IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION TWO

Friends of Martin's Beach, Appellant, **v.** **Martins Beach 1, LLC and Martins Beach 2, LLC,** Respondents.	Case No. A142035

San Mateo County Superior Court, Case No. CIV517634
Honorable Gerald J. Buchwald

AMICUS BRIEF OF CALIFORNIA STATE LANDS COMMISSION AND CALIFORNIA COASTAL COMMISSION IN SUPPORT OF APPELLANT FRIENDS OF MARTINS BEACH

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INTRODUCTION

The trial court judgment under review quieted title in defendants and respondents Martins Beach 1 and 2, LLCs (the Martins Beach entities) to "beachfront land, road, tidelands, and related easements that are currently Martins Beach" as well as the "off-shore submerged tidelands." The trial court purported to quiet title to the "off-shore submerged tidelands" even though the Martins Beach entities did not seek such relief. The Martins Beach entities' cross-complaint to quiet title was limited to property landward of the mean high tide line thus excluding both tidelands and submerged lands. The quiet title judgment purporting to include "off-shore submerged tidelands" was in error and requires reversal.

The trial court erred in a number of ways beyond including property in the judgment that was not the subject of the quiet title cross-complaint. Upon its entry to the United States in 1850, California received title to the tidelands and submerged lands within its borders, including those at Martins Beach, as an incident to its sovereignty to be held subject to the public trust for commerce, navigation and fisheries. The trial court attempted to extinguish the State's property interest in these lands based on federal confirmation in the nineteenth century of a Mexican rancho grant. In doing so, the trial court failed to recognize that the rancho grant and land surveys performed in connection with the federal confirmation of the grant demonstrate that the tide and submerged lands at Martins Beach were not included in the original rancho grant. Because the original Mexican rancho grant never included tide and submerged lands, the trial court's reliance on *Summa Corp. v. California ex. rel. State Lands Commission* (1984) 466 U.S. 198 (*Summa*) to place those lands into private ownership was improper. The trial court similarly failed to recognize that the deeds by which the Martins Beach entities took title to the property at issue do not include conveyance to them of any interest in tide and submerged lands.

Nothing in the trial court record or in the law supports the trial court's erroneous judgment that purports to confirm into private ownership California's sovereign tide and submerged lands.

The trial court further erred in entering a quiet title judgment in favor of the Martins Beach entities because the State of California was an indispensable party to the quiet title action. The State was an indispensable party based on general rules regarding indispensability of parties whose property interests may be affected by litigation, as well as specific statutory provisions that require joinder of the State in actions regarding title to or the boundaries of tide and submerged lands. The failure to include the State in the quiet title action renders the judgment void. Moreover, even if that were not so, the quiet title judgment cannot bind the State, or any of its constituent agencies, because of the failure to individually name the State as a party to the action.

This case is of concern to the California State Lands Commission and the California Coastal Commission because of their statutory roles with regard to tide and submerged lands and coastal property that adjoins those lands. The Legislature has vested exclusive control of the State's ungranted tide and submerged lands such as those at Martins Beach in the State Lands Commission. (Pub. Resources Code, §6301.) And the Legislature has placed regulatory authority over coastal land use in the Coastal Commission. (Pub. Resources Code, § 30000 *et seq.*) If the trial court's judgment were to stand, not only would the State of California unlawfully lose sovereign property, but also the State Lands Commission and the Coastal Commission's ability to implement their respective statutory responsibilities would be severely compromised. This Court should reverse the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. TITLE HISTORY OF THE MARTINS BEACH PARCELS.

The Martins Beach entities are the record owners of two parcels of real property (Martins Beach) located south of Half Moon Bay at 22325 Cabrillo Highway, also known as Highway 1. (Clerk's Transcript (CT) 1567:6-8.)

The first parcel, with record ownership in Martins Beach 1, via a deed from Richard M. Deeney, is described in that deed as a parcel that begins:

> at a point on the edge of the Coast or Ocean Bank [thence inland by a series of courses and distances until] the Center of Lobitos Creek and thence down said creek 11.84 chains to its mouth; *thence along the high water mark of the ocean* Southerly 27.75 chains...to the point of beginning...

