of fact,” the CPUC specifically found that CWRR “is a common carrier railroad engaged in interstate commerce,” and “operates railroad passenger and freight services between Fort Bragg and Willits, California.” (*Id.* at *17.) In its “conclusions of law,” the CPUC held: “[CWRR] is a public utility within the meaning of Section 216(a) of the PU Code.” In footnote 7 of its decision, the CPUC also held that “[CWRR] is a common carrier, see PU Code Section 211, and is therefore a public utility under California law. PU Code 216(a).” (*Id.* at *10, fn. 7.)

The fact that Mendocino Railway’s predecessor petitioned the CPUC to reduce its commuter service, that the CPUC indicated it would keep the request open after it deregulated the excursion service, and that CPUC subsequently granted the predecessor’s petition to withdraw its request to reduce commuter service is indicative of public utility status, which CWRR and the CPUC assumed it had. (See *Van Hoosear v. Railroad Com. of California* (1920) 184 Cal. 553, 554–555 [water supplier’s status as public utility could be inferred by supplier’s request to Railroad Commission to discontinue service].) Similarly, the fact that Mendocino Railway’s predecessor sought and received permission to issue stock as required by Public Utilities Code section 818 is indicative of its public utility status. (See

⁹Public Utilities Code section 818 provides, in pertinent part, as follows: “No public utility may issue stocks and stock certificates . . . unless, in addition to the other requirements of law it shall first have secured from the commission an order authorizing the issue”

Traber v. Railroad Com. of California (1920) 183 Cal. 304, 307–308 [corporation organized under statute relating to public utilities indicative that service provided was a public utility]; see *Palermo Land & Water Co. v. Railroad Com. of California* (1916) 173 Cal. 380, 384 [submission to have rates fixed by public authority implies service is a public utility].)

We conclude that when viewing the evidence presented through the appropriate legal standards, Mendocino Railway met its burden of proving it is more likely than not a common carrier public utility.¹⁰

D. Legal Requirements for a Taking

Having concluded, Mendocino Railway has satisfied its burden of proving that it is more likely than not a common carrier public utility, we next address whether it has satisfied the statutory requirements for eminent domain. That is, whether it has established by a preponderance of the evidence that “(a) The public interest and necessity require the project. [¶] (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury. [¶] (c) The property sought to be acquired is necessary for the project.” (Code Civ. Proc., § 1240.030; *San Bernardino County Flood Control Dist. v. Grabowski*, *supra*, 205 Cal.App.3d at p. 898.)

Public Interest

¹⁰ We note that prior to oral argument, counsel for Mendocino Railway submitted a decision from the STB from September 26, 2025, which issued a declaratory order confirming Mendocino Railway’s status as a Class III rail carrier subject to its jurisdiction. (*Mendocino Railway – Petition for Declaratory Order*, Docket No. FD 36868, *1 (STB Sept. 26, 2025).) However, this decision is not relevant to our determination that Mendocino Railway has met its burden of establishing its common carrier public utility status under state law.

As discussed, the power of eminent domain may be exercised to acquire property only for a public use. (U.S. Const., 5th & 14th Amends.; Cal. Const. art I § 19.) “It is for the Legislature to determine what shall be deemed a public use for the purposes of eminent domain, and its judgment is binding unless there is no ‘possibility the legislation may be for the welfare of the public.’” (*People ex rel. Department of Public Works v. Superior Court of Merced County* (1968) 68 Cal.2d 206, 210.) “Where the Legislature provides by statute that a use, purpose, object, or function is one for which the power of eminent domain may be exercised, such action is deemed to be a declaration by the Legislature that such use, purpose, object, or function is a public use.” (Code Civ. Proc., §1240.010.)

Public Utilities Code section 611 provides that a railroad corporation, such as Mendocino Railway, “may condemn any property necessary for the construction and maintenance of its railroad.” As stated, Mendocino Railway seeks to acquire the property for the “construction and maintenance of rail facilities” related to Mendocino Railway’s “ongoing and future freight and passenger rail operations.” As the proposed transloading facilities and related rail improvements are incident to the operation and maintenance of the railroad, the proposed taking is deemed a public use. (Code Civ. Proc., § 1240.010; Pub. Util. Code, § 611.) Nevertheless, this legislative declaration does not preclude Meyer from demonstrating that, as a matter of fact, the use sought to be served is a private one. (See Code Civ. Proc., §§ 1250.350, 1250.360; *Los Angeles County v. Anthony* (1964) 224 Cal.App.2d 103, 105.) The burden of proof is on Meyer to show the purported use is not the intended use. (*People ex. rel. Dept. of Public Works v. Garden Grove Farms* (1965) 231 Cal.App.2d 666, 671.)

