

Case No. B292091

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION SEVEN

Warren M. Lent, et al.,

Plaintiffs-Appellants, Cross-Respondents,

v.

California Coastal Commission,

Defendant-Respondent, Cross-Appellant.

**SURFRIDER FOUNDATION'S and AZUL'S APPLICATION FOR
LEAVE TO FILE AMICUS CURIAE BRIEF AND [PROPOSED]
BRIEF IN SUPPORT OF CALIFORNIA COASTAL COMMISSION**

On Appeal from the Superior Court of California,
County of Los Angeles, Case No. BS167531
Honorable James C. Chalfant, Judge

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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 15, 2020

Respectfully submitted,



Deborah A. Sivas

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE SECOND DISTRICT COURT OF APPEAL:

Pursuant to Rule 8.200(c) of the California Rules of Court, Surfrider Foundation (“Surfrider”) and Azul respectfully request leave to file the attached *amicus curiae* brief in support of Respondent and Cross-Appellant California Coastal Commission.

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amicus Surfrider is a grassroots nonprofit organization headquartered in Orange County, California and dedicated to the protection and enjoyment of the world’s oceans, waves, and beaches through a powerful activist network. It has more than 250,000 supporters, activists, and members who live in the United States and over 1,600 local chapters and school clubs nationwide, including the volunteer-based Ventura County Chapter and Los Angeles Chapter.

Surfrider has a particular interest in the outcome of the present litigation, both because of its desire to see beach access restored in one of the least publicly accessible portions of the California coast, and because of its interest in the Coastal Commission’s ability to carry out its legal obligations to protect and maximize public beach access and recreational opportunities in California’s coastal zone.

Surfrider has a substantial interest in the beaches of Malibu generally and in this particular case. Staff and volunteers from Surfrider’s Ventura and West Los Angeles-Malibu Chapter attended and spoke at the December 2016 Coastal Commission hearing at which the Commission levied the fine that the Lents now challenge. At the hearing, Surfrider’s representatives argued that the Commission should consider applying the

full penalty amount of approximately \$8.4 million, rather than the much smaller amount that Commission staff had initially proposed. Surfrider’s members, supporters, and staff also regularly use and enjoy Malibu’s beaches in a variety of ways, including surfing, swimming, sunbathing, picnicking, walking, jogging, and observing native plants and animals located there. Surfrider’s members desire and intend to use Las Flores Beach for such purposes, but generally cannot due to lack of public access.

Amicus Azul is a grassroots nonprofit organization that engages the Latinx community in coastal and ocean conservation. Based in San Francisco, Azul operates as a project of Multiplier, a nonprofit organization that protects and fosters a healthy, sustainable, resilient, and equitable world. Azul works throughout California to further its mission. Coastal access is one of Azul’s core priorities. One of its three main campaigns, the “Vamos A La Playa” campaign, seeks to safeguard and enhance equitable beach access for all Californians. To pursue this goal, Azul advocates for low-cost beach accommodations, incorporation of environmental justice into relevant regulatory decisions, and robust implementation and enforcement of the access provisions of the Coastal Act.

Azul has a significant interest in the outcome of this litigation. Azul advocated directly for the enactment of section 30821 of the Coastal Act, which granted the Coastal Commission the penalty authority it exercised in this case. Accordingly, it is of great importance to Azul that the Court upholds section 30821 and endorses the Coastal Commission’s judicious use of its fine authority. In addition, the Latinx community members that Azul represents have been adversely affected by the long history of inequitable access to Malibu beaches, which has resulted largely from private property owners’ refusals to comply with the Coastal Act. For this

reason, the Commission's ability to enforce the Coastal Act's access provisions by fining private property owners bears directly on Azul's ability to protect its members' interests. Moreover, many of Azul's supporters, members, and staff regularly use Malibu's beaches for recreational purposes, and desire and seek to eventually use the Las Flores beach for similar purposes.

HOW THIS BRIEF WILL ASSIST THE COURT

The proposed *amicus curiae* brief will assist the Court by describing (1) the Coastal Commission's significant, repeated struggles to resolve public access violations before the California Legislature enacted section 30821 of the Coastal Act, (2) the ways in which section 30821 has already improved the Commission's ability to enforce the Coastal Act's access provisions, and (3) the reasons why significant administrative fines are necessary both to remedy the most serious access violations – like the Lents' – and to deter similar violations from occurring in the future. The party briefs do not fully address these issues, which are critical to understanding the legal questions before the Court. Accordingly, Surfrider and Azul offer the proposed *amicus* brief to provide background context that may be helpful to this Court's resolution of the matter.

REQUEST FOR LEAVE TO FILE

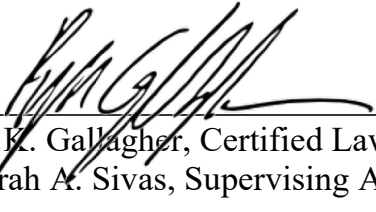
Because the decision of this Court will directly affect Surfrider and Azul, and because the proposed *amicus* brief brings a unique perspective to bear on this matter, Surfrider and Azul respectfully request that the Court grant the filing of this *amicus curiae* brief.

DATED: July 15, 2020

Respectfully submitted,

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BRIEF OF AMICI CURIAE¹

INTRODUCTION

The beach is central to the fabric of California’s identity. The coast’s long stretches of sand, rugged rocky crags, and tidepools teeming with life have served as the backdrop for countless family visits, community events, and dearly-held memories. But beachfront property owners’ illegal, unrelenting efforts to seal off coastal access have threatened to turn public beaches into private playgrounds. In response to this crisis of public access, the California Legislature strengthened the California Coastal Commission’s (“Coastal Commission” or “Commission”) authority to protect coastal access by enacting section 30821 of the Coastal Act in 2014. The Coastal Commission’s use of this new power in this case was not only appropriate to address a grievous access violation along one of the least publicly accessible portions of California’s coastline; it was also necessary to deter similar violations in the future.

Preventing access violations is critical because coastal access serves a wide range of important public purposes.² Proximity to coastlines confers health benefits, with those who live close to the beach reporting better overall physical and mental health than those

¹ No party or counsel in the pending case authored this brief in whole or in part, or made any monetary contribution intended to fund the preparation or submission of the brief. No person other than the proposed *amici curiae* made any monetary contribution intended to fund the preparation or submission of this brief.