(CT 358-359, emphasis added.)

The second parcel, with record ownership in Martins Beach 2, also via a deed from Richard M. Deeney, is described in that deed as a parcel that:

> [b]egin[s] on the bank of the Pacific Ocean at the Northwest corner of the land now or formerly owned by Calvin Putnam; *thence from said point of beginning along said ocean bank* . . . [series of courses and distances].

(CT 356-357, emphasis added.)

Both parcels have as their base title a Mexican land grant, which did not include tide and submerged lands. In 1838, the Mexican governor of Alta California, Juan B. Alavardo, provisionally granted an 8,905-acre parcel of property known as Rancho Canada de Verde y Arroyo de la Purisima to Jose Maria Alviso. (CT 865:24-25; 1568:21-24.) The two parcels at issue in this case were included within Rancho Purisima. (Declaration of Bill Lott, CT 865:21-866:14; 709; 845:9-13; "Requests for Judicial Notice Are Granted" CT 1588.) In 1840, Jose Maria Alviso conveyed his interest in Rancho Purisima to his brother, Jose Antonio Alviso. (*Ibid.*)

In 1848, both the United States and Mexico approved the Treaty of Guadalupe Hidalgo ending the Mexican-American War. The treaty resulted in Mexico ceding a large portion of the present southwestern United States, including California, to the United States. (CT 1568:26-28; *Summa, supra,* 466 U.S. at p. 202.) To fulfill its obligations under the Treaty of Guadalupe Hidalgo and to provide for an orderly settlement of Mexican land claims in California, Congress passed the California Lands Act of March 3, 1851, setting up a comprehensive claims settlement procedure. (9 Stat. 631.) The 1851 Act created a Board of Land Commissioners with the power to decide the rights of "each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government. . . ." (9 Stat. 631, § 8; *Summa, supra*, at p. 203.)

In 1852, Jose Antonio Alviso filed a claim for Rancho Purisima with the Board of Land Commissioners. (CT 865:28-866:2; 1569:14-18.) The Board and the United States District Court confirmed the claim. (*Ibid.*) The United States appealed, and the United States Supreme Court confirmed Jose Antonio Alviso's claim. (*United States v. Alviso* (1859) 64 U.S. (23 How.) 318.)

In addition to its procedure to confirm rancho grants, the 1851 Act established a system requiring a survey of property subject to the confirmation process. (9 Stat. 631, § 13.) When the Board of Land Commissioners confirmed or a federal court affirmed a rancho grant claim, the United States Surveyor General was required to accurately survey the property and to prepare and furnish a plat of that survey. (*Ibid*; *United States v. Fossatt* (1858) 62 U.S. (21 How.) 445, 450.) The survey determined and located the land included in the grant from the Mexican government so that a confirmed claimant could say, "this is mine." (*Botiller v. Dominguez* (1889) 130 U.S. 238, 249.)

Pursuant to his duties under section 13 of the Act, the United States Surveyor General surveyed Rancho Purisima and produced a plat of that rancho. The boundary between the "Pacific Ocean" and Rancho Purisima is shown on the United States Surveyor General's original "PLAT of the Rancho Canada de Verde y Arroyo de la Purisima" as a meander line. (CT 709; Declaration of James Koepke In Support of Motion for Judicial Notice, ¶ 5, pp. 2-3; see Exh. A (Rancho Plat).) The field notes for the original United States Surveyor General's survey of Rancho Purisima confirm this. The field notes for the survey commence:

> Beginning at a large round rock, in the mouth of the Purissima creek, from which the witness post on line between sections 16 and 17, 78 chains south of the corner to sections 8, 9, 16, 17 in township 6 south, range 5 west bears north 81 1/2° east, 11 chains and 63 links. Thence *following the meanders of the Pacific Ocean* as follows. [series of courses and distances]