The trial court implicitly found Meyer had met his burden of proof, ruling that because “the income generated from the Skunk Train excursion service is 90% of [Mendocino Railway]’s revenue” it could “easily find that [Mendocino Railway]’s primary objective is to obtain the property to serve the excursion service.” Based on this finding, the court concluded Mendocino Railway “cannot exercise the power of eminent domain to carry on its private business activities.” Although the court began this section by “[a]ssuming” Mendocino Railway “has public utility status,” for the purpose of its eminent domain analysis, this finding is based on the same rationale for its determination that Mendocino Railway is not a public utility—i.e. that any public use is incidental to its private activities.

This interpretation is contrary to established law. It is the character of the use, not its extent, which determines whether it is public. (*Laguna Drainage Dist. v. Charles Martin Co.* (1904) 144 Cal. 209, 217–218; *People ex rel. Department of Public Works v. Lagiss* (1963) 223 Cal.App.2d 23, 38.) In other words, it is not necessary that a significant portion of the community enjoy the use. (*Laguna Drainage Dist. v. Charles Martin Co.*, at pp. 217–218.) Rather, the law simply requires that all citizens in a given community, who are capable of enjoying the use, have an equal right to do so. (*San Joaquin & Kings River Canal & Irrigation Co. v. Stevenson* (1912) 164 Cal. 221, 229.) The intended use must be the intended object (*Lorenz v. Jacob* (1883) 63 Cal. 73, 74), but an incidental private benefit does not disqualify a use as a public use (*Redevelopment Agency v. Rados Bros.* (2001) 95 Cal.App.4th 309, 315.) Stated differently, the primary purpose cannot be to promote a private enterprise, or to accomplish a purpose the primary nature of which is not public under the pretext that it is. (See, e.g. *County of San Mateo v. Coburn* (1900) 130 Cal. 631, 634 [where “it is clear that it is for a

private purpose, the legislative declaration will be of no avail”]; *San Francisco v. Ross* (1955) 44 Cal.2d 52, 59 [“percentage area to be used for other commercial activity is small enough to be merely an incident to the parking activity and not in itself enough to invalidate the whole plan, nevertheless it aids in characterizing the whole operation as a private one for private gain”].)

At trial, Meyer sought to prove the real purpose of Mendocino Railway’s acquisition of his property was for private purposes—expansion of its excursion services—without any relation to the expansion of its commuter and freight services. In support of this position, Meyer submitted Mendocino Railway’s initial conceptual drawing for the property, which included a station/store, campground, and a long-term recreational vehicle park. That conceptual drawing was ultimately abandoned in the subsequent June 2022 site plan, which depicts maintenance/ repair facilities, a yard, vehicle parking, a rail transloading facility, depot offices, a platform, and a natural habitat preserve.

The trial court gave little weight to the June 2022 site plan because it was not prepared until 18 months after the eminent domain action was filed and it was “considerably different from the original conceptual drawing.” The court also found there was “no evidence of an actual plan for development or funding of the project”, which had the effect of leaving Meyer in the dark in terms of what is being planned for his property.

Assuming, but not holding, that the “late hour evidence of a site plan” was somewhat dubious, and the project description is somewhat general in nature, it does not follow that the property sought to be condemned may not be put to a public use. Beyond an outdated conceptual drawing and mere speculation about Mendocino Railway’s intentions, there is nothing in the

