

**IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA  
SIXTH APPELLATE DISTRICT**

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Case Nos. H050433 AND H051907

**CHRISTOPHER J. WESELOH, ET AL.,**  
*Plaintiffs, Cross-Defendants, Respondents, Cross-  
Appellants*

v.

**COUNTY OF SANTA CRUZ, et al.**  
*Defendant, Cross-Complainant, Appellant, Cross-  
Respondent.*

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On Appeal From the Superior Court for  
County of Santa Cruz

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Case No. 18CV03315, Judge Timothy Volkmann

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**[PROPOSED] AMICUS CURIAE BRIEF  
CALIFORNIA STATE ASSOCIATION OF COUNTIES,  
LEAGUE OF CALIFORNIA CITIES AND FRIENDS OF  
COUNTY PARKS IN SUPPORT OF DEFENDANT, CROSS-  
COMPLAINANT, APPELLANT, CROSS-RESPONDENT  
COUNTY OF SANTA CRUZ, ET AL**

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## **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

The trial court decision in this matter was erroneous and should be reversed. The purpose of this amicus brief is not to duplicate the arguments already so well and extensively presented by the appellant, which arguments, *amici* believe, correctly demonstrate the need for a reversal of the trial court's decision. Instead, consistent with the whole purpose of briefs filed by parties who serve as "friends of the court," this brief provides a statewide view of the issues before the Court and urges the Court to recognize that the dispute must be resolved from a different perspective than the one utilized by the trial court.

First, the trial court judgment should be reversed because its decision was made in direct contradiction to a fundamental state policy that the trial court simply disregarded in its consideration of the claims made by the plaintiffs. The state has a formal and extremely strong policy, based on provisions in the California Constitution, that requires that the state maximize its efforts to preserve and protect public access to and along the California coast. That was not a policy that guided the trial court's decision in any way. The trial court acted, in fact, as if this

extremely strong state policy did not exist or was not relevant.

Second, it is vital that this Court recognize, as the trial court failed to recognize, that the dispute about public access brought before the trial court could not properly be considered as if it were in some way analogous to a dispute between two “private parties.” The trial court reviewed the dispute as though it were a disagreement over an access agreement which might well have been made between private parties, not recognizing that the County of Santa Cruz was, in all of the events that came before the trial court, acting, really, as a *trustee for the rights of the public*. This vital perspective should inform this Court’s review of the record and should lead to a reversal of the trial court’s decision.

Third, the trial court decision, in essence, reflected the idea that the access rights of the public could be defeated by the County’s claimed inattention, disinterest, and/or failure to take various actions, as though the private party plaintiffs could somehow eliminate public rights by something akin to “adverse possession,” or on the theory that the County of Santa Cruz had actually “abandoned” the public’s rights.

Amici submit this brief to emphasize that public agencies in

California act as trustees for the public, and that the rights of the public to public access, once those rights have been created, cannot properly be adjudged to be “lost” or “abandoned” without affirmative and formal action by the public agency. Because such formal action did not occur here, the trial court decision must be reversed.

## II. ARGUMENT

### A. THE TRIAL COURT FAILED TO GIVE SUFFICIENT WEIGHT TO THE STATE’S STRONG POLICY OF MAXIMIZING PUBLIC ACCESS TO AND ALONG THE CALIFORNIA COAST

The California Coastal Act lists the following as one of its “basic goals”:

**Maximize 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.

(Pub. Resources Code, § 30001.5, subd. (c)(emphasis added).)

The California Coastal Act was originally enacted by the Legislature in 1976, as the legislative implementation of an initiative measure, the California Coastal Zone Conservation Act (Proposition 20, 1972), which included a very similar provision.<sup>1</sup>

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<sup>1</sup> Proposition 20 enacted what was then Public Resources Code section

The initiative measure, directly enacted by the citizens of the State of California, mandated the preparation of a “Public Access Element” intended to provide “**maximum visual and physical use and enjoyment of the coastal zone by the public.**”

(Former Pub. Resources Code, § 27304, subd. (c)(3), repealed by its own terms (Jan. 1, 1977)(emphasis added).) Indeed, [o]ne of [the Coastal Act’s] goals is to ‘[m]aximize public access to’ the beach.”