(*Id.*, ¶ 5, pp. 2-3; see Exh. B (Survey Field Notes), p. 164, emphasis added.) This survey is the basis for the description of Rancho Purisima contained in the confirmatory federal patent for the property. (Declaration of James Koepke In Support of Motion for Judicial Notice, ¶ 5, p. 3; see Exh. C (Patent).) The waterward boundary of Rancho Purisima is also shown as a meander line on the plat of that rancho depicted on the Purisima Rancho Cabrillo Unified School District map. That map shows the meander line as a series of courses and distances (labeled U.S. Survey Line) inland of the depiction of the location of the mean high tide line at that time. (CT 621; 707.) Thus, the deeds from Richard M. Deeney to the Martins Beach entities, the rancho plat, the rancho survey, the Rancho Purisima confirmatory patent, and other maps contained in the record are all consistent in their exclusion of tidelands and submerged lands from the lands included in Rancho Purisima and subsequently conveyed to the Martins Beach entities.

II. THE GENESIS OF THE DISPUTE OVER MARTINS BEACH AND THE FRIENDS OF MARTINS BEACH LAWSUIT.

A road leads from Highway 1 to the beach portion of Martins Beach. It provides the only vehicular access to the beach. High cliffs to the north and south shelter the beach, and the cliffs stretch into the Pacific Ocean forming an isolated cove. There is no reasonable access from other beaches because of the cliffs. (CT 1567:15-19.)

For many years the Deeney family owned Martins Beach and the public used the beach for picnicking, surfing, and other recreational uses. The Deeneys also provided a general store and public restrooms at the beach. This changed after the Martins Beach entities purchased the property. They closed the access gate on the road to the beach, employed security guards, and threatened members of the public who attempted to use the beach with criminal prosecution for trespass. (CT 1567-1568.)

On October 30, 2013, the Friends of Martins Beach (Friends), an unincorporated association, filed its first amended complaint. The complaint included causes of action to quiet title in the public for access and recreational use easements over Martins Beach Road and the dry sand along the beach based on a number of theories, including theories based on Article X, section 4 of the California Constitution, the public trust doctrine and express dedication of land to the public.[1] (CT 1-10.) The Friends also sought injunctive relief barring the Martins Beach entities from interfering with the public's use of these easements. (*Ibid.*)

The Martins Beach entities answered denying the allegations in the Friends' complaint and cross-complained for quiet title and declaratory and injunctive relief. (CT 27:23-27; 28:17-21; 29:2-7.) The Martins Beach

[1] The Friends did not allege and the parties acknowledge in their briefing that the trial court did not adjudicate whether any rights of public access exist by virtue of an implied dedication.

entities' cross-complaint to quiet title alleged that no person possessed an easement or any interest whatsoever "above the mean high tide line" of Martins Beach. (CT 29:5-7; 23-24.) The cross-complaint prayed for a judgment quieting its title to Martins Beach free of any adverse claim or interest whatsoever "above the mean high tide line." (CT 30:14, 17, 23.)

Neither party to this litigation named the State of California, the California State Lands Commission or the California Coastal Commission as parties in the action. Nor did the parties, or the trial court, provide any notice of the pendency of the action to the State of California, the California State Lands Commission or the California Coastal Commission. Accordingly, the litigation proceeded to final judgment without any representation of the State's interests.[2]

The Friends and the Martins Beach entities filed cross-motions for summary judgment/summary adjudication. The Friends' motion was only as to its second cause of action for tidelands-based public access pursuant to article X, section 4 of the California Constitution. (CT 344-345; 347-353; 1566:13-15.) The Martins Beach entities' motion for summary judgment encompassed all causes of action alleged in the Friends first amended complaint and also included a request for summary adjudication of the quiet title and declaratory relief claims in their cross-complaint. (CT 390-393; 394-419; 1566:2-12.) After briefing and argument, the trial court granted the Martins Beach entities' motion for summary judgment as to all causes of action in the Friends' amended complaint, as well as their motion for summary adjudication of the claims in their cross-complaint. (CT 1566-1594.)

