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9/8/2022 12:03 PM  
Superior Court of California  
County of Mendocino

By:   
Dorothy Jess  
Deputy Clerk

**NO FEE REQUIRED PURSUANT  
TO GOVERNMENT CODE  
SECTION 6103**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MENDOCINO

**CITY OF FORT BRAGG,**  
  
Plaintiff,  
  
v.  
  
**MENDOCINO RAILWAY,**  
  
Defendant,  
  
**CALIFORNIA COASTAL COMMISSION,**  
  
Intervenor.

Case No. 21CV00850  
**CALIFORNIA COASTAL  
COMMISSION'S NOTICE OF MOTION  
AND MOTION FOR LEAVE OF COURT  
TO INTERVENE**  
Date: 10/06/2022  
Time: 2:00 p.m.  
Dept: TM  
Judge: The Honorable Clayton L.  
Brennan  
Trial Date:  
Action Filed: October 28, 2021

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:  
NOTICE IS HEREBY GIVEN that on October 6th, 2022, at 2:00 pm., or as soon thereafter as  
the matter may be heard, in Department TM of this court, the California Coastal Commission  
("Commission") will, and hereby does, move the Court for an order granting leave to file a  
complaint in intervention in this action for declaratory and injunctive relief on the side of

1 the Plaintiff City of Fort Bragg (“City”). The Commission’s motion will be made pursuant to the  
2 provisions of section 387, subdivisions (d)(1) and (d)(2), on the grounds that the Commission has  
3 an interest in the litigation and relief sought by the City, and that disposition of the action may as  
4 a practical matter impede the Commission’s ability to protect its interests in implementing and  
5 enforcing the California Coastal Act, which is not and cannot be adequately represented by the  
6 existing parties. In the alternative, the Commission’s motion is further made on the grounds that it  
7 has a direct an immediate interest in the action, its intervention will not enlarge the issues in this  
8 litigation, and its reasons for intervening outweigh any opposition by the current parties.

9 This motion will be based on this notice of motion, the proposed complaint in intervention,  
10 the declaration of Josh Levine, and the memorandum of points and authorities served and filed  
11 herewith, on the papers and records and file herein, and on such oral and documentary evidence  
12 as may be presented at the hearing on the motion.

13 Dated: September 8, 2022

14 Respectfully submitted,

15 ROB BONTA  
16 Attorney General of California  
17 DAVID G. ALDERSON  
18 Supervising Deputy Attorney General

19 

20 PATRICK TUCK  
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***NO FEE REQUIRED PURSUANT  
TO GOVERNMENT CODE  
SECTION 6103***

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF MENDOCINO

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12  
13 **CITY OF FORT BRAGG,**

Plaintiff,

14  
15 v.

16 **MENDOCINO RAILWAY,**

Defendant,

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18  
19 **CALIFORNIA COASTAL COMMISSION,**

Intervenor.  
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22

Case No. 21CV00850

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
CALIFORNIA COASTAL  
COMMISSION'S MOTION TO  
INTERVENE**

Date:

Time:

Dept:

Judge: The Honorable Clayton L.  
Brennan

Trial Date:

Action Filed: October 28, 2021

23 **INTRODUCTION**

24 Pursuant to Code of Civil Procedure section 387, subdivision (d), the California Coastal  
25 Commission ("Commission") moves this Court for an order granting the Commission leave to  
26 intervene in this matter on the side of Plaintiff City of Fort Bragg ("City"). In this action, the City  
27 seeks an injunction ordering that Defendant Mendocino Railway ("Railway") must comply with  
28

1 the City’s ordinances, regulations, and authority. The City also seeks a judicial declaration that  
2 the Railway is not exempt from the City’s laws and authority.

3 The Commission is the state agency responsible for administering the California Coastal  
4 Act (“Coastal Act”). Because the City implements the permitting requirements of the Coastal Act  
5 via the City’s Local Coastal Program, the Commission has a strong interest in the relief sought by  
6 the City. In particular, the Commission relies on the City’s ability and authority to require coastal  
7 development permits in the coastal zone of the City pursuant to its LCP. Thus, if allowed to  
8 intervene on the side of the City, the Commission will similarly seek a judicial declaration that  
9 the development activities of the Railway in the coastal zone of the City are properly subject to  
10 the City’s LCP permitting requirements, as well as any applicable provisions of the Coastal Act.  
11 Based on the Railway’s ongoing unpermitted development activities in the coastal zone, the  
12 Commission will also seek injunctive relief and civil penalties related to the Railway’s violations  
13 of the Coastal Act.