² Robert Garcia & Erica F. Baltodano, *Free the Beach! Access, Equal Justice, and the California Coast*, 2 Stan. J. C.R. & C.L. 143, 172 (2005).

who do not.³ Access to the coast can improve physical health by providing opportunities for exercise such as swimming, surfing, and beachcombing. Informal public spaces like beaches are the “most frequently used facilities for physical activity.”⁴ And numerous studies link exposure to the natural world – which beach access enables – with a variety of mental health benefits.⁵ Coastal access also plays a major role in state and local economies. The California coast attracts millions of visitors from other states and countries every year.⁶ In 2012 alone, tourism in coastal areas contributed more than \$17.6 billion to California’s GDP, employed nearly 368,000 people, and generated \$8.7 billion in wages.⁷

The legal architecture of the state’s coastal laws reflects the importance of the beach to Californians. Indeed, the public’s right to access the coast is enshrined in the State’s Constitution.⁸ And California courts have long recognized that the State holds all beaches below the mean high tide line in public trust for the benefit

³ See Matthew P. White et al., *Coastal Proximity, Health, and Well-being: Results from a Longitudinal Panel Survey*, 23 *Health & Place* 97 (2013).

⁴ Garcia & Baltodano, *supra* note 2, at 173.

⁵ See *id.* at 173 n.132; Dan R. Reineman et al., *Coastal Access Equity and the Implementation of the California Coastal Act*, 36 *Stan. Envtl. L. Rev.* 89, 91 n.7 (2016). One such study found that beaches provide greater (self-reported) mental restoration than urban green spaces or open spaces. See Matthew P. White et al., *Feelings of Restoration from Recent Nature Visits*, 35 *J. Envtl. Psychol.* 40 (2013).

⁶ Office for Coastal Mgmt., Nat’l Oceanic & Atmospheric Admin., *The National Significance of California’s Ocean Economy* 13-14 (2015).

⁷ *Id.*

⁸ Cal. Const. art. X, § 4.

of the people of California.⁹ In 1972, Californians successfully lobbied to more fully implement this constitutional mandate and secure their rights as beneficiaries of the public trust through Proposition 20.¹⁰ The resulting long-term plan laid the foundation for the Coastal Act and its stringent public access protections.¹¹ Over the last forty years, the Legislature has tailored this framework to the evolving challenges of maintaining beach access. For instance, the Legislature recently gave the Coastal Commission additional authority to incorporate equity considerations into its permitting process.¹²

Despite robust legal protections for public coastal access, it remains much harder for certain groups to access the beach than

⁹ See, e.g., *Marks v. Whitney*, 6 Cal. 3d 251 (1971).

¹⁰ See Deborah A. Sivas, *California Coastal Democracy at Forty: Time for a Tune-up*, 36 Stan. Envtl. L.J. 109, 118 (2016). This temporary initiative – set to automatically sunset in 1977 – created a new coastal conservation commission and required it to submit a long-term coastal protection plan to the Governor and Legislature. *Id.* at 119.

¹¹ *Id.* at 123.

¹² A.B. 2616, 2015-16 Leg., Reg. Sess. (Cal. 2016); see Cal. Pub. Res. Code § 30604(h). The Coastal Act defines environmental justice as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” Cal. Pub. Res. Code § 30107.3. The 2016 bill also included an anti-discrimination provision. A.B. 2616; Cal. Pub. Res. Code § 30013. Given that minorities and low-income communities have disproportionately limited coastal access opportunities, the Commission rightly views its implementation of the access penalty provision, section 30821, as “a key facet of the Commission’s environmental justice work.” Cal. Coastal Comm’n., *Report to the California Legislature on Implementation of Coastal Commission Administrative Penalty Authority from 2015-2018* at 23 (2019) [hereinafter “*Implementation Report*”].

others. Statewide, minority and lower-income groups are drastically underrepresented in coastal communities,¹³ disparities that are even more pronounced in Los Angeles County.¹⁴ In practice, being able to live in coastal cities like Malibu has been a privilege available only to certain groups.¹⁵ As a result, all others must travel farther and expend more effort to access the coast. And access points are scarce: Within Malibu, a full *two-thirds* – 16 of 24 – of the vertical access easements that the Coastal Commission has secured remain closed to the public, including the easement across the Lent’s property.¹⁶ Furthermore, a substantial majority of California voters – 62 percent – continue to cite limited public access as a major barrier to visiting the coast.¹⁷

Some coastal property owners have further undermined the State’s beach access goals by flagrantly impeding those access points that are open to the public. Malibu has been the epicenter of

¹³ See Reineman et al., *supra* note 5, at 98, 106.

¹⁴ See U.S. Census Bureau, *QuickFacts: Los Angeles County, California; California; Malibu City California*, (Mar. 9, 2020), available at <https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia,CAL,malibucitycalifornia/PST045219>.

¹⁵ The current skewed demographics in coastal communities like Malibu are the result of many complex social and economic factors, but undeniably have connections to the explicitly discriminatory zoning and real estate policies that existed in many of those communities until the mid-twentieth century. See Garcia & Baltodano, *supra* note 2, at 153-56.

¹⁶ Tentative Order at 20.

¹⁷ The Field Poll & The UCLA Inst. of the Env’t & Sustainability, *Factors Relating to How Often Californians Visit the Beach or Coastline 5* (2016), available at https://www.ioes.ucla.edu/wp-content/uploads/Field-Poll_IoES-Press-Release.pdf.

this issue. Property owners along the Pacific Coast Highway have made artificial curb cuts in front of fake garages, painted curbs red, and posted illicit “no parking” signs to give the impression of limited parking near public access points.¹⁸ Businesses bordering public accessways have attempted to collect unauthorized “membership” fees and ban anyone with a surfboard from reaching the beach.¹⁹ Homeowners’ groups on Malibu’s Broad Beach have erected illegal signs and fences and hired private security firms to patrol on all-terrain vehicles, all to discourage public use of even the wet sand areas of the beach.²⁰ And in 2005, Broad Beach property owners went so far as to illegally bulldoze huge amounts of sand from the public tidelands to their own backyards, causing significant environmental damage in an attempt to discourage public access to the beach.²¹

For years, these access violations continued with impunity. Perpetrators stood pat knowing that the Coastal Commission could

¹⁸ Dan Weikel, *In Malibu, Denying a Path to the Sand Proves Costly: California Coastal Commission Hits Property Owners with \$5.1 million in Fines for Beach Access Violations*, L.A. Times, Dec. 9, 2016; Robin Abcarian, *Long Overdue: Malibu Elitists Who Impede Public Access Now Face Fines*, L.A. Times, June 23, 2014.