record to force the conclusion that the principal, if not the predominant, use of the property sought to be acquired will be private and not public. Nor is there anything to require us to conclude that because Mendocino Railway has historically derived 90% of its income from its private excursion services that the property sought is merely incidental to the principal public use and is in fact private. (See, e.g., *Stratford Irr. Dist. v. Empire Water Co.* (1943) 58 Cal.App.2d 616, 621–622.) Mendocino Railway’s stated intention is to acquire the property to assist in its commuter and freight services, by improving its facilities. Under such circumstances, the finding of public use has sufficient support in the declaration of the Legislature (see Pub. Util. Code, § 611), which is not overcome by the fact that the acquisition may also incidentally benefit Mendocino Railway’s private business activities. Should the proposed development violate any provisions of the law or of the Constitution by furthering a purely private endeavor—i.e., campgrounds, retail spaces, etc.—Meyer’s remedy is in an action attacking that future development and not in an attempt to defeat a proper acquisition of property for a valid purpose. (See *County of Los Angeles v. Anthony, supra*, 224 Cal.App.2d at p. 107 [acquisition of land for motion picture and television museum was for public good, if contract for construction, operation and maintenance of a building violated law or Constitution, remedy was an action challenging the development not the acquisition of land].)

Location

“Proper location is based on two factors: public good and private injury. Accordingly, the condemnor’s choice is correct or proper unless another site would involve an equal or greater public good and a lesser private injury. A lesser public good can never be counter-balanced by a lesser private injury to equal a more proper location. [Citation.] Nor can equal public good and

equal private injury combine to make the condemnor's choice an improper location." (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 470–471, fn. omitted.)

This limitation essentially involves a comparison of two or more sites. (See *San Diego Gas & Elec. Co. v. Lux Land Co.* (1961) 194 Cal.App.2d 472, 477–478.) The evidence at trial reflects Mendocino undertook an extensive search, investigation, and analysis of several potentially suitable locations for the project. In its search, Mendocino Railway considered various factors and site characteristics required for its project, including, without limitation, size, shape, location, and topography. Generally, the site needs to be relatively level, large enough to accommodate the construction of rail facilities suitable for ongoing and future operations, and located along Mendocino Railway's existing rail line.

After considering six other potential sites, Mendocino Railway determined that the subject property was the only site that met all key site requirements for the project. The subject property is a relatively level parcel of approximately 20 acres located along Mendocino Railway's main rail line near Willits, with good accessibility to a highway. Moreover, the subject property is undeveloped and the property owner, Meyer, at least initially, indicated a willingness to sell.

The trial court nevertheless implicitly concluded this uncontradicted evidence failed because Mendocino Railway presented no analysis regarding the impact the project would have on the residents living directly adjacent to the property. It was certainly well within the court's province to disregard Pinoli's testimony that there would be no real impact on the residents. (See *Hittle v. Santa Barbara County Employees Retirement Assn.* (1985) 39 Cal.3d 374, 396.) We do not purport to second-guess this decision or reweigh the

evidence. (*Washington Mutual Bank v. Blechman* (2007) 157 Cal.App.4th 662, 670.) But whether the facts, when construed most favorably in Meyer's favor, are legally sufficient to establish an unlawful taking, is a question of law we review de novo. (See *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188 [whether facts, when construed most favorably to prevailing party are legally sufficient to constitute civil harassment reviewed de novo]; *DVD Copy Control Assn., Inc. v. Bunner* (2003) 31 Cal.4th 864, 890 [reviewing court independently examines whether facts come within 1st Amend.]; *Smith v. Selma Comm. Hosp.* (2008) 164 Cal.App.4th 1478, 1515 [existence or nonexistence of substantial evidence supporting a jury instruction is question of law].)

Here, the record reflects Mendocino Railway compared numerous locations and concluded Meyer's property was the most suitable. In other words, the selection of the property was proper because there was no other site with an equal or greater public good. (*SFPP v. Burlington Northern & Santa Fe Ry. Co.*, *supra*, 121 Cal.App.4th at pp. 470–471, fn. omitted.) The failure to prove the location of the project was most compatible to the least private injury was not fatal to an otherwise lawful taking. (See *Pasadena v. Stimson* (1891) 91 Cal. 238, 254–255 (*Stimson*) [failure to prove location of sewer was most compatible with greatest public good and least private injury not a basis for nonsuit].) To be sure, the construction and maintenance of railroad-related facilities could impact neighboring property owners. However, without at least *some* proof the location is unnecessarily injurious, no location could ever be approved. (*Cf. Stimson, supra*, 91 Cal. at p. 255–256 [requiring clear and convincing evidence to challenge sewer location proposed by public entity].) Here, other than mere disbelief in Pinoli's testimony that the project would have no impacts, no countervailing evidence was presented.