14 This case is still in its infancy, with the Railway filing its responsive pleading just over two  
15 months prior to the filing of this motion, and the Court just set trial for June 2023. The  
16 Commission’s intervention will not delay this case in any way and will not enlarge the issues at  
17 hand. Intervention by the Commission should be granted.

### 18 **BACKGROUND**

19 The California Coastal Commission is a state agency created by the Coastal Act (Pub.  
20 Resources Code, § 30000-30900). The Commission has the authority and responsibility, pursuant  
21 to Public Resources Code section 30330, to take any action necessary to carry out the provisions  
22 of the Coastal Act, including the filing of lawsuits. (See Pub. Resources Code, § 30334, subd.  
23 (b).) The Commission is charged with administering the Coastal Act and its policies, including a  
24 permitting system for any proposed development in the “coastal zone.” (Pub. Resources Code, §  
25 30600.) The Commission is the original permitting authority, but local governments with  
26 territory within the coastal zone are required to develop Local Coastal Programs (LCPs) to  
27 implement the Coastal Act. Once the Commission certifies the local government’s LCP, the local  
28 government reviews development applications for consistency with the LCP and issues permits

1 for development in the coastal zone. (See Pub. Resources Code, §§ 30600, subd. (d), 30500, and  
2 30519.) The Commission nonetheless may take action to enforce any requirements of a certified  
3 LCP, particularly when the local government requests that the Commission do so. (See Pub.  
4 Resources Code, § 30810.)

5 The Commission has certified the City of Fort Bragg’s LCP, and the Commission contends  
6 that a number of the Railway’s land use activities described in the City’s complaint, such as  
7 replacing the roundhouse, lie within the coastal zone of the City. (See Complaint, at ¶ 12; see also  
8 Coastal Commission Notice of Violation Letter, issued August 10, 2022 (“Notice of Violation”),  
9 attached as Exhibit A to the Declaration of Josh Levine (“Levine Decl.”), at pp. 2-3.) Thus, the  
10 Commission contends that the Railway’s development activities in the coastal zone are subject to  
11 the permitting requirements in the City’s LCP. (Notice of Violation, at pp. 2-4.) Because the  
12 Commission further contends that the Railway has undertaken development activities in the  
13 coastal zone without applying for or obtaining a coastal development permit from the City, the  
14 Railway is in violation of the City’s LCP and the Coastal Act, and is subject to an enforcement  
15 action. (See Notice of Violation, at p. 2.) In July 2022, the City requested that the Commission  
16 assume primary responsibility for enforcing the Railway’s violations of the Coastal Act and the  
17 City’s LCP with respect to the Railway’s activities in the coastal zone, and the Commission has  
18 agreed to do so, recently issuing the Notice of Violation to the Railway discussed above. (See  
19 Levine Decl., at ¶ 2.)

20 However, the Railway continues to allege that its status as a public utility railroad regulated  
21 by the California Public Utilities Commission and the federal Surface Transportation Board  
22 preempts “environmental pre-clearance review and land-use permitting,” under state and federal  
23 law. (Railway’s Verified Answer, ¶¶ 12, 15.) The Commission disputes the Railway’s claim to  
24 preemption from the permit requirements of the City’s LCP and the Coastal Act, and has a strong  
25 interest in a judicial declaration settling the issue of the Railway’s claimed preemption once and  
26 for all.

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**RELIEF SOUGHT BY THE CITY AND THE COMMISSION**

In its complaint, the City seeks a declaratory judgment that the Railway is not a public utility, so as to foreclose the argument that the Railway’s purported regulation by the CPUC preempts any local regulation. The City additionally seeks injunctive relief requiring the Railway to comply with the City’s codes, regulations, jurisdiction, and authority for any development it undertakes in the City going forward. (See Complaint, Prayer for Relief, ¶¶ 1-2.)