¹⁹ Sarah Parvini, *Malibu Eatery Ends Beach Fee: Coastal Panel Probe into Allegations of Walk-in Fees Leads to Agreement with Paradise Cove*, L.A. Times, July 3, 2016; Martha Groves, *Malibu Beach Access at Issue: Coastal Agency Warns Paradise Cove after Reports that Surfers Were Barred, Hassled*, L.A. Times, Nov. 2, 2014.

²⁰ Garcia & Baltodano, *supra* note 2, at 158.

²¹ *Id.* at 157-58; *see also* Kenneth Weiss & Amand Covarrubias, *Battle Over Broad Beach Takes New Turn, with Earthmoving Equipment*, L.A. Times, June 9, 2005.

not unilaterally fine anyone and that the Commission's primary enforcement tool – filing a civil lawsuit – was so costly and time-consuming that it was seldom employed. The Commission's cease and desist letters and settlement requests were often ignored. That calculus changed in 2014, when the people of California finally gave the Commission the power to meaningfully enforce the State's coastal access policy by imposing its own administrative penalties.

Ideally, the Coastal Commission would never need to impose a unilateral penalty under section 30821. Property owners would instead avoid committing new violations, remedy existing violations quickly, or reach settlements with the Commission. Indeed, that is largely how section 30821 has worked in practice: Over 90 percent of the access cases resolved since 2014 have resulted in no penalty at all, and fewer than two percent have resulted in a unilateral fine.²² But in order to maintain this incentive structure, the Commission must be able to use its authority to levy significant fines in response to serious violations – fines no greater than what the Legislature has expressly permitted, but which are sufficient to both remedy and deter such violations.

This is the rare case in which the Coastal Commission had no choice but to use its unilateral penalty power. For over a decade, the Lents have intentionally blocked an accessway from being opened in one of the least publicly accessible areas of the California coast and have rejected every opportunity to cure their violation. The Coastal

²² Cal. Coastal Comm'n., *Implementation Report*, *supra* note 12, at 1, 19; *see also* Section III, *infra*.

Commission responded by carefully applying the factors listed in section 30820 of the Coastal Act to calculate an appropriate penalty amount that was much lower than the maximum fine it could have imposed.²³ This substantial, commensurate fine was the only tool sufficient to rectify the harm from the Lents' violation and prevent similarly grave violations in the future.

ARGUMENT

I. State law robustly protects access to the California coast.

California law has long prioritized coastal access. The very first California constitution, adopted in 1879, enshrined a public right of access to state-owned coastal tidelands.²⁴ This constitutional protection now states:

No individual, partnership, or corporation . . . 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 always be attainable for the people thereof.²⁵

Courts read this constitutional provision to articulate “a clea[r] . . . public policy in this state in favor of allowing public access to

²³ See Commission’s Opening Br. (“Commission Opening Br.”) at 23, 61, 63-64 (regarding the Coastal Commission’s use of the section 30820 penalty factors to determine administrative penalty amounts under section 30821).

²⁴ *Sumner Hill Homeowners’ Assn., Inc. v. Rio Mesa Holdings, LLC*, 205 Cal. App. 4th 999, 1017 (Cal. Ct. App. 2012) (stating that the “constitutional protection of public access to navigable waters [which also applies to tidal lands] was first adopted in 1879 . . . and is now found in article X, section 4 of the California constitution.”).

²⁵ Cal. Const. art. X, § 4.

shoreline areas.”²⁶

Furthermore, the State holds coastal tidelands – including the wet sand portion of beaches below the mean high tide line²⁷ – in trust for the use, benefit, and enjoyment of the people of California, to whom they ultimately belong as public property.²⁸ Public rights in these areas “encompas[s] navigation, commerce and fishing” and extend to “the right to hunt, bathe or swim.”²⁹ As trustee, the State’s role is to ensure that “the people of the state may enjoy” using tidelands “freed from the obstruction or interference of private parties.”³⁰ This obligation is inalienable. Except when private “use or control” either would improve or would not impair public use of trust resources:

The State can no more abdicate its trust over property in which the whole people are interested . . . so as to leave [it] entirely under the use and control of private parties . . . than it can abdicate its police powers in the administration of government and the preservation of the peace.³¹

²⁶ *Cty. of Los Angeles v. Berk*, 26 Cal. 3d 201, 222 (1980).

²⁷ *See Marks v. Whitney*, 6 Cal. 3d 251, 257-58 (1971) (“Tidelands are properly those lands lying between the lines of mean high and low tide . . . covered and uncovered successively by the ebb and flow [of the sea].”) (internal citations omitted).

²⁸ *Id.* at 258 n.5 (“The state holds tidelands in trust for public purposes, traditionally delineated in terms of navigation, commerce and fisheries.”); *see also Ctr. for Biological Diversity v. FLP Grp., Inc.*, 166 Cal. App. 4th 1349, 1360-65, 1366 n.16 (Cal. Ct. App. 2008).

²⁹ *City of Berkeley v. Superior Court*, 26 Cal. 3d 515, 521 (1980).

³⁰ *Illinois Cent. R.R. Co. v. Illinois*, 146 U.S. 387, 452 (1892).

³¹ *California ex rel. State Lands Com. v. Superior Court*, 11 Cal. 4th 50, 64 (1995) (quoting *Illinois Cent. R.R.*, 146 U.S. at 452-53) (internal quotation marks omitted).

Courts trace the roots of this doctrine to the recognition that the “public rights of commerce, navigation, fishery, and recreation are so intrinsically important and vital to free citizens that their unfettered availability to all is essential in a democratic society.”³² For these reasons, the State is legally obligated to ensure that Californians can use their coastal resources unimpeded by private interests.

Despite California’s efforts to act as a responsible steward of its public resources, the reality of coastal access has continued to diverge from the ideals in the California constitution. In 1972, Malibu was still marked by a “wall of private homes” that “blocked coastal access and views.”³³ In response to this situation and the general deterioration of coastal resources, “thousands of individuals volunteered their time and professional skills”³⁴ to lobby for more stringent coastal protections.³⁵ The resulting voter initiative – Proposition 20 – aimed to protect the coast as a “distinct and valuable natural resource belonging to all the people”³⁶ and became the blueprint for the modern Coastal Act. A direct descendant of this

³² *Zack’s, Inc. v. City of Sausalito*, 165 Cal. App. 4th 1163, 1175 (Cal. Ct. App. 2008).

³³ Jared Orsi, *Restoring the Common to the Goose: Citizen Activism and the Protection of the California Coastline, 1969-1982*, 78 S. Cal. Q. 257, 258 (1996).

³⁴ *Id.* at 262.

³⁵ *Id.* at 258.

