Case Nos. A144268 and 145176

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FIVE

SURFRIDER FOUNDATION,

Plaintiff and Respondent,

v.

MARTINS BEACH 1, LLC, et al.

Defendant and Appellant.

Appeal from a Judgment Entered in Favor of Plaintiff
San Mateo County Superior Court
Case No. CIV520336
Honorable Barbara J. Mallach, Judge

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF BY COASTWALK CALIFORNIA IN SUPPORT OF RESPONDENT

Deborah A. Sivas, CA Bar No. 135446
Alicia E. Thesing, CA Bar No. 211751
Elizabeth Jones, CA Student Bar No. 36640
Elizabeth M. Vissers, CA Student Bar No. 39537
ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305-8610
Telephone: (650) 723-0325
Facsimile: (650) 723-4426

Attorneys for Amici-Applicant
Coastwalk California

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no entities or persons that must be listed in this certificate under Rule 8.208, California Rules of Court.

Dated: July 5, 2016

Respectfully submitted,

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at
Stanford Law School

By: 

Deborah A. Sivas

Attorneys for Amici-Applicant
Coastwalk California

APPLICATION FOR LEAVE TO FILE

Pursuant to California Rule of Court 8.200(c), Coastwalk California respectfully request permission to file the attached brief of *Amici Curiae* in support of Respondent Surfrider Foundation. No party or counsel of record authored the proposed brief, in whole or in part, or contributed funds for the writing of the proposed brief. This application is timely made within 14 days of the filing of Appellant's reply brief on the merits.

INTERESTS OF POTENTIAL *AMICUS CURIAE*

Coastwalk California is a non-profit organization, founded in 1983 by grassroots supporters of coastal public access, coastal preservation, and a statewide California Coastal Trail and subsequently expanded to a broad alliance of coastal stakeholders calling itself the California Coastal Trail Association. Coastwalk's mission is to ensure the right of all people to reach and responsibly enjoy the California coast, and it seeks to realize the vision of "a well-stewarded California coast, highly prized as an irreplaceable commons, open to all." Working toward completion of the California Coastal Trail, Coastwalk helps to ensure public access to the coast and to encourage all kinds of people to get outside and enjoy our coast – hikers, bikers, skaters,

walkers, equestrians, old, young, and in between – people from every community and all walks of life. The interests of Coastwalk and its supporters will be adversely affected by a ruling that Appellants do not need to obtain a coastal development permit before cutting off historic access to the sandy beach public tidelands adjacent to their property.

THE PROPOSED BRIEF

Applicants' proposed brief will assist the Court by more fully addressing the background context in which this case arises. The parties have not substantially briefed the historic and continuing significance of public access to California's 1,100-mile iconic coastline. Under its common law public trust doctrine, the State holds coastal tidelands in trust for the people of California, and universal access to these public trust lands is enshrined in both the California Constitution and the California Coastal Act. In the absence of the Coastal Act's mandate that a coastal landowner proposing new development or a change of use seek and obtain a development permit, meaningful public access to the coast will slowly but surely be lost, one parcel at a time.

Protection of access to public tidelands is increasingly important as coastal property prices soar and the "rich and

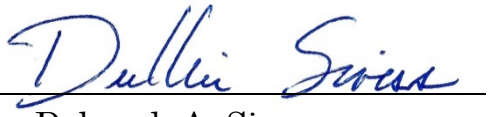
famous" seek to barricade their oceanfront property from the rest of humanity. Civil rights attorney Robert Garcia explains what is at stake: "Beaches are a democratic commons that bring people together as equals. People swim and splash in the waves, people-watch, surf, wile away the afternoon under an umbrella, scamper between tide pools, or gaze off into the sunset. Public access to the beach is integral to democracy and equality." Robert Garcia and Erica Flores Baltodano, Free the Beach! Public Access, Equal Justice, and the California Coast, 2 Stanford J. Civ. Rights and Civ. Liberties 143, 145 (2005). By seeking to undermine the State's key mechanism – coastal development permits – for protecting the public's right to use and enjoy the shoreline, Appellants would steer us further down the path of economic inequity, as those few who can afford to build mansions on the coastal uplands and bluffs effectively privatize the tidelands below and wall off the Pacific Ocean from the millions of Californians yearning for a day at the beach or the tide pools.