Similarly, the Commission’s proposed complaint in intervention seeks a declaration that the Railway’s development activities in the coastal zone of the City are subject to the Coastal Act and the City’s LCP. (Proposed Complaint in Intervention, filed herewith, Prayer for Relief ¶ 1.) The Commission’s complaint further seeks a declaration that the Commission’s and City’s regulation of the Railway’s development activities and their enforcement of those requirements are not preempted under state or federal law. (Proposed Complaint in Intervention, Prayer for Relief ¶ 2.) Finally, the Commission seeks civil penalties related to the Railway’s violations of the Coastal Act, exemplary damages, and an injunction ordering the Railway to cease all unpermitted development in the coastal zone of the City and apply for coastal development permits pursuant to the City’s LCP. (Proposed Complaint in Intervention, Prayer for Relief ¶¶ 3-5.)

**ARGUMENT**

**I. THE COMMISSION IS A PROPER INTERVENOR.**

**A. The Commission fulfills the requirements for mandatory intervention.**

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

1           The Commission readily meets the requirements for mandatory intervention. First, there is  
2 no question that the Commission has a strong interest in the subject of this litigation. The  
3 Commission believes that many, if not all, of the Railway's activities complained of by the City  
4 lie within the coastal zone of the City, and are therefore subject to the Commission's authority  
5 under the Coastal Act. (See Complaint, at ¶ 12; see also Notice of Violation, at pp. 2-3.) The  
6 Commission believes the Railway has undertaken development in the coastal zone of the City in  
7 violation of the City's LCP and the Coastal Act. (See Notice of Violation, at pp. 2-3.) The City  
8 has asked the Commission to be the primary enforcer of the LCP with respect to the Railway's  
9 development activities in the coastal zone of the City. (Levine Decl., ¶ 2.) The Commission is the  
10 statewide entity responsible for ensuring compliance with the Coastal Act, and the City's LCP is  
11 designed to implement the Coastal Act's coastal zone permitting requirements. Thus, the  
12 Commission has a strong interest in enforcing the LCP and the Coastal Act here, and in defending  
13 those laws from the Railway's invalid and unsupported preemption claims.

14           Second, a ruling that the Railway's development activities in the coastal zone of the City  
15 are exempt from requirements in the City's LCP and the Coastal Act would impair the  
16 Commission's ability to enforce the City's LCP and the Coastal Act. Such a ruling would also  
17 threaten coastal resources, considering the City's LCP and the Coastal Act are designed to protect  
18 the coast. (See Notice of Violation, at pp. 1-2.) .

19           Third, the City cannot adequately represent the Commission's interests. The Commission  
20 is the statewide entity charged with implementing the whole of the Coastal Act and oversight of  
21 local governments' issuance of coastal development permits. Without the Commission's  
22 presence in this case, the City may not achieve clarity as to its authority to require coastal  
23 development permits from the Railway under its LCP and the Coastal Act. Additionally, if the  
24 Commission is not permitted to intervene, the Commission would not achieve clarity regarding its  
25 ability to enforce its current Notice of Violation against the Railway, as well as its ability to  
26 support the City in enforcing the applicable provisions of its LCP.

27           Finally, the Commission has significantly more expertise in the implementation and  
28 enforcement of the Coastal Act than the City. Consequently, the Commission's intervention is

1 necessary to ensure that the State’s interests in managing and protecting the coastal zone are  
2 adequately safeguarded from unpermitted development along the coast.

3 **B. The Commission should be granted permissive intervention.**

4 Alternatively, the Court should grant permissive intervention to the Commission under  
5 Code of Civil Procedure section 387, subdivision (d)(2). “Permissive intervention is appropriate  
6 if: ‘(1) the proper procedures have been followed; (2) the nonparty has a direct and immediate  
7 interest in the action; (3) the intervention will not enlarge the issues in the litigation; and (4) the  
8 reasons for the intervention outweigh any opposition by the parties presently in the action.’”  
9 (*Carlsbad Police Officers Association v. City of Carlsbad* (2020) 49 Cal.App.5th 135, 148,  
10 quoting *Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 386.) In *Pappas v. State*  
11 *Coastal Conservancy* (2021) 73 Cal.App.5th 310, the Second District Court of Appeal upheld a  
12 lower court’s ruling permitting intervention under section 387, subdivision (d)(2), finding that the  
13 trial court’s ruling “adhered to the principle that courts should construe section 387 liberally in  
14 favor of intervention.” (*Pappas*, at pp. 318-319, citing *City of Malibu v. California Coastal*  
15 *Com.* (2005) 128 Cal.App.4th 897, 906.) The court “must balance the interests of those affected  
16 by a judgment against the interests of the original parties in pursuing their case unburdened by  
17 others.” (*South Coast Air Quality Management District v. City of Los Angeles* (2021) 71  
18 Cal.App.5th 314, 320, citing *City and County of San Francisco v. State* (2005) 128 Cal.App.4th  
19 1030, 1036.)