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[2] Given the length of California's coast, it is impractical for California's agencies with coastal ownership and regulatory responsibilities to track all litigation throughout the state that could affect interests.

tidelands were therefore within the lands that the Martin Beach entities currently own. (See, e.g., CT 1570:10-14.)

Based on the above analysis, the trial court granted summary judgment in favor of the Martins Beach entities and declared in its Summary Judgment, Summary Adjudication, and Judgment Quieting Title that:

> (a) said Defendants are the fee owners of the Property located at 22325 Cabrillo Highway, including off-shore submerged tidelands, more particularly described in **Exhibit A** (hereinafter the "Property") and that (b) Plaintiff and its successors, assigns, tenants, or agents, and all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the Property adverse to Defendants' title, or any cloud on Defendants' title have no interest in the Property, including, but not limited to, any right of public access or easement for the public to use or access the Property for any purpose whatsoever.

(CT 1661:23-25, emphasis in original.)

Exhibit A to the Judgment consists of the two land descriptions attached to the deeds from Richard M. Deeney to the Martins Beach entities. (CT 1663-1664; compare 356-357 and 358-360 with 1663-1664.) The trial court did not explain why it was awarding relief to the Martins Beach entities that they had not sought.

In its decision, the trial court went on to find that article X, section 4 of the California Constitution could not apply to provide public access to Martins Beach because that section was "a restatement or codification of the preexisting public trust doctrine as it relates to tidelands and what rights flow from the tidelands." (CT 1577:21-23; 1578:4-8.) Again citing *Summa*, the trial court found that to apply article X, section 4 to Martins Beach to mandate public access to the beach would be to allow, in effect, a collateral attack on the patent for Rancho Purisima. (CT 1577:2-1580:20.) The trial court held that any and all interests of the State of California related to the public trust for commerce, navigation, and fisheries at

Martins Beach were extinguished during the Board of Land Commissioners' rancho confirmation process. The judgment further declared that Friends and "all persons unknown" have no interest in the Martins Beach entities' property, including "any right of public access or easement for the public to use or access the Property for any purpose whatsoever. (*Ibid.*)

ARGUMENT

I. THE STATE OF CALIFORNIA OWNS THE TIDELANDS AND SUBMERGED LANDS AT MARTINS BEACH.

The trial court committed grave error when it purported to quiet title in the two Martins Beach entities to the "off-shore submerged tidelands" at Martins Beach. (CT 1661:23-25.) As explained below, distinct from the situation in *Summa*, there were no tidelands or submerged lands included within either of the deeds from Richard Deeney to the Martins Beach entities or in the United States Surveyor General survey of, plat or patent for, Rancho Purisima. The Friends informed the trial court of this fact, but the court seemingly discounted its importance. (CT 1310:14-1311:9; Reporter's Transcript, October 1, 2013, 20:15-21:13; 30:15-24.)

A. The State Received Title to the Tidelands and Submerged lands at Martins Beach upon Its Admission to the Union.

Pursuant to the equal-footing doctrine, when California entered the Union on September 9, 1850, it acquired the rights in the beds of its navigable waters to the same extent as those held by the original States. (*Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co.*, (1977) 429 U.S. 363, 373-374.) The United States held the tidelands and submerged lands it acquired from Mexico in the Treaty of Guadalupe Hidalgo in trust for the States that would be created out of the new territory. (*Borax Consolidated, Ltd. v. Los Angeles* (1935) 296 U.S. 10, 15 citing

Knight v. United States Land Assn. (1889) 142 U.S. 161, 183 ["Upon the acquisition of the territory from Mexico, the United States acquired title to tidelands equally with the title to upland, but held the former only in trust for the future states that might be erected out of that territory."]; accord *City of Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 521.)

The one qualification to this principle is that it was inapplicable to land or interests in land that Mexico conveyed to individuals prior to the United States' assumption of title. *Summa* recognizes this exception; but there is nothing in *Summa*, or in other case law, that casts doubt on California's title to tidelands and submerged lands—like those adjacent to Martins Beach—that Mexico never granted to individuals prior to the Treaty of Guadalupe Hidalgo.