³⁶ The California Coastal Zone Conservation Act of 1972 (Proposition 20), available at <http://www.coastal.ca.gov/legal/proposition-20.pdf>; see also Sivas, *supra* note 10, at 110.

groundswell of participatory democracy, the Coastal Act stands as testament to the importance of coastal access and conservation to Californians.³⁷

Access to the beach lies at the heart of the Coastal Act. Ensuring public access to the coast and to the recreational opportunities it offers are “basic goals of the state for the coastal zone.”³⁸ The State must provide “maximum access,” consistent with other legal requirements. California Public Resources Code section 30210 states:

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.³⁹

Development must also conform with public access goals and may “not interfere with the public’s right of access to the sea where acquired through use or legislative authorization.”⁴⁰ These provisions together enunciate a robust legal commitment to protect public access.

II. The Coastal Commission’s former enforcement powers, or lack thereof, did little to address or dissuade blatant public access violations.

Despite the Coastal Act’s emphasis on public access, for most of its history the Coastal Commission lacked an effective way to

³⁷ See Sivas, *supra* note 10, at 110.

³⁸ Cal. Pub. Res. Code § 30001.5(c).

³⁹ Cal. Pub. Res. Code § 30210.

⁴⁰ Cal. Pub. Res. Code § 30211.

deal with violations of the Act’s access provisions, given its time and resource constraints. The Coastal Act did allow the Commission to pursue civil liability for access violations, but if the Commission could not reach a consent agreement with a willing party, it had to proceed through the courts to impose civil penalties.⁴¹ In a 2008 report, the nonpartisan Legislative Analyst’s Office found that this enforcement structure was “cumbersome” and noted the “high costs of pursuing enforcement through the courts.”⁴² Parties informed of Coastal Act violations often felt no pressure to resolve them, aware that litigation required a “tremendous expenditure of resources” by the Commission and the State Attorney General’s Office, and that those costs could eventually force the Commission to settle even in those rare instances when they did file suit.⁴³

The consequences of this anemic enforcement authority played out for decades up and down the coast in the form of protracted disputes over egregious access violations. Here, again, Malibu took center stage. In April 2005, record producer David Geffen finally agreed to unlock the twin gates on his Malibu

⁴¹ Cal. Coastal Comm’n, *Implementation Report*, *supra* note 12, at 4; *see also* S. Judiciary Comm., 2013-2014 Leg., Reg. Sess., Bill Analysis – AB 976, at 2 (Cal. 2013) (providing analysis of an earlier, very similar bill that would have granted the Commission unilateral penalty authority over Coastal Act violations); *id.* at 5 (noting that violators had a “reverse incentive” to settle because it was unlikely that the Commission would pursue a civil lawsuit in any particular case in the event that the violator refused to cooperate).

⁴² Legislative Analyst’s Office, *2008-09 Analysis: Resources* at B-70 (2008).

⁴³ *See* Cal. Coastal Comm’n, *Implementation Report*, *supra* note 12, at 4.

property to allow public access to Carbon Beach.⁴⁴ But the well-publicized struggle between Geffen and the Coastal Commission never should have occurred in the first place: Geffen had kept the gates shut in spite of making an “irrevocable offer to dedicate public access” in 1983 as an explicit condition of receiving a coastal development permit.⁴⁵ Left with no other recourse than the courts, the Commission – and the beachgoing public – had to weather three years of suits and countersuits before Geffen backed down.⁴⁶ And even then, although Geffen agreed to pay the \$300,000 in attorneys’ fees and costs that the State and a nonprofit had accrued, he faced no additional civil penalties for his clear violations of the Coastal Act.⁴⁷

Less than a decade later and approximately half a mile to the west, Lisette Ackerberg lost her own lengthy battle to keep her property’s public access easement off-limits to the public. Just like Geffen, Ackerberg had explicitly agreed to a vertical access easement in 1985 in exchange for the Commission’s approval of a development permit for her property.⁴⁸ But by the time a nonprofit began working with the Commission to open the easement to the public in 2003, Ackerberg had carried out significant unauthorized

⁴⁴ Kenneth Weiss, *Mogul Yields Access to Beach*, L.A. Times, Apr. 15, 2005.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Kenneth Weiss, *Geffen to Reimburse \$300,000*, L.A. Times, Apr. 16, 2005.

⁴⁸ *Ackerberg v. Cal. Coastal Comm’n*, B235351, 2012 WL 3643069, at *3 (Cal. Ct. App. Aug. 27, 2012) (unpublished).

development within the easement.⁴⁹ In response to the Coastal Commission's efforts to open the accessway, Ackerberg waged a ten-year legal fight defined by the Commission's repeated insistence that her encroachments violated the Coastal Act and by numerous courts' universal agreement with the Commission.⁵⁰ Ackerberg finally agreed to settle only after the California Supreme Court refused to review her last losing appeal in 2012.⁵¹ The easement was eventually opened to the public in July 2015 – two years after the Commission's 2013 settlement with Ackerberg, but more than a decade after the dispute began.⁵²

With no means to resolve violations quickly and its resources often tied up in intensive litigation, the Commission's enforcement caseload ballooned by the mid-2010s. Between 2003 and 2013, the number of pending cases had nearly doubled to 1,944.⁵³ More than a third of these cases were located in Los Angeles County; and more than a quarter were located in Malibu alone.⁵⁴ Of the 1,944 total cases, about 29 percent – the largest single share – were public

⁴⁹ *Id.* at *3-*4.

⁵⁰ *See id.* at *4-*6.

⁵¹ Martha Groves, *A Path of Lost Resistance: The Public Wins Access to a Malibu Beach after Deal with Homeowner*, L.A. Times, July 3, 2015.

⁵² *Id.*

⁵³ Tony Barboza & Matt Moody, *Graphic: Coastal Act Violations*, L.A. Times, Aug. 17, 2013.

⁵⁴ Chad Nelsen, *Los Angeles Is the Epicenter of Coastal Act Abuse*, Surfrider Found. (Aug. 26, 2013), available at <https://www.surfrider.org/coastal-blog/entry/los-angeles-is-the-epicenter-of-coastal-act-abuse>.

access violations.⁵⁵ In proposing a bill to expand the Coastal Commission’s enforcement authority in early 2013, then-Speaker of the State Assembly Toni Atkins called attention to the various “clear and present” consequences of the Commission’s “inability to deter violations of the Coastal Act.”⁵⁶ In particular, she noted it would take the Commission *over 100 years* to resolve its backlog of cases at the Commission’s existing rate of resolution, provided that no additional cases were opened.⁵⁷ But because new cases were being added faster than they could be resolved, it was unclear that the Commission could ever resolve its backlog without major changes to its enforcement authority.⁵⁸

III. Section 30821 gives the Commission the power to more effectively deter public access violations.

A. The Legislature structured section 30821 to deter violations and to limit the imposition of unilateral fines to egregious cases.