As Applicant's *amicus curaie* brief shows, the simple requirement that Appellants seek and obtain a coastal development permit before being allowed to extinguish historic public access to the adjacent coastline does not dictate any

particular outcome in this instance. It merely ensures that the State properly considers and potentially mitigates the impacts of Appellants' proposed course of action on the people's longstanding antecedent right to use and enjoy California's public tidelands.

Dated: July 5, 2016 Respectfully submitted,

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

By: 
Deborah A. Sivas

Attorneys for Amici Applicant
Coastwalk California

Case Nos. A144268 and 145176

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FIVE

SURFRIDER FOUNDATION,

Plaintiff and Respondent,

v.

MARTINS BEACH 1, LLC, et al.

Defendant and Appellant.

Appeal from a Judgment Entered in Favor of Plaintiff
San Mateo County Superior Court
Case No. CIV520336
Honorable Barbara J. Mallach, Judge

BRIEF OF AMICI CURIAE COASTWALK CALIFORNIA IN SUPPORT OF RESPONDENT

Deborah A. Sivas, CA Bar No. 135446
Alicia E. Thesing, CA Bar No. 211751
Elizabeth Jones, CA Student Bar No. 36640
Elizabeth M. Vissers, CA Student Bar No. 39537
ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305-8610
Telephone: (650) 723-0325
Facsimile: (650) 723-4426

Attorneys for Applicant-Amici
Coastwalk California

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION AND SUMMARY OF ARGUMENT

California's 1,100-mile coastline is a defining feature of the state and an incomparable public treasure. The coast provides incalculable recreational, aesthetic, ecological, cultural, spiritual, and economic value to the nearly 40 million people who live here. Although less than half of the shoreline is held in public ownership, all of the wet sand beach – the land seaward of the "mean high tide" line – from Oregon to Mexico belongs to the people of California, held in trust by the State. Without meaningful access to these trust lands, however, the public cannot enjoy the benefits of California's spectacular natural heritage.

For this reason, public access to the coast is deeply enshrined in California law. Dating back to California statehood in 1850, the common law public trust doctrine has always recognized the government's inalienable fiduciary obligation to protect and preserve coastal tidelands for use by the people of California and future generations. Likewise, the California Constitution, as ratified in 1879, fully protects public access to these trust lands and directed the Legislature to enact laws necessary to preserve such access. For coastal tidelands, the

California Coastal Act of 1976 – first embedded in law by a 1972 voter initiative – is the centerpiece of the Legislature's response to this constitutional directive. It places a high priority on maximizing public access to, and public recreational opportunities along, the California coast. Coastal landowners hold their property subject to these long-established background principles.

Protecting public access to coastal amenities is more important today than ever before. As the price of coastal property soars, wealthy new landowners have tried to cut off historic public rights-of-way to the ocean in the hope of walling in a piece of coastline for their own private paradise. The result is that millions of Californians who live within an hour of the coastline are increasingly thwarted in their efforts to enjoy a day at the beach. The Coastal Act's requirement that those proposing new coastal development or changes in coastal property uses first seek and obtain a coastal development permit provides a critical check on this phenomenon, allowing the State to evaluate and mitigate impacts on public access. Without this important check, California cannot ensure that the ocean and the coastal tidelines remain open to all people, regardless of their means.

ARGUMENT

Standing at the edge of the Pacific after a cross-continental journey, author and travel writer Robert Lewis Stevenson captured the unparalleled splendor of the California coast:

> The waves come in slowly, vast and green, curve their translucent necks, and burst with a surprising uproar, that runs, waxing and waning, up and down the long key-board of the beach. The foam of these great ruins mounts in an instant to the ridge of the sand glacis, swiftly fleets back again, and is met and buried by the next breaker. . . . On no other coast that I know shall you enjoy, in calm, sunny weather, such a spectacle of Ocean's greatness, such beauty of changing colour, or such degrees of thunder in the sound.

Robert Louis Stevenson, Across the Plains, Chap. 2 (1892). From the earliest days of statehood, California has sought to protect the public's access to this natural heritage for all people, and for the generations to come.

I. The Public Trust Doctrine Is a Fundamental Background Principle of California Property Law that Applies to All Coastal Land.