California received title to these tidelands, submerged lands, and the beds of navigable lakes and rivers within its borders for public purposes, traditionally delineated in terms of commerce, navigation, fisheries—the "public trust." (*Borax Consolidated, Ltd., supra,* 296 U.S. at pp. 15-16; *People v. California Fish Co.* (1913) 166 Cal. 576, 584; *City of Berkeley, supra,* 26 Cal.3d at p. 521.) This included any tidelands or submerged lands at Martins Beach.

These "public trust lands" are of a unique character distinct from lands California owns in a proprietary capacity. While traditionally delineated in terms of commerce, navigation, and fisheries, the courts have recognized that the public trust also encompasses uses such as open space, recreation, and wildlife habitat. (*Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260.) The public uses to which California's tidelands and submerged lands are subject are sufficiently flexible to encompass changing public needs. (*Ibid.*) When acting within the bounds of the public trust, the power of California as trustee has been described by the California Supreme Court as "absolute." (*Colberg, Inc. v. State of California ex rel. Department of*

Public. Works (1967) 67 Cal.2d 408, 416; accord *Marks v. Whitney, supra*, 6 Cal.3d at p. 260.) The Legislature has delegated to the State Lands Commission the exclusive jurisdiction over California's ungranted tide and submerged lands including the tidelands and submerged lands fronting Martins Beach. (Pub. Resources Code, § 6301.)

B. The Martins Beach Entities Were Never Conveyed Any Tidelands or Submerged Lands.

1. The Deeney Deeds Did Not Convey Title to Any Tidelands or Submerged Lands.

In purporting to confirm title in the Martins Beach entities to the tidelands and submerged lands fronting Martins Beach, the trial court failed to consider title and survey documents that demonstrate that the Martins Beach entities never acquired title to those lands. The deeds Richard Deeney executed did not transfer any tidelands or submerged lands to the Martins Beach entities. The descriptions attached to both deeds have boundary calls at the Pacific Ocean that *exclude* any tidelands or submerged lands.

The deed to Martin's Beach 2 contains a boundary at the Pacific Ocean described by a series of courses and distances "along the ocean bank." (CT 357.) A call in a deed to the "ocean" or "ocean bank" describes a boundary at the mean high tide line unless otherwise indicated. (CT 1298:21-27; *Abbott Kinney Co. v. City of Los Angeles* (1959) 53 Cal.2d 52, 57-58 ["ocean" as westerly boundary of rancho grant implies the mean high tide line as the boundary]; *Freeman v. Bellegarde* (1889) 108 Cal. 179, 187 [term "bank" signifies edge of the watercourse].) There is nothing in this deed to indicate a water boundary in any location other than at the mean high tide line. Tellingly, the Martins Beach entities' cross-complaint seeks only to quiet title *landward* of the mean high tide line, thus acknowledging that their waterward boundary rests at that location. (Cross-

complaint at CT 29:5-7; 23-24; 30:14, 17, 23.) Further, the Martins Beach entities' objections to the Friends' evidence submitted in support of its motion for summary judgment admit that the seaward boundary of the patent confirming the Rancho "is the mean high tide." (CT 1357-1359, Objections 1 through 5.)

That this deed's boundary with the Pacific Ocean is the mean high tide line is further buttressed by the fact that the landward boundary of tidelands owned by the sovereign and, conversely, the waterward property boundary of riparian and littoral landowners is the "ordinary high water mark." (See, e.g., *United States v. Pacheco* (1864) 69 U.S. (2 Wall) 587, 590; *San Francisco v. Leroy* (1891) 138 U.S. 656, 672.) The legal boundary known as the "ordinary high water mark" is physically located on the ground at the "mean high tide" line in tidal waters. (*Borax Consolidated, Ltd., supra* 296 U.S. at pp. 25-27.)