In July 2014, the Legislature finally amended the Coastal Act to add section 30821, granting the Coastal Commission the authority to unilaterally impose substantial administrative penalties for

⁵⁵ *Id.*

⁵⁶ S. Judiciary Comm., *supra* note 41, at 4. Then-Assemblymember Atkins’ bill, A.B. 976, would have given the Coastal Commission the power to impose civil administrative fines for *any* violations of the Coastal Act – not just access violations – but was otherwise virtually identical to the 2014 bill that ultimately granted the Commission expanded administrative penalty authority, S.B. 861. *See id.* at 1-2; S.B. 861, ch. 35; Budget Act of 2014, § 147 (2014).

⁵⁷ S. Judiciary Comm., *supra* note 41, at 5.

⁵⁸ *See id.*

violations of the Coastal Act’s access provisions. This expanded enforcement power was a long time coming. The nonpartisan Legislative Analyst’s Office had recognized as early as 2008 the need for legislation “enabling the [C]ommission to issue fines and penalties directly for enforcement actions, rather than through the court process.”⁵⁹ In 2013, then-Assemblymember Atkins, too, had argued that giving the Commission the power to impose unilateral fines upon “serious and intentional violators” would provide the “necessary enforcement mechanism to deter violations” and begin to remedy its case backlog.⁶⁰ The enactment of section 30821 finally gave the Commission that most basic administrative enforcement power which virtually all of California’s other enforcement agencies had already wielded for years.⁶¹

The Legislature crafted section 30821 to incentivize the removal of coastal access impediments while providing ample opportunities for violators to comply, so that unilateral fines are used as a last resort. Section 30821 authorizes the Commission to impose fines of up to \$11,250 for each day that a violation continues.⁶² But

⁵⁹ Legislative Analyst’s Office, *supra* note 42, at B-70.

⁶⁰ S. Judiciary Comm., *supra* note 41, at 5.

⁶¹ *Id.* at 4 (noting the Commission’s lack of unilateral penalty authority made it a “rare exception” among State enforcement agencies); *see, e.g.*, Fish & Game Code § 2022(f) (Department of Fish and Wildlife); Health & Safety Code § 42402.5 (Air Resources Board); Water Code §§ 13323 et seq., 13385(c) (Regional Water Quality Control Board).

⁶² Cal. Pub. Res. Code §§ 30821(a), 30820 (b). Notably, the fine the Commission ultimately imposed in the Lents’ case was only approximately half of the amount authorized by the statute. Commission Opening Br. at 32.

the structure of section 30821 ensures that such sizeable penalties are imposed through formal processes only when absolutely necessary. First, per the express legislative intent of the statute, “unintentional, minor violations . . . that only cause de minimis harm will not lead to the imposition of administrative penalties if the violator has acted expeditiously to correct the violation.”⁶³ Second, section 30821 has a safe harbor provision: Violators can correct an access violation within 30 days of receiving a notice of violation and avoid penalties, as long as the violation is not a “previous violatio[n] of permit conditions” and correcting the violation would not require an additional development permit.⁶⁴ These various limitations mean that unilateral fines under section 30821, although potentially significant, are imposed only in response to substantial, persistent violations.

Moreover, the penalty must impose costs that exceed the benefits of the violation to incentivize compliance.⁶⁵ The monopolization of coastal access can have quantifiable economic benefits for property owners. Beaches that stay inaccessible to the

⁶³ Cal. Pub. Res. Code § 30821(f).

⁶⁴ Cal. Pub. Res. Code § 30821(h). In practice, the Commission sometimes extends this 30-day safe harbor period to even these exempted violations, in order to incentivize, and allow time for, voluntary cooperation. Cal. Coastal Comm’n, *Implementation Report*, *supra* note 12, at 5 n.12. In addition, the amount of the fine is limited to 75 percent of what the Commission could obtain through a judicial mechanism and is limited to five years even if the violation persists for longer. Cal. Pub. Res. Code §§ 30821(a), 30820(b).

⁶⁵ See Max Minzner, *Why Agencies Punish*, 53 Wm. & Mary L. Rev. 853, 860 (2012).

general public remain all the more valuable to coastal property owners, who can indulge a fantasy of private ownership of a priceless public resource. Here, for instance, the Lents advertised the beach access provided by the stairway and gate as an attractive feature of their house to renters.⁶⁶ When the benefits of non-compliance are so substantial – as in this case, where the Lents could charge on average \$1,092 a night, and up to \$32,000 a month for their rental⁶⁷ – the Commission would need a substantial penalty to persuade even a cooperative property owner to comply.

B. Just as the Legislature intended, the Commission has only imposed section 30821 penalties as a last resort.

Between 2014 and December of 2018, the Commission identified 175 access violations that needed addressing under its section 30821 authority.⁶⁸ The Commission resolved 102 of these cases,⁶⁹ 96 of them via either voluntary action or consent order.⁷⁰ Indeed, the Commission has only actually employed the penalty

⁶⁶ Commission Opening Br. at 107-108.

⁶⁷ *Id.* at 81.

⁶⁸ Cal. Coastal Comm’n, *Implementation Report*, *supra* note 12, at 8.

⁶⁹ *Id.* at 1. Of these cases, 82 were fully resolved informally. *Id.* at 11. In 14 cases, “full agreement for resolution of the violation(s) has been achieved, and the impediments to public access have been removed, but some final action is still pending, such as a needed follow-up permit or the approval of a public access improvement plan.” *Id.* Of the 175 cases, 27 are in Malibu, *id.* at 9, making up approximately 15 percent of the total number of access cases.

⁷⁰ *Id.* at 1, 19. In these cases, the Commission either discussed the cases orally with the violator (13 cases) or sent a notice of violation letter and then resolved them amicably (83 cases). *Id.* at 19.

process in eight cases.⁷¹ The Commission was able to resolve six of these eight cases through consent orders, in which the property owner agreed to a fine and to remedy the violation.⁷² The Lents are one of only two violators with whom the Commission could not reach resolution via settlement and thereby avoid the need to impose any penalty.⁷³ This final step followed almost a decade of efforts by the Coastal Commission to reach an agreement, during which the Lents repeated the same legal arguments and proposed new lists of preconditions with which Commission staff could not possibly comply.⁷⁴

The other cases in which the Commission has had to resort to a formal penalty process have also been serious and complex. For instance, one of the six cases ultimately resolved by formal consent order involved a number of significant permit violations that

⁷¹ *Id.* at 19-20, 22.