(*Coastal Act Protectors v. City of Los Angeles* (2022) 75 Cal.App.5th 526.) “By law, public access to the beach is a California priority.”

(*Keen v. City of Manhattan Beach* (2022) 77 Cal.App.5th 142, 144.)

Furthermore, Article X, Section 4 of the California Constitution also makes clear that “no individual...claiming or

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27001, which read: “The people of the State of California hereby find and declare that the California coastal zone is a distinct and valuable natural resource belonging to all the people and existing as a delicately balanced ecosystem; that the permanent protection of the remaining natural and scenic resources of the coastal zone is a paramount concern to the present and future residents of the state and nation; that in order to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to preserve the ecological balance of the coastal zone and prevent its further deteriorations and destruction; that it is the policy of the state to preserve, protect, and, where possible, to restore the resources of the coastal zone for the enjoyment of the current and succeeding generations....” This language exists in its current form in Public Resources Code section 30001, et seq. The full text and ballot measure arguments of Proposition 20 are available here:

[https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1773&context=ca\\_ballot\\_props](https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1773&context=ca_ballot_props).

possessing the frontage or tidal lands of a harbor, bay, inlet, estuary or other navigable water in this State shall be permitted to exclude the right of way to such water...**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 (emphasis added).)

Thus, the provisions of the California Coastal Act must be liberally applied to the right to the public to access coastal property. “Case authority confirms the importance of preserving public access to the coast. ‘[T]he concerns placed before the Legislature in 1976 were more broad-based than direct physical impedance of access. For this reason, . . . public access and recreational policies of the Coastal Act should be broadly construed to encompass all impediments to access, whether direct or indirect, physical or nonphysical.” (*Spencer v. City of Palos Verdes Estates* (2023) 88 Cal.App.5th 849, 864, citing *Surfrider Foundation v. California Coastal Com.* (1994) 26 Cal.App.4th 151, 158. See *11 Lagunita, LLC v. California Coastal Com.* (2020) 58 Cal.App.5th 904, 937 [“Public access is not limited to the right to access a particular beach, it also includes the public’s right to

access the sea itself, as well as the dry sand on the beach.”].)

“There is no question the state places significant value on the public’s right to access the coast.” (*Lent v. California Coastal Com.* (2021) 62 Cal.App.5th 812, 858.) The public’s rights are protected in numerous statutory provisions, including the public’s right to access coastal lands (Cal. Const., art. X, §§ 3, 4; Pub. Resources Code, § 30210), and the ability to use oceanfront land for recreation (Pub. Resources Code, §§ 30220 [“Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.”], 30221 [“Oceanfront land suitable for recreational use shall be protected for recreational use and development unless ... already adequately provided for in the area.”]). (See *Lent, supra*, 62 Cal.App.5th at p. 859.) The Coastal Act’s “policies protect such public access by, among other things, precluding development from interfering with such use and protecting oceanfront land suitable for recreational use.” (*Greene v. California Coastal Com.* (2019) 40 Cal.App.5th 1227, 1234, citing Pub. Resources Code, §§ 30211, 30212, 30221.)

There is nothing in the trial court’s “Final Statement of Decision” that reflects these constitutional and statutory

mandates. Contrary to the trial court’s ruling, the directive of the voters and the Legislature to maximize public access to and along the coast is not an invitation to “violate the constitutionally protected rights of private property owners.” Indeed, “[t]he predominant goal of the Coastal Act is the protection of public access and preservation of the fragile coastal ecology from overzealous encroachment.” (*Save Oxnard Shores v. California Coastal Com.* (1986) 179 Cal.App.3d 140, 152.) In this case, however, the trial court made no reference to the state law mandate to “maximize” access to and along the coast, and the trial court similarly took no account of the policies contained in the California Constitution.