The description of the Martins Beach entities' water boundary in the deed that conveyed the parcel to Martin's Beach 1 is even more precise as to its location at the mean high tide line. The ocean boundary of the lands conveyed there is described as running "along the high water mark of the ocean." (CT 359.) Because the "high water mark" is located at the "mean high tide line," this deed also transferred no tidelands or submerged lands.

Neither Martin's Beach entity ever received any tidelands or submerged lands through the deeds from their predecessor in interest. Therefore, as a matter of law, they never had any claim to any tidelands or submerged lands at Martins Beach. Because the Martins Beach entities have no right, title, or interest in any tidelands or submerged lands at Martins Beach, the trial court's order on the motions for summary judgment finding that the Martins Beach entities own the "tidelands, and related easements that are currently Martins Beach" and its judgment purporting to

quiet title in the entities to the "off-shore submerged lands" were simply wrong.

C. Rancho Purisima Included No Tidelands or Submerged Lands.

In addition to ignoring the Deeney deeds that did not convey tidelands or submerged lands to the Martins Beach entities, the trial court also failed to account for facts pertinent to the historic Mexican land grant. As outlined in the Factual and Procedural Background section above, the United States Surveyor General surveyed Rancho Purisima to determine what lands were included in that rancho grant. (*Botiller, supra,* 130 U.S. at p. 249.) The original plat for the Rancho Purisima grant depicted its boundary with the Pacific Ocean as a "meander line." (Declaration of James Koepke, ¶ 5, pp. 2-3; Exh. A (Rancho Plat).) This rancho plat is based upon the field notes from the United States Surveyor General's original survey of Rancho Purisima. Those field notes show that Rancho Purisima's boundary with the Pacific Ocean was a meander. The notes commence:

> Beginning at a large round rock, in the mouth of Purissima Creek . . . Thence following *the meanders of the Pacific Ocean* as follows. [series of courses and distances]

(Declaration of James Koepke, ¶ 5, pp. 2-3, Exh. B (Survey Field Notes), p. 164; emphasis added.) This description was incorporated into the patent for Rancho Purisima. (Declaration of James Koepke In Support of Motion for Judicial Notice, ¶ 5, p. 3; Exh. C (Rancho Patent).)

In public land surveys, government surveyors were to "meander" the shore of the water body at the ordinary high water mark. (*Railroad Company v. Schurmeir* (1868) 74 U.S. (7 Wall.) 272, 284, 287; *Thomas B. Bishop Co. v. Santa Barbara County* (9th Cir. 1938) 96 F.2d 198 *cert. den.* 305 U.S. 623.) A meander line is

> . . . a line . . . described by courses and distances, being a straight line between fixed points or monuments, or a series of connecting straight lines. The line is thus fixed by reason of the difficulty of surveying a course following the sinuosities of the shore; and the impractability of establishing a fixed boundary along the shifting sands of the ocean.

(*Den v. Spaulding* (1940) 39 Cal.App.2d 623, 627.) Thus, a meander line is an attempt using straight surveyed lines to describe the location of a sinuous and ever shifting water course. However, it is the water body itself—here the mean high tide line of the Pacific Ocean—that is the legal property boundary and not the described meander line. (*Mitchell v. Smale* (1891) 140 U.S. 406, 413; *Railroad Co. v. Schurmier*, *supra*, 74 U.S. (7 Wall.) at pp. 286-287.) The mean high tide line on ocean beaches is an ambulatory boundary whose physical location changes with the seasons.[4] (*Lechuza Villas West v. California Coastal Com.* (1997) 60 Cal.App.4th 218, 235; *Muchenberger v. City of Santa Monica* (1929) 206 Cal. 635, 642.)