With its admission to the union in 1850, the State of California acquired title to "all navigable waterways and the lands lying beneath them 'as trustee of a public trust for the benefit of the people.'" National Audubon Society v. Superior Court, 33 Cal. 3d 419, 434 (1983). Tracing its origins in Roman,

English, Spanish, and Mexican law,[1] the public trust doctrine extends to all coastal tidelands between the mean daily high and low tides – that is, those lands "covered and uncovered successively by the ebb and flow of the tides," Marks v. Whitney, 6 Cal. 3d 251, 257-58 (1971) – as well as to all submerged coastal lands continuously covered by water, out to three miles. See Zack's, Inc. v. City of Sausalito, 165 Cal. App. 4th 1163, 1175, n.4 (2008) (explaining difference between lands subject to daily tides and submerged lands); Cal. Civ. Code § 670 (state owns all land below ordinary high-water mark); People v. California Fish Co., 166 Cal. 576, 584 (1913).[2]

The courts have recognized that the trust tidelands "are so particularly the gifts of nature's bounty that they ought to be reserved for the whole of the populace" and that public trust rights in navigation, fisheries, and recreation "are so intrinsically important and vital to free citizens that their unfettered availability to all is essential in a democratic society." Zack's, Inc., 165 Cal. App. 4th at 1175-76 (citing Martin v. Waddell, 41

---

[1] National Audubon, 33 Cal. 3d at 434 and n.15.

[2] The State owns submerged lands extending three miles seaward of the low-water mark. Tidewater Marine Western, Inc. v. Bradshaw, 14 Cal. 4th 557, 565 (1996); Cal. Gov't Code § 170.

U.S. (16 Pet) 367, 413-14 (1842)). Consistent with this understanding, the public trust doctrine imposes an affirmative "duty on the government to protect" trust resources and uses, Center for Biological Diversity v. FLP Group, Inc., 166 Cal App. 4th 1349, 1365 (2008). "The State can no more abdicate its trust over property in which the whole people are interested . . . than it can abdicate its policy powers in the administration of government and the preservation of the peace." National Audubon, 33 Cal. 3d at 437-38 (quoting Illinois Central R. Co. v. State of Illinois, 146 U.S. 387, 453 (1892)).

Although the public's right in tidelands was originally focused on navigation, commerce, and fishing, the range of protected public trust uses today "is far broader, including the right to hunt, bathe, or swim, and the right to preserve the tidelands in their natural state as ecological units of scientific study." City of Berkeley v. Superior Court, 28 Cal. 3d 515, 521 (1980). The public has the right to use tidelands "for boating and general recreation" and "for anchoring, standing, or other purposes." Marks v. Whitney, 6 Cal. 3d at 259. Indeed, "[t]here is a growing public recognition that one of the most important public uses of the tidelands – a use encompassed within the

tidelands trust – is the preservation of those lands . . . so that they may serve . . . as open space, and as environments which . . . favorably affect the scenery and climate of the area." National Audubon, 33 Cal. 3d at 434-35.

Moreover, "by its very essence, a public trust use facilitates public access, public enjoyment, or public use of trust land." San Francisco Baykeeper, Inc. v. Cal. State Lands Commission, 242 Cal. App. 4th 202, 236 (2015). As the court explained in Center for Biological Diversity, the public trust doctrine "is not just a set of rules about tidelands, a restraint on alienation by the government or an historical inquiry into the circumstances of long-forgotten grants," but fundamentally is "a public property right of access to certain public trust natural resources for various public purposes." 166 Cal. App. 4th at 1360 (citations omitted). For that reason, "[c]ourts have liberally construed the purposes of public trusts 'to the end of benefiting all the people of the state.'" Whaler's Vill. Club v. California Coastal Com., 173 Cal. App. 3d 240, 255-56 (1985) (holding that "[t]he right of privacy does not extend to exclusion of the public from access to public trust lands") (quoting Colberg, Inc. v. State of California Ex Rel. Dept. Pub. Wks., 67 Cal. 2d 408, 417 (1967)).

In short, California's robust public trust doctrine, which for nearly 170 years has protected the people's ability to access and use coastal tidelands held in common for all, is a background principle of state property law against which courts must weigh any use of, or restriction on, adjacent private land ownership. Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1029 (1992).