Amicus Friends of the County Parks particularly emphasizes the practical importance of these preeminent state policies to elder persons, persons with disabilities, and all others who would be shut off from both visual and actual access to the coast were the trial court decision upheld. The photographs in the trial court record are dramatic evidence of the “real life” impact of the trial court’s decision on the achievement of the state’s coastal

access policies.<sup>2</sup>

The state's extremely strong legislative and constitutional mandates were simply ignored by the trial court, as if they were not relevant. This was a very significant and consequential error and is a compelling reason to reverse the decision of the trial court.

**B. THE TRIAL COURT ACTED AS THOUGH THE DISPUTE ABOUT PUBLIC ACCESS THAT CAME BEFORE IT WAS ANALOGOUS TO A DISPUTE BETWEEN TWO PRIVATE PARTIES. IN FACT, A DIFFERENT PERSPECTIVE WAS REQUIRED, ONE RECOGNIZING THE COUNTY'S TRUSTEE RESPONSIBILITIES TO THE PUBLIC**

Just as the trial court failed to consider the relevance or applicability of the strong public policies that require Santa Cruz County, and the court, to maximize public access to and along the coast, the trial court never properly considered that Santa Cruz County, with respect to all of the actions it took (or did not take), was acting as a trustee for the rights of the public.

For over a century, the courts have understood that property held by a public agency is not treated just like any other private

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<sup>2</sup> A photo of the obstructed sidewalk is available at page 15 of the Appellants Opening Brief (AOB), and at 16AA/09059 of the Appellant's Appendix. The 37' Walk image is at page 14 of the AOB, and 55AA/14279 of the Appellant's Appendix.

property. Rather, “[a] county acts independently of the local population and ‘holds its property on behalf of the state for governmental purposes.’” (*Boss v. Lewis* (1917) 33 Cal.App.792, 796.) Thus, “[w]hile the legal title is in the county, it is a title held in trust for the whole public.” (*Reclamation District No. 1500 v. Superior Court* (1916) 171 Cal.672, 679.)

In the context of coastal access, there is a fundamental reason that public property be considered to be held for the good of the entire public. “Beaches are not a luxury. Beaches are a public space that provide a different set of rhythms to renew public life. 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.” (Garcia & Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast* (2005) 2 Stan. J.C.R. & C.L. 143, 145.) Notwithstanding the importance of public coastal access, “inequities are being documented in access to nature and open space. Lack of access to ‘recreational’ resources is of growing concern as the physiological and psychological benefits of exposure to nature are better

understood. Thus, inequitable access to these resources may have very real implications for health, happiness, and productivity.”

(Reineman, et al., *Coastal Access Equity and the Implementation of the California Coastal Act* (2016) 36 Stan. Envtl. L.J. 89, 90-91.)

Therefore, this perspective – seeing the County in a trustee capacity – is important. But the trial court seemed to see the dispute before it from another, erroneous perspective, as if the dispute between the homeowners and the County were analogous to disputes about easements between two private parties. The County’s fiduciary responsibility, in which the County acts as a “trustee” for the rights of the public, provides much stronger protections for the public. The trial court’s error should be reversed.

**C. THE PUBLIC’S RIGHTS TO ACCESS TO AND ALONG THE COAST CANNOT BE DEFEATED BY CLAIMS THAT THE COUNTY OF SANTA CRUZ “ABANDONED” THE PUBLIC’S RIGHTS.**

As noted in the County’s Opening Brief, one possible basis for the trial court’s ruling is that Plaintiffs/Respondents acquired the property at issue through adverse possession. (Opening Br., pp. 60-61.) This is clear error. Because the public access rights at issue in this case belong to the public, and because there was

never any proceeding by which the County definitively and publicly abandoned them, these rights continue to exist, and the decision of the trial court must be reversed.