20 Permissive intervention is appropriate here. First, the Commission has followed the proper  
21 procedures of Code of Civil Procedure section 387 in seeking leave to intervene in a timely  
22 fashion, just over two months after the Railway filed its Answer and finally put the case at issue,  
23 and just a few days after this Court set the case for trial in June 2023.

24 Second, the Commission has a direct and immediate interest in the lawsuit, as explained  
25 above in Section I.A.

26 Third, intervention will not enlarge the issues raised by the original parties. The  
27 Commission and the City are aligned in their prosecution of this action and in seeking declaratory  
28 relief as to the merits, or lack thereof, of the Railway’s preemption arguments, as well as the



1 applicability of the permitting and enforcement requirements of the Coastal Act and the City’s  
2 LCP to the Railway’s development actions within the coastal zone.

3 Finally, the Commission’s reasons for intervening outweigh any potential opposition by the  
4 Railway. Because the Commission and the Railway dispute the applicability of the City’s LCP  
5 and the Coastal Act to a number of the Railway’s development activities (Notice of Violation, at  
6 pp. 2-3), the rights of all parties can only be adequately addressed with the Commission’s  
7 involvement in this action. The Court should grant the Commission’s motion to intervene here.

8 **C. Intervention is timely.**

9 There is no statutory deadline to file a motion to intervene. (*Noya v. A.W. Coulter Trucking*  
10 (2006) 143 Cal.App.4th 838, 842.) “Timeliness is determined by the totality of the circumstances  
11 facing would-be intervenors, with a focus on three primary factors: ‘(1) the stage of the  
12 proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the  
13 reason for the delay.’” (*Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560,  
14 574, quoting *Smith v. Los Angeles Unified School District* (9th Cir. 2016) 830 F.3d 843, 854.)

15 Although the instant lawsuit was filed in October 2021, the Court only denied the  
16 Railway’s demurrer this past April, the Court of Appeal denied the Railway’s appeal petition less  
17 than three months ago, and the California Supreme Court denied the Railway’s petition for review  
18 just over two months ago, on June 23, 2022. The Railway then filed its answer to the City’s  
19 complaint the next day, on June 24, 2022, and the court just set trial for June 2023. This  
20 proceeding is still in its earliest stages; no prejudice will be incurred by the other parties by the  
21 Commission’s intervention just a couple of months after the Railway filed its Answer. Moreover,  
22 the City only requested that the Commission assume primary enforcement authority related to the  
23 Railway’s unpermitted development activities in the coastal zone of the City less than two months  
24 ago, in July 2022, and that is when that the Commission became aware that its interests may not  
25 “be protected adequately by the parties,” and was compelled to seek to intervene. (Levine Decl, ¶  
26 2; *Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 575.) For all of these  
27 reasons, this motion is timely.  
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**CONCLUSION**

For the foregoing reasons, the Commission requests that the Court grant the Commission’s motion to intervene. A copy of the Commission’s proposed Complaint in Intervention is filed herewith.

Dated: September 8, 2022

Respectfully submitted,

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DAVID G. ALDERSON  
Supervising Deputy Attorney General



PATRICK TUCK  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MENDOCINO

13 **CITY OF FORT BRAGG,**

14 Plaintiff,

15 v.