⁷² *Id.* at 1, 6. In the one other case where an agreement could not be reached, the violator refused to remove an unauthorized seawall despite permit conditions to the contrary. *Id.* at 22.

⁷³ Commission Opening Br. at 24. The Commission's flexible approach to settlement also undermines the Lents' claim that the Commission is tempted by some irresistible financial incentive. *See* Lent Opening Br. at 59-61. For instance, instead of paying a fine, violators of the Coastal Act's access provisions have provided such "non-monetary, in lieu enhancements . . . as enhanced trails, public access signage, a signalized crossing to aid pedestrians, and the development of the coastal access app YourCoast." Cal. Coastal Comm'n, *Implementation Report*, *supra* note 12, at 2. This accommodating approach indicates the Commission's willingness to seek win-win solutions by tailoring agreements to violators' needs and abilities, while also ensuring that penalties help address the harm access violations perpetuate.

⁷⁴ *See* Commission Opening Br. at 30-31.

substantially impaired access. The San Mateo County property owner failed to maintain a stairway to allow beach access, as required by the relevant development permit.⁷⁵ When the stairway collapsed, the Commission requested repeatedly, over the course of five months, that the violator submit a plan to restore public access, but received no response.⁷⁶ The Commission then opened up an enforcement case and sent a notice to alert the property owner of the possibility of administrative penalties.⁷⁷ For the next several months, the Commission repeatedly followed up with the violator, but the violator failed to provide any plan to restore access.⁷⁸ The owner then began dumping boulders on the beach without a permit, digging large trenches there, and putting construction equipment on a bluff trail and viewing area.⁷⁹

After the violator agreed to cease construction, the Commission initiated formal proceedings, resulting in a mutually-agreed Consent Order in 2018 – within two years – that included remediation measures and a fine.⁸⁰ Without the substantial penalty

⁷⁵ Cal. Coastal Comm’n, *Staff Report: Recommendations and Findings for Consent Cease and Desist Order, Consent Restoration Order, and Consent Administrative Civil Penalty, CCC-18-CD-01/CCC-18-RO-01/CCC-18-AP-01 (Oceanaire)*, at 5 (2018), available at <https://documents.coastal.ca.gov/reports/2018/4/th7/th7-4-2018-report.pdf> [hereinafter “Oceanaire Staff Report”].

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Cal. Coastal Comm’n, *Implementation Report*, *supra* note 12, at 21; *see also* Cal. Coastal Comm’n, *Oceanaire Staff Report*, *supra* note 75, at 6.

⁸⁰ Cal. Coastal Comm’n, *Oceanaire Staff Report*, *supra* note 75, at 6-7.

threat and administrative penalty process that the Commission gained in 2014, reaching a resolution may have taken far longer.

Aside from the order that it issued in the Lents' case, the Commission has only needed to resort to a unilateral order one other time. This violation was also persistent, though less so than the Lents' violation. In 2014, an architect remodeling a home in Orange County assured Coastal Commission staff that he would merely be replacing "paint and carpet,"⁸¹ as the Commission staff could not recommend approval of a full remodel absent concurrent removal of a seawall in front of the home (due to the explicit conditions of the governing permit).⁸² But when the neighboring Katzes bought the house, they directed the architect to remodel it fully for later sale, following similar plans to those Coastal Commission staff had already indicated it could not recommend approving.⁸³ The Katzes explicitly ordered their architect to avoid the Coastal Commission entirely and then tore the house down to its bare foundation and some framing.⁸⁴

⁸¹ Cal. Coastal Comm'n, *Staff Report: Recommendations and Findings for Cease and Desist Order and Administrative Civil Penalty, CCC-18-CD-02/CCC-18-AP-02 (Katz)*, at 4 (2018), available at <https://documents.coastal.ca.gov/reports/2018/8/Th8s/th8s-8-2018-report.pdf> (internal quotation marks omitted) [hereinafter "*Katz Staff Report*"].

⁸² *Id.* at 3-4; Cal. Coastal Comm'n, *Year in Review 2018*, at 17 (2019), available at <https://documents.coastal.ca.gov/assets/press-releases/year-in-review/2018-Year-in-Review.pdf>

⁸³ Cal. Coastal Comm'n, *Katz Staff Report*, *supra* note 81, at 4-5.

⁸⁴ *Id.* at 4.

The Katzes remained unwilling to work with the Commission. For six months following the Commission’s notice of violation in 2017, the Commission corresponded extensively with the Katzes’ architect and attorney.⁸⁵ Despite many efforts to reach an amicable solution, the Katzes would not halt construction on their property or consider alternatives to the seawall.⁸⁶ When the Commission finally notified the Katzes that it would have to initiate formal action, seven months after the initial enforcement letter, they sued the Commission.⁸⁷ Ultimately, the Commission had no option but to unilaterally order a \$1 million fine and the removal of the seawall.⁸⁸

The Lents’ violation lasted much longer than the Katzes’, creating a significant deprivation of public beach access. Whereas the enforcement process took only a matter of months for the Katzes, the Lents stalled for years, “shuffl[ing] through at least four lawyers over nearly ten years repeating the same spurious arguments” and forcing the Commission to spend “nearly a decade seeking resolution.”⁸⁹ One factor affecting the seriousness of the harm caused – and accordingly, the difference in penalty amount – is the fact that the penalty period in the Lents’ case was over twice as

⁸⁵ *Id.* at 5.

⁸⁶ *Id.*

⁸⁷ *Id.* at 5-6.

⁸⁸ Cal. Coastal Comm’n, *Year in Review 2018*, *supra* note 82, at 17.

⁸⁹ Commission Opening Br. at 18-19.

long.⁹⁰ Moreover, as discussed below, the Lents' violations prevented the Commission from developing the first and only viable public access point along a nearly three-mile-long segment of beach for almost a decade, causing substantial harm.⁹¹

IV. Section 30821's sizeable penalties are a necessary and effective tool to enforce the Coastal Act's access provisions.

A. The authority to impose large fines is essential for the Commission to resolve access violations efficiently and manage its ever-increasing caseload.

Enforcing coastal access is resource-intensive work. When a violation is reported, the Commission must first conduct a preliminary investigation.⁹² If they decide to open a case, staff then notifies violators and attempts to reach an amicable resolution.⁹³ Even when the parties reach an agreement quickly, staff still must do substantial work to “research violations, coordinate with local governments, determine what is needed at the site . . . clearly explain

⁹⁰ *Id.* at 79-80. Indeed, the length of this penalty period – not, as the Lents erroneously assert, the Lents' exercise of their right to contest the violations and penalty – is a key factor underlying the size the penalty in this case. *See id.* at 79-80, 91-92.