United States Supreme Court decisions generally hold that the ordinary high-water mark (mean high tide line) is the boundary between rancho lands and California's sovereign lands on the Pacific Ocean. In *United States v. Pacheco*, one of the issues was the location of the boundary of the Rancho Potrero de los Cerritos where the land the patent conveyed was described as bounded on the west "by the bay." The Supreme Court held that "[w]hen, therefore, the sea, or a bay, is named a boundary, the line of ordinary high-water mark is always intended where

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[4] "The high water mark is the mark made by the fixed plane of high tide where it touches the land; as the land along a body of water gradually builds up or erodes, the ordinary high water mark necessarily moves, and thus the mean high tide line, i.e., the legal boundary, also moves." (*Lechuza Villas West v. California Coastal Com.* (1997) 60 Cal.App.4th 218, 235 citing *City of Oakland v. Buteau* (1919) 180 Cal. 83.)

the common law prevails. (*United States v. Pacheco*, *supra*, 69 U.S. (2 Wall.) at p. 590.) This is true even with patents resulting from Mexican rancho grants. (*Ibid*; accord *Packer v. Bird* (1891) 137 U.S. 661, 666, 669.)

The landward boundary of "tidelands" is the mean high tide line and the landward boundary of "submerged lands" is the mean low tide line. (*Mansell, supra,* 3 Cal.3d at p. 478 fn. 13.) Thus, because the federal survey of the Rancho Purisima lands excluded lands waterward of the mean high tide line, that rancho did not contain within its boundaries any tidelands or submerged lands. Instead, these tidelands and submerged lands, like all the others within California's boundaries, passed to California at statehood.

D. Because Rancho Purisima Contained No Tidelands or Submerged Lands, California Was Not Required to Make Any Claims During the Board of Land Commissioner's Confirmation Process.

The trial court relied upon *Summa* to hold that no lands held "subject to the public trust" currently existed within Rancho Purisima. Finding that California failed to assert any public trust or other interest in the rancho during the patent confirmation process, the trial court declared that Martins Beach contained no lands subject to the public trust.[5] (CT 1574.)

However, it is irrelevant that California did not assert any public trust or other rights in Rancho Purisima during the patent confirmation process. Rancho Ballona—the rancho that was at issue in *Summa*—unquestionably included some 2,000 acres of tidelands within its boundaries. (See *Summa,*

[5] As outlined above, this finding is technically correct. The Martins Beach entities did not receive title to any lands subject to the public trust because their ownership terminated at the mean high tide line. The finding is, however, misleading to the casual reader, and is at odds with the judgment purporting to quiet title in the Martins Beach entities to tidelands and submerged lands.

supra, 466 U.S. at p. 202, fn. 2.) In contrast, Rancho Purisima did not contain any tidelands or submerged lands.[6] Therefore, California was not required to make any assertions regarding its ownership of tidelands during the federal confirmation process and maintains its sovereign property rights in the tidelands and submerged lands at Martins Beach.

A contrary view of the law would have grave implications. There are dozens of ranchos up and down California's coast and in its bays from San Diego County through Sonoma County. (See, e.g., *United States v. Pacheco, supra*, 69 U.S. (2 Wall) at pp. 589-590; *Abbott Kinney Co., supra*, 53 Cal.2d at p. 59; *Koyer v. Miner* (1916) 172 Cal. 448, 449.) Most do not have boundaries that extend seaward of the mean high tide line. A rule that would require California to have asserted its public trust rights during the patent confirmation process for each of these ranchos would cloud the title of the State to thousands of acres of California's tidelands and submerged lands along hundreds of miles of coast adjoining property whose title derives from historic ranchos. This Court should reject this legally unfounded and disruptive result.

II. THE STATE OF CALIFORNIA WAS AN INDISPENSABLE PARTY TO THE QUIET TITLE CAUSE OF ACTION.

The trial court purported to quiet title in the Martins Beach entities to "the Property located at 22325 Cabrillo Highway, including off-shore submerged lands, ..." Because the State of California was an

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[6] The trial court's confusion on this point may be related to the Declaration of Bill Lott. (CT 864-866.) While the original patent for Rancho Purisima is not included in the record, Mr. Lott states that he has examined it and it contained "no mention or reservation of any public trust easement." (CT 866:2-3.) While this statement is literally correct it implies that tidelands or submerged lands were included within Rancho Purisima triggering the requirement under *Summa* that California make any tidelands-related claims during the confirmation process. However, as shown above, Rancho Purisima contained no tidelands or submerged lands.

indispensable party to the action, and was not joined in the action, the judgment is void.