17 **MENDOCINO RAILWAY,**

18 Defendant,

20 **CALIFORNIA COASTAL COMMISSION,**

21 Intervenor.

Case No. 21CV00850

**[PROPOSED] COMPLAINT IN  
INTERVENTION**

Date:

Time:

Dept:

Judge: The Honorable Clayton L  
Brennan

Trial Date:

Action Filed: October 18, 2021

23  
24 **COMPLAINT IN INTERVENTION**

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

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

5 The Commission alleges as follows:

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

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

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

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

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

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

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

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

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



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

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

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

12 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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



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

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

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

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

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

17 **PRAYER FOR RELIEF**

18 Wherefore, the Commission prays for judgment as follows:

19 On the First Cause of Action:

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

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

1           On the Second Cause of Action:

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

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

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

15           On All Causes of Action:


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

18           7.           For the Court to award such other and further relief as it may deem necessary and  
19 proper.  
20

21 Dated: September 8, 2022

Respectfully submitted,

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

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

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Attorney General of California  
2 DAVID G. ALDERSON  
Supervising Deputy Attorney General  
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4 State Bar No. 305718  
1515 Clay Street, 20th Floor  
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6 Telephone: (510) 879-1006  
Fax: (510) 622-2270  
7 E-mail: Patrick.Tuck@doj.ca.gov  
8 *Attorneys for Intervenor*  
*California Coastal Commission*

***NO FEE REQUIRED PURSUANT  
TO GOVERNMENT CODE  
SECTION 6103***

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF MENDOCINO

11  
12  
13 **CITY OF FORT BRAGG,**

14 Plaintiff,

15 v.

16 **MENDOCINO RAILWAY,**

17 Defendant,

18  
19 **CALIFORNIA COASTAL COMMISSION,**

20 Intervenor.  
21  
22

Case No. 21CV00850

**DECLARATION OF JOSH LEVINE IN  
SUPPORT OF CALIFORNIA COASTAL  
COMMISSION'S MOTION TO  
INTERVENE**

Date:

Time:

Dept:

Judge: The Honorable Clayton L.  
Brennan

Trial Date:

Action Filed: October 28, 2021

23 **DECLARATION OF JOSH LEVINE**

24 I, Josh Levine, declare as follows:

25 1. I am the North Coast District Enforcement Analyst for the California Coastal  
26 Commission ("Coastal Commission"). My duties as an Enforcement Analyst for the Coastal  
27 Commission include review and investigation of complaints regarding unpermitted development  
28

1 and other land use activities within the coastal zone and issuance of Notices of Violation and  
2 other enforcement notices related to these unpermitted activities on behalf of the Coastal  
3 Commission.


4 2. On July 12, 2022, I participated in a phone call with staff of the City of Fort Bragg  
5 (“City”) wherein the City staff requested that the Coastal Commission assume primary  
6 enforcement responsibility related to Plaintiff Mendocino Railway’s unpermitted development  
7 activities in the coastal zone of the City of Fort Bragg.

8 3. On August 10, 2022, I prepared, signed, and mailed a copy of a Notice of Violation  
9 letter (File Number V-1-22-0070) to Christopher G. Hart at Mendocino Railway, on behalf of the  
10 Coastal Commission. A true and correct copy of that Notice of Violation letter is attached hereto  
11 as Exhibit A.

12 4. I have confirmed that four of the parcels cited in the Notice of Violation letter (APNs  
13 008-053-29, 008-054-16, 008-053-34, and 008-151-23) are owned by Mendocino Railway and  
14 are located within the coastal zone, pursuant to section 30103 of the California Coastal Act of  
15 1976. I am also informed and believe that the other parcel referenced in the Notice of Violation  
16 letter (APN 008-151-26) was recently acquired by Mendocino Railway from Georgia-Pacific  
17 LLC, and is also located in the coastal zone.

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

20 Executed this 6<sup>th</sup> day of September, 2022, in Arcata, California.

21  
22 

23 Josh Levine  
24  
25  
26  
27  
28

**CALIFORNIA COASTAL COMMISSION**

1385 8th Street, Suite 130  
Arcata, CA 95521  
FAX (707) 826-8960  
TDD (707) 826-8950



August 10, 2022

Christopher G. Hart  
Mendocino Railway  
100 West Laurel St  
Fort Bragg, CA 95437

Violation File Number: V-1-22-0070 - Mendocino Railway Roundhouse  
Property Location: 100 West Laurel Street, Fort Bragg, CA 95437;  
Mendocino County Assessor's Parcel Numbers  
("APNs") 008-053-29, 008-054-16, 008-020-18, 008-  
053-34, 008-151-26, and 008-151-23.  
Violation<sup>1</sup> description: Unpermitted development, that includes, but is not  
limited to, the replacement of the "Roundhouse", the  
replacement of a structure located off of West Alder  
Street with an added concrete patio, the replacement  
of a storage shed allegedly used to store rail bikes, a  
lot line adjustment, and restricting public parking.