⁹¹ *Id.* at 18. As both the Katzes' case and this case demonstrate, violators also have channeled considerable resources into challenging the Commission's authority in the courts rather than using these resources to comply or negotiate a mutually agreeable settlement. While using litigation to stall and avoid penalties has undermined section 30821's effectiveness in these two severe cases, a favorable ruling from this Court will close this last perceived loophole. Such a ruling would ensure that a violator's ability to drag out enforcement through years of negotiation and litigation does not exempt them from the access provisions with which others must comply.

⁹² Cal. Coastal Comm'n, *Implementation Report*, *supra* note 12, at 8 n.19.

⁹³ *See id.* at 10-11, 18.

all of the legal and factual issues of the case” and inform the violator of the necessary steps to end the violation and comply on an ongoing basis.⁹⁴ Complex access cases are exceptionally resource-intensive, involving extended research and negotiations.⁹⁵ Indeed, ongoing violations like the Lents’ can require years of staff time and work to resolve.⁹⁶

Because its work is time-consuming and its enforcement budget is small, the Commission lacks sufficient resources to address all of its enforcement cases.⁹⁷ The Commission’s enforcement team includes approximately 15 staff members across the entire state and its over 1,000-mile coastline.⁹⁸ In the absence of resources to address every single individual access violation, section 30821 provides an important deterrent that enables the Commission to implement its statutory mandate, while still reserving fines for only long-term and significant violations.

Section 30821 has sped up the resolution of access cases, decreasing the resources that such cases require and limiting the harm that violations cause. On average, the time needed to resolve a case using section 30821 is 90 percent lower than the average time

⁹⁴ Cal. Coastal Comm’n, *Implementation Report*, *supra* note 12, at 18.

⁹⁵ Cal. Coastal Comm’n, *Budget Change Proposal 4 (2020)*, available at https://esd.dof.ca.gov/Documents/bcp/2021/FY2021_ORG3720_BCP3490.pdf. Cases that present multiple violations also require additional work to resolve. Cal. Coastal Comm’n, *Implementation Report*, *supra* note 12, at 9.

⁹⁶ *See* Cal. Coastal Comm’n, *Implementation Report*, *supra* note 12, at 22 (describing extent of work involved to resolve several such cases).

⁹⁷ *Id.* at 19 (noting the backlog of access cases).

⁹⁸ Cal. Coastal Comm’n, *Budget Change Proposal*, *supra* note 96, at 3-4.

needed before the Commission gained penalty authority.⁹⁹ Before section 30821 was passed, resolving an access case took an average of 1,073 days – almost three years.¹⁰⁰ By contrast, after section 30821 was passed, the average time to resolve a case was 102 days – a little over three months.¹⁰¹ This change is significant because the longer that coastal access violations go unresolved, the more profound the public harm: Each day that members of the public cannot access the coast is another day during which they are deprived of beach access benefits. In addition, when cases are expediently resolved, scarce Coastal Commission enforcement resources become available to resolve its backlog of other cases, including access cases.¹⁰² Through these mechanisms, section 30821 effectively increases coastal access for the beachgoing public.

The Commission’s authority under section 30821 is increasingly necessary as the Commission manages a mushrooming access caseload.¹⁰³ The Commission attributes the uptick in access cases over the past two decades to a number of factors, including greater reporting of access violations by the public, mounting development pressures that deprive the public of coastal access points and alternative open spaces, and the effect of sea level rise, which has begun to threaten coastal access and recreation

⁹⁹ Cal. Coastal Comm’n, *Implementation Report*, *supra* note 12, at 2.

¹⁰⁰ *Id.* at 16.

¹⁰¹ *Id.*

¹⁰² *Id.* at 12.

¹⁰³ *Id.* at 7.

opportunities.¹⁰⁴ By 2018, the backlog in the Commission’s enforcement docket was considerable. Between 2015-2018, Commission staff opened 482 more enforcement cases than it was able to close.¹⁰⁵

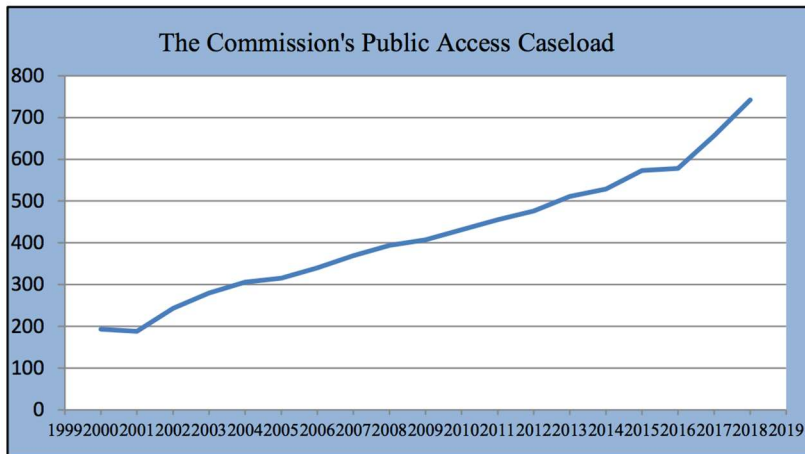


Figure 1. The Commission’s public access enforcement caseload from 2000 to 2018.¹⁰⁶

Now more than ever, the Commission needs meaningful authority to enforce public coastal access.

B. Imposing significant fines on recalcitrant violators is appropriate and fair.

In general, when enforcement capacity is limited, larger fines are the appropriate response to deter violations¹⁰⁷ and incentivize

¹⁰⁴ *Id.* at 6.

¹⁰⁵ *Id.* at 7 n.1.

¹⁰⁶ *Id.* at 7 (excerpted).