II. The California Constitution Has Long Enshrined the Right of Public Access to Coastal Tidelands.

The people's right to use and enjoy trust tidelands is of little value without the ability to access those public assets. To ensure such public access, the California Constitution has for over 135 years provided that:

> No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands . . . shall be permitted to exclude the right of way to such water whenever it is required for any public purpose . . . and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

Cal. Const. art. X, § 4.[3] This constitutional directive enunciates a

[3] The current California Constitution was ratified on May 7, 1879. "This constitutional protection of public access to navigable waters was first adopted in 1879 as then article XV, section 2, and is now found in article X, section 4 of the California

strong public policy of "encouraging public use of shoreline recreational areas" and "in favor of allowing the public access to shoreline areas." Gion v. Santa Cruz, 2 Cal. 3d 29, 42 (1970); County of Los Angeles v. Berk, 26 Cal. 3d 201, 222 (1980); see also Sumner Hill Homeowners' Assn., Inc. v. Rio Mesa Holdings, LLC, 205 Cal. App. 4th 999, 1024 (2012) (stating that "[p]ublic access rights [to navigable waters and tidelands] are a matter of constitutional protection").

Over the subsequent decades, the Legislature enacted various piecemeal statutes to implement the constitutional protection of public access to the coastline. See Gion, 2 Cal. 3d at 43 (enumerating various legislative enactments intended to protect and implement the public's right to access navigable waters and tidelands). For instance, in 1949, the Legislature declared that "[a]ll navigable waters situated within or adjacent to city shall remain open to the free and unobstructed navigation of the public. Such waters and the water front of such waters shall remain open to free and unobstructed access by the people from the public streets and highways within the city. Public

---

Constitution." Sumner Hill Homeowners' Assn., Inc. v. Rio Mesa Holdings, LLC, 205 Cal. App. 4th 999, 1017 (2012).

streets, highways, and other public rights of way shall remain open to the free and unobstructed use of the public from such waters and water front to the public streets and highways." Cal. Gov't Code § 39933.

But concerns about public access to the coast only increased as California's population grew exponentially throughout the twentieth century. A joint legislative committee report published in 1931, recognizing that "[o]ne of the most valuable assets of the State of California lies in its coast line along the Pacific Ocean and in the land and water areas contiguous thereto," requested that the then-Department of Natural Resources undertake a thorough study of how the coastline could be developed in an orderly manner so "as to meet the needs of the people of all parts of the State." See Janet Adams, Proposition 20 – A Citizens' Campaign, 24 Syracuse L. Rev. 1019, 1029 (1973) (quoting Report of Joint Legislative Comm. On Seacoast Conservation, Cal. Assembly J., 48th Sess. 461-62 (1931)), available at http://heinonline.org/HOL/Page?handle=hein.journals/syrlr24&div=50&g_sent=1&collection=journals. The resulting legislative report concluded, among other things, that "at many places along

the water front of the State there is not provided sufficient access to the tidelands." Id. Little came of these early studies, however.

By the mid-1960's, with the post-World War II population of California exploding toward 20 million people – most of whom lived in coastal communities – the Legislature directed the Governor to prepare a Comprehensive Ocean Area Plan to address increasing concerns about coastal development. Adams, supra, at 1021. By then, "the coastline was vanishing before an encroaching frontier of development." See Jared Orsi, Restoring the Common to the Goose: Citizen Activism and the Protection of the California Coastline, 1969-1982, 78 So. Cal. Quarterly 257, 258 (1996), available at http://scq.ucpress.edu/content/78/3/257. In Malibu, for example, "a wall of private homes blocked coastal access and views." Id. at 259. Elsewhere, "beaches literally ran out of sand, as breakwaters and artificial fill interrupted the migration of sediments" and "[n]early half of the coastal sloughs and estuaries that had existed in 1900 had disappeared or had lost all their ecological utility." Id. Of paramount concern was the fact that by the 1960's, only 200 miles of California's 1,100-mile coastline was available for public use. Id. at 258.

