

Memorandum

To : The Conservancy
The Advisory Committee

Date: September 26, 2016

From : 
Joseph T. Edmiston, FAICP, Hon. ASLA, Executive Director

Subject: **Agenda Item 16: Consideration of resolution authorizing submission of an amicus letter in support of the Mountains Recreation and Conservation Authority's Petition for Review to the California Supreme Court in the matter of *Friends of the Hastain Trail, et al. v. Coldwater Development, LLC, et al.***

Staff Recommendation: That the Conservancy adopt the attached resolution recommending authorizing submission of an amicus letter in support of the Mountains Recreation and Conservation Authority's Petition for Review to the California Supreme Court in the matter of *Friends of the Hastain Trail, et al. v. Coldwater Development, LLC, et al.*

Legislative Authority: Public Resources Code 33211(c)

Background: The Hastain Trail is an historic hiking trail in Franklin Canyon, just north of the City of Beverly Hills. It originates in Franklin Canyon Park, which is operated by the Mountains Recreation and Conservation Authority (MRCA) and traverses private property to a nearby hilltop that provides nearly 360 degree views of the canyon. The Hastain Trail has been a popular hiking route since at least the 1950s and remains popular to this day.

In 2011, the owner of the private property over which the trail travels erected fences, installed “no trespassing” signs, and began grading activities on the subject property. A group of concerned citizens known as the Friends of the Hastain Trail (“Friends”) quickly filed a lawsuit against the property owner on the grounds that there had been an implied public dedication of a hiking trail for the Hastain Trail on private property. The MRCA later joined the suit as an intervening plaintiff in support of the Friends.

In order to prove that a property owner impliedly dedicated a right to public access, a plaintiff must satisfy the standard laid out in the landmark Supreme Court decision in *Gion v. City of Santa Cruz* (1970) Cal.3d 29 (“*Gion*”). The Court in *Gion* ruled that a plaintiff could prevail in a case for implied public dedication if they established “the public has used the land without objection or interference for more than five years,” and that “persons have used the land as they would have used public land.”

The *Gion* decision was highly controversial at the time it was decided and the Legislature subsequently adopted a bill that effectively abolished the establishment of implied public

dedications of private property through public use. (Cal. Civil Code Sec. 1009). The Supreme Court later clarified the effect of Section 1009 ruling that plaintiffs could still bring actions for implied public dedications for recreational purposes, but that the evidentiary burden outlined in *Gion* must have been satisfied prior to March 3, 1972, the effective date of Section 1009.

At trial, the Friends and MRCA prevailed on all fronts after presenting both eyewitness and documentary evidence that the elements of the *Gion* test had been satisfied. The defendant property owner soon filed an appeal. The appeal was briefed and oral argument was held on September 21, 2015. After a lengthy delay, the Court of Appeal requested additional briefing on issues that were not central to trial court decision. The parties briefed the issues as requested and the Court of Appeal returned a 2-1 decision which overturned the trial court ruling and striking down the finding that an implied public dedication of a public trail easement had occurred. The Court's ruling contained the majority opinion, two separate concurrences, and a dissent from Justice Jeffrey Johnson.

The majority's decision rested on the determination that the Hastain Trail was, at one point, a "fire road." Therefore, the Court ruled, no public rights could be established over the underlying property because its use as a hiking trail would have been expected, thereby failing to provide the property owner with sufficient notice of adverse use. The two judge majority also found that no substantial evidence had been provided of the public usage of a critical portion of the trail.

Justice Johnson submitted a very strongly worded dissenting opinion. He argued that the concept of the Hastain Trail as a fire road is irrelevant to the matter. Not only because the term was undefined at trial and appeal, but because there was no evidence presented that the fire road purportedly doubling as the Hastain Trail was ever actually owned or dedicated to a public entity, which is key to the majority's logic. Justice Johnson pointed out that there is no statutory or case law precedent for the majority to conclude that a theoretical fire road would negatively impact the establishment of an implied public dedication. In summary, he labeled the majority opinion a "revisionist approach" that is not supported in law or in fact.

Implications of the Decision

Court of Appeal certified the opinion for publication, establishing this as binding precedent for similar cases throughout the state. This is critically important legally, since the majority opinion dramatically alters a 50-year precedent in a manner that starkly contradicts previous cases.

More importantly, for advocates and stewards of public access, is the fact the Court has called into question every hiking trail in the entire state outside of publicly owned lands that may have

been colocated with a fire road, however defined, at some point in its history. This decision also greatly heightens the burden of proof for plaintiffs in implied dedication cases at a time when meeting that burden was already increasingly difficult. If this decision stands, hikers, bicyclists, and equestrians, as well public agencies and nonprofits that manage trails and public access should be on notice that it could represent a significant impediment to preserving recreational public access in perpetuity.

The MRCA filed a Petition for Reconsideration to the Court of Appeal which was denied. The MRCA then filed a Petition for Review to the California Supreme Court, which is currently under consideration. Generally, the Supreme Court grants review to only a small percentage of the cases it is asked to review. The MRCA believes that, due to the important public policy issues at stake in this case and the complexity and tone of the four different opinions from the 3 judge panel, there is a higher than average chance that review will be granted

In order to increase the case's profile and increase the chance that the Supreme Court will grant review, the MRCA has requested stakeholder groups to submit *amicus* letters of support. Conservancy staff has requested the Office of the Attorney General to research this matter and to consider submitting an *amicus* letter in this matter. Staff believes that the Conservancy can provide a valuable regional and statewide perspective on this matter and that its involvement will improve the chances of a review.