

Case No. A157073

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

TIBURON/BELVEDERE RESIDENTS UNITED
to SUPPORT the TRAILS (“TRUST”)

Plaintiff and Appellant,

v.

MARTHA CO., a California corporation;
and DOES ONE through FIFTY

Defendant and Respondent.

On Appeal From The Marin County Superior Court
The Honorable Roy O. Chernus
Case No. CIV 1703276

**AMICUS BRIEF OF THE SIERRA CLUB AND MARIN
CONSERVATION LEAGUE IN SUPPORT OF
APPELLANT TIBURON/BELVEDERE RESIDENTS
UNITED TO SUPPORT THE TRAILS (“TRUST”)**

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**PROPOSED AMICUS BRIEF IN SUPPORT OF
TIBURON/BELVEDERE RESIDENTS UNITED TO SAVE THE
TRAILS [“TRUST”]**

Introduction

Neighbors as well as hikers from around the Bay Area and beyond have walked the trails on the Martha Co. property for decades, experiencing the trails’ spectacular views to Angel Island and beyond. Members of the Sierra Club have used these trails for many years and continue to do so. Marin Conservation League (“MCL”) has recognized the importance of the Martha Co. trails to the public residing in the Bay Area and beyond. The trial court erred in determining that the evidence of the public’s regular and repeated use of the trails on the Martha Co. property was insufficient to establish an implied in law dedication. Amici ask this Court to reverse the decision below.

Statement of Facts

The Sierra Club and MCL incorporate by reference the Statement of Facts set forth in Appellant’s Opening Brief (“AOB”) at pages 9-13.

Argument

I. The Trial Court Improperly Determined that the Martha Co. Trail Users Did Not Satisfy the Requirement for Dedication to the Public.

The trial court improperly emphasized that trails on the Martha Co. property were accessed primarily by neighbors in concluding that TRUST had failed to demonstrate that these trails had been dedicated to public use.

See Statement of Decision at 2 (“The evidence was also clear that most of these witnesses were nearby neighbors to the property”); *id.* at 3 (distinguishing *Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, on the grounds that “[t]he use of the property was . . . by a far greater number of people who were from not just the area surrounding it”).

As Appellant TRUST has demonstrated, the question of whether trail users reside near the trails is not determinative of whether the land has been dedicated to the public. Appellant’s Reply Brief (“ARB”) at 22-23. Rather, the legal standard is satisfied, as here, by demonstrating that “various groups of persons have used the land,” not simply “a limited and definable number of persons.” See *Gion v. City of Santa Cruz* (1970) 2 Cal.3d 29, 39 (abrogated prospectively by statute, as stated in *Friends of the Trails, supra*, 78 Cal.App.4th at 823).

Although the adverse use must be “substantial, diverse, and sufficient, . . . to convey to the owner notice that the public is using the passage as if it had a right to do so,” *Friends of the Trails, supra*, 78 Cal.App.4th at 825, fn. 7, a dedication implied in law in favor of the public does not require that the trail’s users reside far away. For example, while the court in *Friends of the Trails* acknowledged that more than “just neighbors” used a road above the “Rattlesnake canal” in Nevada County, that evidence was not dispositive to the court’s determination that the public’s use was adverse. *Id.* at 819 (citing trial court’s summary of

evidence); *id.* at 825. Instead, the court found an implied dedication based on evidence indicating that the public’s use was “far from rare,” and was “continuous, regular, and open.” *Id.* (quoting trial court decision). The court found this “level of use was sufficient to afford unequivocal notice of public use” to the land owners. *Id.* Where, as here, there is evidence that various groups of people used the trails in sufficient number to put the owners on notice, it matters not where those people were from. Accordingly, it was error for the trial court here to focus on where the Martha Co. trail users resided.¹

II. The Martha Co. Trails are World-Class, Attracting Hikers from Beyond the Property’s Immediate Vicinity.

Neighbors and residents of the Tiburon Peninsula and beyond have experienced the beauty and unique qualities of the trails on the Martha Co. property for decades.