Dear Mr. Hart:

The California Coastal Act<sup>2</sup> was enacted by the State Legislature in 1976 to provide long-term protection of California's coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats; protect natural landforms; protect scenic landscapes and views of the sea;

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<sup>1</sup> Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or the City of Fort Bragg LCP that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development. Please further note that "violation" as used in this letter refers to alleged violations of the Coastal Act and/or the City of Fort Bragg LCP, as determined by Commission staff.

<sup>2</sup> The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

August 10, 2022

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protect against loss of life and property from coastal hazards; protect and enhance public recreation opportunities; and, provide maximum public access to the sea.

The Coastal Act establishes a permitting system for proposed development, as that term is defined in the act (see below), in the “Coastal Zone.” The Commission is the original permitting authority, but local governments with territory within the Coastal Zone are required to develop Local Coastal Programs (“LCP”s) to implement the Act, and once the Commission certifies a local government’s LCP, permitting and enforcement authority in the area covered by that LCP is generally delegated to that local government. Although the property at issue here is within the City of Fort Bragg’s LCP jurisdiction, the Commission can assume primary responsibility for enforcement of any Coastal Act and LCP violations at issue in this case pursuant to Section 30810(a) of the Coastal Act, which provides that the Commission may issue an order to enforce the requirements of a certified LCP in the event that the local government, in this case the City of Fort Bragg (“the City”), requests the Commission to assist with or assume primary responsibility for issuing such order. During a July 12, 2022, phone call with City staff, Commission staff were asked to assume primary enforcement responsibility for this case.

Commission staff was notified on July 7, 2022, and on August 4, 2022, of unpermitted development occurring on APNs 008-053-29, 008-054-16, 008-020-18, 008-053-34, 008-151-26, and 008-151-23 (“subject property”), including, the replacement of the entire roof and the windows/walls of the structure known as the “Roundhouse,” which constitutes the replacement of the entire structure. The potential impacts of the unpermitted development include the disturbance and removal of toxic construction materials that may have been used in the Roundhouse’s original structure. These materials have the potential - especially during their disturbance/resuspension, deconstruction, temporary storage, removal, and disposal - to impact hydrologic and biologic coastal resources.

Commission staff became aware of further unpermitted development during our investigation of the Roundhouse replacement. Unpermitted development including, but not limited to, the replacement of a structure off of West Alder Street, on APN 008-151-26, including completely new interior, wiring, plumbing, flooring, roof, windows, fencing, and a concrete slab partially enclosed patio, imposing new restrictions on parking on the subject property that has historically been available to the public, and the replacement of a shed on APN 008-054-16, which reportedly is being used to store rail bikes. Additionally, the Lot Line Adjustment (“LLA”) that Commission staff first addressed in our December 21, 2018 letter to the City, which letter was then sent to you as an attachment to Commission staff’s June 11, 2019 letter to Anthony LaRocca as counsel for Mendocino Railway (“MR”), remains unpermitted development.

Section 30600(a) of the Coastal Act and Section 17.71.045(B) of the City of Fort Bragg’s certified LCP require that any development occurring within the Coastal Zone

August 10, 2022

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must first be authorized by, and must be undertaken in accordance with, an approved coastal development permit (“CDP”).

Section 30106 of the Coastal Act and Section 17.71.045(B) of the City’s certified LCP defines “development” as:

*“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of materials; change in the density or intensity of use of land, ... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z’berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).*

Commission staff have sent several letters to MR, including letters dated June 11, 2019, November 2, 2020, and February 3, 2021. In our November 2, 2020, letter we stated that:

“We also remain unconvinced that Mendocino Railway’s (“MR”) rail holdings are necessarily still appropriately considered to be a part of the interstate rail network for purposes of the ICCTA, and thus believe that the proposed development plans at the former Georgia-Pacific Mill site may be outside the jurisdiction of the Surface Transportation Board (“STB”) pursuant to 49 U.S.C. § 10501(a). Finally, even if MR’s holdings were determined to be subject to STB jurisdiction, we believe that certain portions of the proposed development would also be subject to federal consistency review by the Commission.”<sup>3</sup>

Furthermore, as we have also mentioned elsewhere, even if MR’s rail operations are still subject to STB’s jurisdiction, that jurisdiction does not extend to non-rail-related activities merely because they are conducted by an organization that also operates rail lines. Thus, any such activities would remain subject to the Coastal Act’s permitting requirements, in addition to potentially being subject to the Commission’s federal consistency review authority.