¹⁰⁷ In assessing this particular fine, the Commission considered deterrence exactly how it should have: in alignment with the importance of deterrence to the Legislature in enacting section 30821, and consistent with the factors listed in section 30820(c), which weighed in favor of an elevated penalty. *See* Commission Opening Br. at 119 (“Commissioners directly referenced the statutory factors for imposing a higher penalty, including the costs to the state . . . the severity of the violation . . . the length of time of the

compliance. Multiple studies have shown that increasing the magnitude of fines increases their ability to deter violations;¹⁰⁸ this principle informs section 30821's structure and the proper reading of its statutory factors.¹⁰⁹ Furthermore, when (as here) enforcement is costly, an optimal fine structure increases penalties as the severity of violations escalates, incentivizing violators to commit less severe violations.¹¹⁰ The Commission has implemented this exact incentive structure, imposing lower fines for lesser violations and more compliant violators, which induces amicable settlement.¹¹¹ When the costs of prosecuting and punishing severe violations are high – as in this case, when recalcitrant violators dragged out the resolution of

violation . . . the failure by the Lents to take any voluntary restoration efforts . . . and the economic profits from the violation,” and noting that much of the Commission’s discussion of deterrence centered on its importance as a legislative purpose underlying section 30821) (citations omitted).

¹⁰⁸ See, e.g., Katharina Laske et al., *Do Fines Deter Unethical Behavior? The Effect of Systemically Varying the Size and Probability of Punishment* (2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3157387; John M. Weber & R.E. Crew, Jr., *Deterrence Theory and Marine Oil Spills: Do Coast Guard Civil Penalties Deter Pollution?*, 58 J. Envtl Mgmt. 161, 165-67 (2000). Indeed, some studies have suggested that fines of insufficient magnitude may actually incentivize the behavior they are intended to deter, as violators begin to view penalties as a cost of doing business. See Chung-Cheng Lin & C.C. Yang, *Fine Enough or Don't Fine at All*, 59 J. Econ. Behav. & Org. 195, 197 (2006).

¹⁰⁹ See *supra* note 107.

¹¹⁰ Dilip Mookherjee & Ivan P.L. Png, *Marginal Deterrence in Enforcement of Law*, 102 J. Pol. Econ. 1039, 1041 (1994).

¹¹¹ Commission Opening Br. at 96-97 (noting lesser penalty imposed on the Katzes, whose violation existed for a shorter time period); *id.* at 92 (explaining lower penalties are necessary for settled cases in order to incentivize settlement).

their violations for over a decade – high fines are an effective and efficient response to achieve socially optimal levels of deterrence.¹¹²

Long-lasting violations also deprive the public of access for long periods of time, creating substantial harm. Such is the case here. On Las Flores Beach, where the Lent property is located, the Local Coastal Plan stated almost 20 years ago that it is necessary to maintain one vertical access easement every 1,000 feet in order to provide sufficient public access.¹¹³ But with the Lents' easement still closed to the public, Las Flores Beach currently has *no* public access points – the closest access points are approximately 1.7 miles west at Carbon Beach and one mile east at Big Rock Beach.¹¹⁴ In other words, by dragging their feet and refusing to remedy their blatant access violation, the Lents have effectively kept nearly ten percent of Malibu's 27-mile coastline off limits to the public for years.

Section 30821's fines force the violator to internalize these substantial harms, rather than allowing property owners to continue to benefit at the public's expense. The revenue generated from Section 30821's penalties are ultimately used to improve public

¹¹² Mookherjee & Png, *supra* note 110, at 1041; *see also* A. Mitchell Polinsky & Steven Shavell, *The Theory of Public Enforcement of Law*, in 1 Handbook of Law and Economics 403, 413, 421-22 (A. Mitchell Polinsky & Steven Shavell eds., 2007) (when detection probability is low or enforcement resources are limited, high fines may be optimal).

¹¹³ Cal. Coastal Comm'n, *City of Malibu Local Coastal Program Land Use Plan 36* (2002), available at <https://www.coastal.ca.gov/ventura/malibu-lup-final.pdf>.

¹¹⁴ Tentative Order at 21.

coastal access.¹¹⁵ This use of fines and settlements to remediate coastal access is entirely proper (especially given that monetary penalties must be appropriated by the Legislature to be used),¹¹⁶ as it forces property owners to bear the costs of activities they benefit from rather than externalizing them. The Coastal Conservancy's use of these penalties to further its public access mission benefits the public – and does so to partly make up for the public harm that long-standing access violations cause.

Moreover, the Commission has deployed section 30821 in the appropriate and fair way the Legislature envisioned. Here, rather than mechanically assigning the maximum penalty authorized by section 30821, the Commission carefully evaluated the penalty factors listed in section 30820(c), and assessed a fine commensurate with a severe and lasting violation, for which the statutory factors weighed in favor of a high fine.¹¹⁷ Importantly, the fine in this case amounted to *only half* the statutorily authorized penalty.¹¹⁸ An adverse ruling in this Court would jeopardize the Commission's carefully tailored and judicious approach.¹¹⁹

¹¹⁵ Cal. Coastal Comm'n, *Implementation Report*, *supra* note 12, at 2.

¹¹⁶ *Id.*

¹¹⁷ *See supra* note 107; *see also* Commission Opening Br. at 23 (describing design of statutory factors), 116-19 (describing the Commission's careful weighing of the statutory factors).

¹¹⁸ Commission Opening Br. at 32-33.


¹¹⁹ Indeed, if upheld, the trial court's remand order – which focused on the fact that the Commission ultimately imposed a fine higher than the amount recommended by staff – would create an incentive for Commission staff to recommend the highest authorized fine amount. *See id.* at 124-27.

CONCLUSION


For too long – despite Californians’ efforts to legally protect their rights and the Commission’s efforts to safeguard them – property owners monopolized coastal access with few consequences. The penalty authority in section 30821 is a crucial remedy. Without this authority and the ability to meaningfully use it when necessary, property owners’ efforts to privatize the beach may once again render coastal access an elite privilege rather than a public right. The Court should reject a return to this inequitable reality, deny the Lents any relief on their appeal, and grant the Commission’s cross-appeal in full.

DATED: July 15, 2020 Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c) of the California Rules of Court, I certify that the text of this brief consists of 7,446 words, not including caption, tables, signature block, and required certificates, as counted by Microsoft Word, the computer word processing program used to generate the brief.

Dated: July 15, 2020


Deborah A. Sivas

PROOF OF SERVICE

At the time of service, I was over the age of eighteen years and not a party to this action. I am employed in the county of Santa Clara, State of California. My business address is 559 Nathan Abbott Way, Stanford, California 94305-8610.

On July 15, 2020, I served the foregoing **SURFRIDER FOUNDATION'S and AZUL'S APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND [PROPOSED] BRIEF IN SUPPORT OF CALIFORNIA COASTAL COMMISSION** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY U.S. MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Mills Legal Clinic at Stanford Law School for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Stanford, California.

BY ELECTRONIC SERVICE: I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to TrueFiling, through the user interface at <https://tf3.truefiling.com>.

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

Executed on July 15, 2020, at East Palo Alto, California.



Ana Villanueva

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