The Legislature did take some modest steps to address

these mounting concerns. For instance, the right of public access to trust tidelands is now embedded in the California Subdivision Map Act, the state's bedrock land use planning law. Cal. Gov't Code § 66478.1 ("It is the intent of the Legislature, by the provisions of Sections 66478.1 through 66478.10 of this article to implement Section 4 of Article X of the California Constitution insofar as Sections 66478.1 through 66478.10 are applicable to navigable waters."). In enacting the Subdivision Map Act in 1974, the Legislature found and declared that "the public natural resources of this state are limited in quantity and that the population of this state has grown at a rapid rate and will continue to do so, thus increasing the need for utilization of public natural resources" and the "demand for private property adjacent to public natural resources through real estate subdivision developments which [has] resulted in diminishing public access to public natural resources." Id. § 66478.2. The Legislature further declared that "it is essential to the health and well-being of all citizens of this state that public access to public natural resources be increased" and that "[i]t is the intent of the Legislature to increase public access to public natural resources." Id. § 66478.3. The Map Act thus requires reasonable public

access for subdivision development adjacent to public waterways. Id. §§ 66478.4-66478.14. For coastal property, the statute directs local agencies to assess reasonable public access by considering "the type of coastline or shoreline and the various appropriate recreational, educational, and scientific uses, including, but not limited to, diving, sunbathing, surfing, walking, swimming, fishing, beachcombing, taking of shellfish and scientific exploration." Id. § 66478.11.

But because approvals for development are spread across dozens of local cities and counties, there was no way to ensure consistent access to, and protection of, California's coastal amenities. Adams, supra, at 1022-23. In the 1960's, public hearings on proposed local development "became dismally familiar": "So long as coastal cities, towns, and counties were forced to rely for their financial base upon the property tax dollar, the California coast was fair game for unrestrained and irreversible commercial development. Meanwhile, conservationists repeated their refrain—'Where's the beach?'" Id. at 1023. After legislative attempts to create a statewide coastal management agency proved unsuccessful, a grassroots effort coalesced around a voter initiative to "Save Our Coast." Adams,

supra, at 1023-1029; Orsi, supra, at 260-64. That initiative, designated on the November 1972 ballot as "Proposition 20," passed with more than 55 percent of the vote – an 800,000-vote margin of victory. Adams, supra, at 1042; Orsi, supra, at 264. Proposition 20 declared that "the California coastal zone to be a 'delicately balanced ecosystem' whose preservation and protection for present and succeeding generations are of paramount concern to the state and nation." CREED v. Cal. Coastal Zone Conservation Comm'n, 43 Cal. App. 3d 306, 311 (1974) (quoting former Pub. Res. Code § 27001 and upholding initiative against legal challenge).

III. Public Access Concerns Lie at the Heart of the California Coastal Act Enacted by Voter Initiative and Subsequently Codified by the Legislature.

As the California Supreme Court subsequently explained:

> In recent decades, the People of California have become painfully aware of the deterioration in the quality and availability of recreational opportunities along the California coastline due to the combined factors of an increasing demand for its use and the simultaneous decreasing supply of accessible land in the coastal zone. Growing public consciousness of the finite quantity and fragile nature of the coastal environment led to the 1972 passage of Proposition 20, an initiative measure entitled the California Coastal Zone Conservation Act (the 1972 Coastal Act).

Pacific Legal Foundation v. Cal. Coastal Comm'n, 33 Cal. 3d 158, 162 (1982) (citing former Pub. Resources Code, §§ 27000-27650). In response, "[o]ne of the stated purposes of the 1972 Coastal Act was to increase public access to the coast." Id. at 163. The supporting ballot argument stated: "Our coast has been plundered by haphazard development and land speculation. Beaches formerly open for camping, swimming, fishing and picnicking are closed to the public. Campgrounds along the coast are so overcrowded that thousands of Californians are turned away." Id., n.1. As the Supreme Court approvingly explained, "[t]he 1972 Coastal Act expressly authorized the Coastal Commission to utilize its permit approval power as a lever to pry access easement dedications from landowners desiring to develop their coastal properties." Id.

The 1972 Coastal Act was an interim measure that created a temporary Coastal Commission to develop and submit for legislative approval a long-range plan for the "maintenance, restoration, and enhancement of the overall quality of the coastal zone." Orsi, supra, at 264-65. The planning process for that task was expansive and encouraged significant public participation. Id. at 265-69. As part of this inclusive planning effort, the

interim Commission accommodated historically under-represented communities like the residents of the Barrio Logan neighborhood near San Diego Bay. Id. at 267. The resulting California Coastal Plan was completed in December 1975 and submitted to the Legislature, where it was used to guide drafting of the 1976 Coastal Act that ultimately replaced and permanently codified Proposition 20. Pacific Legal Foundation, 33 Cal. 3d at 162-63.