A. The Sierra Club’s Numerous Bay Area Members Have Long Been Active Throughout Marin County.

The Sierra Club’s members have historically hiked and recreated on the Martha Co. trails, and continue to do so. The San Francisco Bay Chapter of the Sierra Club, which includes Marin County, was established in 1924. *See* Sierra Club San Francisco Bay Chapter, “History,” *available*

¹ Notably, the Martha Co. acknowledged that not all of TRUST’s witnesses lived within close walking distance of the property. Respondent’s Opening Brief (“ROB”) at 34, fn. 26.

at <https://www.sierraclub.org/san-francisco-bay/history>. Among the first subcommittees of the Chapter were “Trails” and “Local Walks Schedule,” and by 1961 the Chapter was sponsoring more than 300 outings per year. *Id.* During the 1960’s and early 1970’s, the Chapter’s membership was swelling: it grew from 8,000 members in 1964 to 11,648 members in 1966. *Id.* By 1969 the Chapter had 20,000 members, and that figure grew to 27,500 members in 1973. *Id.*

The Sierra Club’s members from Marin, the Bay Area, and beyond have for decades enjoyed hiking and recreating in the open space areas in Marin, including on the Martha Co. trails. They value the views, wildlife, geology, history, and botany of the area. The Martha Co. property in particular affords spectacular views of San Francisco, the East Bay Hills, Mount Diablo, Mount Tamalpais, San Pablo Bay, Angel Island, and the Golden Gate Bridge. The property provides valuable habitat for endangered red-legged frogs and rare plants. The property’s trails serve the important need of Sierra Club members and the public at large for quality time in nature.

B. The Marin Conservation League Considers the Martha Co. Trails To Be World-Class.

Marin Conservation League (“MCL”) was formed in 1934. *See* MCL, “Successes,” *available at*

<http://www.marinconservationleague.org/advocacy/successes.html>. Its mission is to preserve, protect, and enhance the natural assets of Marin County for the public. *See* MCL, “Who We Are,” *available at* <http://www.marinconservationleague.org/about-us.html>. MCL works to achieve its mission through prudent action, including property acquisition, advocacy, and conservation. *Id.* The approximately 1,000 member organization serves as the countywide authority on environmental policy by studying and analyzing issues, proposing policy, educating and mobilizing citizens, and monitoring outcomes. *Id.*

Since its inception, MCL has worked to protect open space lands in Marin County for public use. Its extensive experience includes preserving and protecting areas that include Point Reyes National Seashore, Samuel P. Taylor State Park, Mt. Tamalpais State Park, Angel Island State Park, and many more. *See* MCL, “Successes,” *available at* <http://www.marinconservationleague.org/advocacy/successes.html>; *see also* MCL, “MCL’s Legacy: A Map of Our Successes,” *available at* <http://www.marinconservationleague.org/advocacy/interactive-map.html>.

MCL also has an active history on the Tiburon Peninsula. In 1958, MCL initiated the acquisition of the Tiburon Uplands Nature Preserve, a 24-acre piece of land that is now owned by the Marin County Open Space District. *See* MCL, “Walk Into (Conservation) History #15; Saturday, May

3, 2014; *Conserving South Tiburon Ridge*,” (“Walk Into History”) at 2, available at http://www.marinconservationleague.org/images/stories/pdfs/events/mcl_walk-alk-old-st-hilarys_program_for-web.pdf. MCL also supported the purchase of 117 acres of Ring Mountain as an open space preserve, also located on the Tiburon Peninsula. See MCL, “Ring Mountain,” available at <http://www.marinconservationleague.org/ring-mountain.html>.

The Martha Co. property is “prime land”; it affords views that “encompass Angel Island in the foreground, and the expanse of the Bay Area beyond, in an almost 360-degree arc.” Walk Into History at 3, 7.² Based on its more than 80 years of experience protecting open space lands in Marin, and its members’ intimate knowledge of the Tiburon Peninsula’s open space areas and trails, MCL considers the Martha Co. property trails to be world-class.

Conclusion

For all of these reasons, the Sierra Club and MCL support TRUST’s appeal of the trial court’s judgment in favor of Martha Co. and against TRUST.

² In 2014, MCL noted that the Martha Co. property is “accessible by walkers.” *Id.* at 7.

DATED: June 26, 2020

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CERTIFICATE OF WORD COUNT

In accordance with California Rules of Court Rule 8.204(c)(1), I certify that, exclusive of this certification and the other exclusions referenced in Rule of Court 8.204(c)(3), this Brief of Amici Curiae in Support of Appellant TRUST contains **1,265** words, as determined by the word count of the computer used to prepare this brief.

DATED: June 26, 2020

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CERTIFICATE OF SERVICE

I, Jennifer Miao,

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On June 26, 2020, 2020, I served true copies of the following document described as:

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

Executed on June 26, 2020, at San Francisco, California.



Jennifer Miao

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