We request a full description of all development that has occurred on the subject property without a CDP. Please include all staging areas and construction debris

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<sup>3</sup> Jessica Reed letter to Mendocino Railway dated November 2, 2020 p.1.

August 10, 2022

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removal plans in your description. Depending on the extent, type and nature of the unpermitted development that has occurred, resolution may require that you obtain authorization to remove, and then do remove, the unpermitted development or that you obtain authorization of the development “after-the-fact,” as well as compliance with other provisions of the Coastal Act, including potential requirements for mitigation and the payment of penalties. **In order to ensure no further harm to coastal resources and to avoid the potential for continuing accrual of penalties, please cease all unpermitted development immediately and respond by August 26, 2022.**

While we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address violations of the Coastal Act including the following:

Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who undertakes development in violation of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who “knowingly and intentionally” performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 per violation for each day in which each violation persists.

Sections 30821 and 30821.3 authorize the Commission to impose administrative civil penalties in an amount of up to \$11,250 per violation of the Coastal Act, for each day that each violation persists. The administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.

Finally, Section 30812 authorizes the Executive Director to record a Notice of Violation against any property determined to have been developed in violation of the Coastal Act. If the Executive Director chooses to pursue that course, you will first be given notice of the Executive Director's intent to record such a notice, and you will have the opportunity to object and to provide evidence to the Commission at a public hearing as to why such a notice of violation should not be recorded. If a notice of violation is ultimately recorded against your property, it will serve as notice of the violation to all successors in interest in that property.

I look forward to hearing from you by **Friday, August 26, 2022**. If you have any additional questions or concerns, please contact me at (707) 826-8950, by email at [joshua.levine@coastal.ca.gov](mailto:joshua.levine@coastal.ca.gov), or by writing to the address in the letterhead above.



August 10, 2022

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Sincerely,

A handwritten signature in black ink, appearing to read "JL", with a long horizontal flourish extending to the right.

Josh Levine

North Coast District Enforcement Analyst

Cc: Lisa Haage, Chief of Enforcement  
Aaron McLendon, Deputy Chief of Enforcement  
Alex Helperin, Assistant General Counsel  
Melissa Kraemer, North Coast District Manager  
Sarah McCormick, City of Fort Bragg, Assistant to the City Manager

**DECLARATION OF ELECTRONIC SERVICE VIA  
ONE LEGAL**

Case Name: *City of Fort Bragg v. Mendocino Railway*  
No.: **21CV00850**

I declare:

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

On **September 8, 2022**, I electronically served the attached

- **CALIFORNIA COASTAL COMMISSION'S NOTICE OF MOTION AND MOTION FOR LEAVE OF COURT TO INTERVENE**
- **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CALIFORNIA COASTAL COMMISSION'S MOTION TO INTERVENE**
- **[PROPOSED] COMPLAINT IN INTERVENTION**
- **DECLARATION OF JOSH LEVINE IN SUPPORT OF CALIFORNIA COASTAL COMMISSION'S MOTION TO INTERVENE (with Exhibit A – Notice of Violation to his Declaration)**

BY ELECTRONIC TRANSMISSION—ONE 00LEGAL, addressed as follows:

KRISTA MACNEVIN JEE JONES MAYER

[kmj@jones-mayer.com](mailto:kmj@jones-mayer.com)

*Attorneys for Plaintiff City of Fort Bragg*

Paul J. Beard II

[paul.beard@fisherbroyles.com](mailto:paul.beard@fisherbroyles.com)

*Attorneys for Defendant Mendocino Railway*

When electronically filing the above entitled document with One Legal, I simultaneously opted for electronic service of the same on Ms. Jee and Mr. Beard at the email above.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **September 8, 2022**, at Oakland, California.

Najaree Hayfron

Declarant



Signature