The California Coastal Plan recognized that "[d]espite legal guarantees and historical public use of the California coastline, much access to the shoreline has been lost by the erection of fences, buildings, and other structures." California Coastal Plan at 152, available at http://digitalcommons.law.ggu.edu/caldocs_agencies/91/. In particular, "[a]long the immediate shoreline, homes, businesses, and industries have often cut off existing public access to the coastline, have used up available road capacity and off-street parking, and have precluded use of the coastline area for recreation." Id. To counter these alarming trends, the Plan recommended the State guarantee the public's right to use the coast, where acquired through historic use and custom, by denying development inconsistent with such historic

use, by actively pursuing implied dedication claims, and by requiring that all new development provide accessways to the shoreline. Id. at 153-54.

Consistent with these recommendations, "[o]ne of the objectives of the 1976 version of the Coastal Act was to preserve existing public rights of access to the shoreline and to expand public access for the future." Pacific Legal Foundation, 33 Cal. 3d at 163. The Legislature declared a "basic goal" of the Coastal Act to "[m]aximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners." Cal. Pub. Res. Code § 30001.5(c). The Coastal Act now fully implements the State's constitutional public access protections for coastal tidelands: "In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." Id. § 30210.

The Coastal Act protects public access to the coastline through an expansive definition of new development, see LT-WR, LLC v. Cal. Coastal Comm'n, 151 Cal. App. 4th 427, 443 (2007) (affirming that gates and signs constitute "development"), and a requirement that any such development "shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation." Cal. Pub. Res. Code § 30211; see also id. § 30212 ("Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects . . ."); Grupe v. Cal. Coastal Comm'n, 166 Cal. App. 3d 48, 160 (1985) (section 30212 empowers the Coastal Commission to exact access dedications as a condition of approving new development).

In this way, the requirement for a coastal development permit provides the key mechanism by which the State can protect and ensure continued, constitutionally-guaranteed public access to the coastal tidelands. While the Coastal Act provides for the balancing "of the rights of the individual property owner with the public's constitutional right of access," including through

the use of "innovative access management techniques," Cal. Pub. Res. Code § 30214(b)-(c), such balancing occurs as part of the coastal development permit process by the Coastal Commission, not through a judicial decision before the permit application is filed.

To assist in implementing the Coastal Act's public access provisions, the Coastal Commission in June 1999 adopted a Public Access Action Plan, available at http://www.coastal.ca.gov/access/accesspl.pdf. The Action Plan affirms the significance of public access to the coast. In 1995, for example, there were 566 million visits to the California coast, contributing an estimated $27 billion to the state economy. Id. at 2. A willingness-to-pay study concluded that an additional "intrinsic value" of beach access to California residents was $900 million. Id. Consistent with its statutory mandate, the Coastal Commission prioritizes the protection and facilitation of public access to the coast by establishing and facilitating permanence for offers to dedicate public easements in connection with development permits, by assisting with efforts to complete by the California Coastal Trail from Oregon to the Mexican border, and by pursuing prescriptive

public rights to access coastal areas historically used by the public. Id. at i-iii.[4]

IV. Broad-Based Public Access to the California Coast Is Becoming Increasingly Important, Not Less So.

Despite the protections now built into the common, constitutional, and statutory law, the need for meaningful public access to the coast is more important than ever. As far back as the 1970's, California recognized the emerging "trend" – as a result of "rising land and construction costs and high property taxes, the limited amount of land available on the coast, and the demand for higher-priced housing and visitor accommodations" – driving lower income residents away from use and enjoyment of the coast. California Coastal Plan at 152. To combat this trend, the Coastal Plan recommended adoption of a long-term goal of maximizing access to the coast "for persons of all income levels, all ages, and all social groups . . . consistent with the need to

---

[4] More extensive and updated information about these various efforts is available on the Coastal Commission's websites. See *Coastal Access Program*, http://www.coastal.ca.gov/access/accndx.html; *Coastal Access Program: Prescriptive Rights Program*, http://www.coastal.ca.gov/access/prc-access.html; *Coastal Access Program: Offer to Dedicate—Prescriptive Access Easement Program*, http://www.coastal.ca.gov/access/otd-access.html; *Coastal Access Program: California Coastal Access Guide*, http://www.coastal.ca.gov/access/accessguide.html.

protect coastal areas from destructive overuse." Id. at 153. This goal is codified in the present-day Coastal Act. E.g., Cal. Pub. Res. Code § 30213 ("Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.").