We conclude, notwithstanding the absence of an impacts analysis, the facts adduced at trial establish that the project is planned and located in the manner most compatible with the greatest public good and least private injury.

Necessity of Property

Finally, “[t]he property sought to be acquired” must be “necessary for the project.” (Code Civ. Proc., § 1240.030, subd. (c).) “This aspect of necessity includes the suitability and usefulness of the property for the public use. [(See *City of Hawthorne v. Peebles* [(1959)] 166 Cal.App.2d 758, 763 (“necessity does not signify impossibility of constructing the improvement . . . without taking the land in question, but merely requires that the land be reasonably suitable and useful for the improvement”)] . . . Thus, evidence on the aspect of necessity covered by subdivision (c) is limited to evidence showing whether the particular property will be suitable and desirable for the construction and use of the proposed public project.” (Cal. Law. Revision Com. com., 19 West’s Ann. Code Civ. Proc. (2025 ed.) foll. § 1240.030, p. 322.)

As discussed in the preceding section, the trial testimony established that there are several key site requirements for construction of the project, including that the property be approximately 20 acres in size, relatively level, located along Mendocino’s rail line, near the City of Willits, and adjacent to a highway. Meyer’s property is the only property identified by Mendocino Railway as having these features and being suitable for the project.

Accordingly, we conclude Mendocino Railway met its burden of establishing by a preponderance of the evidence that it has complied with the statutory requirements for eminent domain.

DISPOSITION

The judgment in favor of Meyer and the related attorney fees award are reversed. The matter is remanded for further proceedings regarding the amount of compensation to be paid to Meyer for the taking of his property. Mendocino Railway is entitled to its costs on appeal.

Langhorne Wilson, J.

WE CONCUR:

Humes, P. J.

Smiley, J.

Mendocino Railway v. Meyer/A168497, A168959

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JAN 26 2026

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

MENDOCINO RAILWAY,

Plaintiff-Appellant,

v.

JOHN MEYER,

Defendant-Respondent.

After a Published Opinion by the Court of Appeal
First Appellate District, Division One
Appellate Court Case No. A168497 & A168959

Appeal From Mendocino County Superior Court
Hon. Jeanine Nadel
Superior Court No. SCUKCVED202074939

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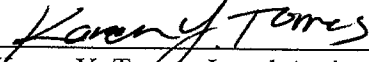
I declare that I am over the age of 18 years, employed in the County of Mendocino, and not a party to the within action; my business address is P.O. Box 419, 200 N. School Street, Room 304, Ukiah, CA 95482.

On January 14, 2026, I served the **PETITION FOR REVIEW** on the interested parties in this action by placing the original true copies thereof, as follows:

SEE ATTACHED SERVICE LIST

<input type="checkbox"/>	By E-SERVICE. Pursuant to California Rules of Court Rule 2.251(c), adopted effective July 1, 2013, I am e-Serving the above-listed document(s) to the electronic service address(es) on the attached Service List and e-Filing the document(s) using one of the court's approved electronic service providers. A true and correct copy of the e-Service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input checked="" type="checkbox"/>	By MAIL. I am readily familiar with this law firm's practice for collection and processing of documents for mailing with the U. S. Postal Service. The above-listed document(s) will be deposited with the U. S. Postal Service on the same day shown on this affidavit, to the addressee(s) on the attached Service List in the ordinary course of business. I am the person who sealed and placed for collection and mailing the above-listed document(s) on this date at Ukiah, California, following ordinary business practices.
<input checked="" type="checkbox"/>	By E-MAIL. I e-mailed above-listed document(s) to the e-mail address(es) of the addressee(s) on the attached Service List. A true and correct copy of the e-mail transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By OVERNIGHT DELIVERY. The above-listed document(s) will be deposited with an Overnight Delivery Service on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and overnight delivery the above-listed document(s) on this date at Ukiah, California, to the addressee(s) on the attached Service List following ordinary business practices. A true and correct copy of the overnight delivery service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By PERSONAL SERVICE. I caused to have hand delivered, the above-listed document(s) to the parties listed in the service list.
<input checked="" type="checkbox"/>	(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 14, 2026, at Ukiah, California.



Karen Y. Torres, Legal Assistant

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