The principle that public property cannot be acquired by adverse possession is manifested through decades of case law. “The rule is universal in its application to all property set apart or reserved for public use, and the public use for which it is appropriated is immaterial. . . . *The public is not to lose its rights through the negligence of its agents, nor because it has not chosen to resist an encroachment by one of its own number, whose duty it was, as much as that of every other citizen, to protect the state in its rights.*’ This rule has been often repeated in the opinions of this court.” (*Bartholomew v. Staheli* (1948) 86 Cal.App.2d 844, 857 [italics in original]). See also *Southern Pacific Co. v. City and County of San Francisco* (1964) 62 Cal.2d 50, 53, fn. 1 [“title to property held by the governmental agencies therein described is not subject to loss by adverse possession regardless of the character of the property”]; *Hagman v. Meher Mount Corp.* (2013) 215 Cal.App.4th 82, 87 [“title to property owned by a public entity cannot be obtained by another through adverse possession,” fn. omitted]; *City of Los Angeles v. Forrester* (1936) 12 Cal.App.2d 146,

149 [“the rights of a municipality in public land may not be divested by adverse possession”]; *Martin v. City of Stockton* (1919) 39 Cal.App. 552, 557 [“it has been held and decided that no rights can thus be acquired in and to the public property, or property devoted to a public use, or owned by a municipality for public uses”].) The policy rationale for this rule is self-evident. Local agencies have limited resources, and it is simply not possible to police all public rights all the time. The public should not be punished by the loss of its rights to public property simply because the public agency could not or did not continually enforce its property rights.

This common law principle was codified by the Legislature when it amended Civil Code section 1007 in 1935 “prohibiting the acquisition of title by adverse possession of any public-use property, no matter how long the property is occupied.” (*Marin Healthcare Dist. v. Sutter Health* (2002) 103 Cal.App.4th 861, 882.) It is therefore of no relevance that the private land owners in this case used and maintained the property for 79 years or that the County took no affirmative steps to maintain the property. It is simply not permissible under the law to acquire public land through the actions or inactions that the trial court relied upon

here.

To the contrary, the Legislature has dictated the methods by which public land can be sold, transferred or abandoned. (See, e.g., Sts. & Hy Code, §§8300-8374 [governing vacation of public streets, highways and easements].) For example, in the Surplus Land Act, written notice must be provided to designated entities before a local agency can dispose of certain types of property, including those that may be used for open space purposes. (Gov. Code, § 54222.) The Legislature was clear about its intent in creating these requirements prior to disposing of public property, expressing its “belief that there is an identifiable deficiency in the amount of land available for recreational purposes and that surplus land, prior to disposition, should be made available for park and recreation purposes or for open-space purposes.” (Gov. Code, § 54220, subd. (b).)

This Court should not affirm a trial court ruling that is premised on the ability of private landowners to assume ownership of public property through occupation, the passage of time, and local agency inaction. The courts and the Legislature have made abundantly clear that public property rights, such as the easement on the 37’ Walk at issue in this case, are owned by

public agencies on behalf of the public, and private owners may not assert adverse possession or similar legal arguments to support claims that the public agency abandoned its rights to the property.

### III. CONCLUSION

The trial court's Final Statement of Decision ignores constitutionally-based state policies that require local governments and state government to maximize public access to and along the coast. In 1929, long before the Coastal Act, Santa Cruz County accepted a public easement that exemplified this state law mandate and never took action to terminate that easement. In fact, in 1980, the County took action to reinforce and reemphasize this public access requirement. The trial court failed to treat the issues presented to it in a way that recognized the public's rights, and as organizations representing 472 cities and every county government in the state, as well as the public's interest in accessing public parks, *amici* ask this Court to see this case from the perspective of the strong state policies supporting public access and precluding the loss of public property absent formal action of the legislative body.

The trial court's ruling denies public access to and along

the beach by interrupting pedestrian travel adjacent and in view of the beach, and access from the 37' Walk onto the beach.

Allowing this ruling to stand would set a dangerous precedent, encouraging and empowering private landowners to extend control and ownership to public property abutting their private property, and cutting off access to public spaces. CSAC, Cal Cities and Friends of County Parks therefore urge this Court to reverse the trial court decision.

Dated: March 17, 2025

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced thirteen (13) point Century Schoolbook typeface. According to the "Word Count" feature in my Microsoft Word software, this brief contains 3,078 words.

I declare under penalty of perjury that this Certificate of Compliance is true and correct, and that this declaration was executed in Sacramento, California on March 17, 2025.

Dated: March 17, 2025

Respectfully submitted,

*/s/ Jennifer B. Henning*

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