More than four decades since publication of the California Coastal Plan, however, the goal still has not been achieved. If anything, as the price of coastal property continues to rise and the wealthiest individuals among us increasingly propose gated mansions along the coastal frontage, the State is moving further away from achieving meaningful public access. For minority communities, the lack of meaningful coastal access is, in part, a legacy of historic discriminatory housing patterns. Robert Garcia and Erica Flores Baltodano, Free the Beach! Public Access, Equal Justice, and the California Coast, 2 Stanford J. Civ. Rights and Civ. Liberties 143, 153-55 (2005). But these historic patterns are reinforced today by celebrities and other affluent landowners who defy Coastal Act requirements and take extreme measures to discourage non-residents from using and enjoying the public tidelands that abut their properties. Id. at 155-63, 167-71.

As the Coastal Commission recognized in its 1999 Action Plan, 80 percent of Californians live within an hour's drive of the coast, and as the state's population of historically underserved communities continues to grow, the need for coastal access to meet the needs of diverse users likewise will continue to grow, especial in areas, like the San Mateo coastline, that lie near major urban areas. Public Access Action Plan at 3. Recognizing these needs and the increasing problem of wealthy landowners trying to cut off public access to the coast, in 2014, the California Legislature passed, and Governor Brown signed, a statutory amendment giving the Coastal Commission new authority to impose administrative civil penalties for violations of the Coastal Act's public access provisions. Cal. Pub. Res. Code § 30821.

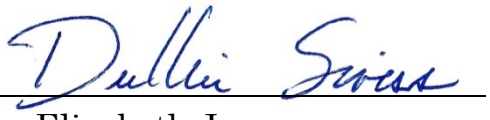
CONCLUSION

Perhaps the Coastal Commission said it best: "The California Coast is a place of magnificent vistas and seemingly endless beauty. It seems to define who we are and what this State is all about. Anyone, no matter who he is and how much or how little he has, can partake of this beauty. The California coast belongs to us all. It sustains a remarkable variety and abundance of life. It fires the imagination, inspires creative

expression, and offers sanctuary to body and soul. Countless residents and visitors have forged an enduring and enriching bond with this bountiful and tantalizing reach of geography." Public Access Action Plan at 1. The State's legal obligation to provide meaningful coastal access for all people can only be satisfied when potential developers of adjacent property, particularly property that was historically used by the general public at prior landowner's invitation, obtain an appropriate coastal development permit under the Coastal Act.

Dated: July 5, 2016 Respectfully submitted,

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

By: 

Elizabeth Jones
Elizabeth Vissers
Deborah A. Sivas

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court 8.204(c), I certify that the text of this brief consists of 4,337 words, not including tables of contents and authorities, signature block, and this certificate of word count as counted by Microsoft Word, the computer program used to prepare this brief.

Deborah A. Sivas

CERTIFICATE OF SERVICE

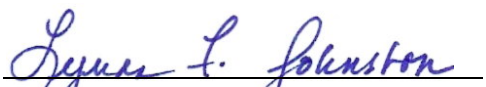
LYNDA F. JOHNSTON declares:

I am over the age of eighteen years and not a party to this action. My business address is 559 Nathan Abbott Way, Stanford, California 94305-8610.

On July 5, 2016, I served the foregoing **APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF BY COASTWALK CALIFORNIA IN SUPPORT OF RESPONDENT; BRIEF OF AMICI CURIAE COASTWALK CALIFORNIA IN SUPPORT OF RESPONDENT** on all persons identified below by placing a true and correct copy thereof in a sealed envelope, with postage fully prepaid, in the United States Mail at Stanford, California, addressed as follows:

Clerk of the Court
Superior Court of California, County of San Mateo
400 County Center
Redwood City, CA 94063-1655

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed July 5, 2016 at Stanford, California.



LYNDA F. JOHNSTON