Code of Civil Procedure section 389 defines an "indispensable" party as one (1) in whose absence complete relief cannot be accorded among those already party to the action or (2) who claims an interest relating to the subject of the action and is so situated that his absence will impede his ability to protect that interest or leave the existing parties subject to multiple or inconsistent obligations. The controlling test for determining an indispensable party in a case such as this is, "[w]here the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensable party." (*Save Our Bay, Inc. v. San Diego Unified Port Dist.* (1996) 42 Cal.App.4th 686, 692 quoting *Bank of California v. Superior Court* (1940) 16 Cal.2d 516, 522 [landowner an indispensable party to a challenge to an environmental impact report that, if successful, would negatively affect the property's value].) In quiet title actions, rival claimants are indispensable parties to the action. (*Monterey S.P. Partnership v. W.L. Bangham, Inc.* (1989) 49 Cal.3d 454, 459 [all persons with an interest in real property at time a suit to enforce mechanic's lien is filed must be made parties to the suit]; *Birch v. Cooper* (1902) 136 Cal. 636, 638-639 [rival claimants via multiple contracts for purchase of land are indispensable parties to action to quiet title to the land in question]; *Crofton v. Young* (1941) 48 Cal.App.2d 452, 456 [holder of writ of execution pursuant to money judgment indispensable party to quiet title action regarding real property subject to the writ.].)

In this case, the trial court's judgment unquestionably "injures or affects" California's interests: it purports to extinguish the State's ownership interest in its tide and submerged lands. Additionally, the State, as owner of its sovereign lands, is a rival claimant to the property

encompassed by the judgment. Accordingly, the State of California was an indispensable party to the quiet title action.

In addition to general rules regarding indispensable parties that compelled joinder of the State in the quiet title action, several statutes specifically required joinder of the State. First, the Legislature has explicitly recognized and required that in any action that involves the boundaries of or title to tide and submerged lands, the State of California, by and through the State Lands Commission, is an indispensable party to the action. (Pub. Resources Code, §§ 6308 and 6464; *Abbott Kinney*, *supra*, 53 Cal.2d at pp. 56-57 [purpose of section 6308 is to ensure the State of California is a party to any action challenging the state's title to tidelands].) Public Resources Code section 6308 provides that the state must be joined as a party in actions affecting title or boundaries of tidelands and submerged lands that have been granted by the state, in trust, to local governments. The statute makes explicit the State's interest in litigation affecting title to or the boundaries of its sovereign lands, even where the State retains only a residual, supervisorial interest in granted lands. Public Resources Code section 6464 pertains to suits against the State, or against the State with others, to fix and determine the boundaries between tide and submerged lands and adjoining lands. Section 6464 further supports that the State is an indispensable party to a quiet title action that affects the boundaries of or title to tidelands and submerged lands.

Because the State was not included as a party to the action, did not receive notice of the action, and did not participate in the action, the quiet title judgment in favor of the Martins Beach entities is void. (See *Southern Cal. Title Cleaning Co. v. Laws* (1969) 2 Cal.App.3d 586, 589; *Ursino v. Superior Court* (1974) 39 Cal.App.3d 611, 616-617.) This Court should reverse the judgment.

Finally, even assuming the quiet title judgment was not void because of the failure to include the State in the action, it does not bind the State in any respect, including as to property interests in the uplands at Martins Beach, because of the failure to individually name the State as a party in the action. (See Code Civil Proc., § 764.070 [for quiet title judgment to be binding on California, it must be individually named as a party to a quiet title action].)

III. NOTHING IN *SUMMA* PREVENTS THE STATE OF CALIFORNIA FROM EXERCISING ITS POLICE OR REGULATORY POWER OVER MARTINS BEACH.

The trial court granted summary judgment on the Friends' second and seventh causes of action seeking public access to Martins Beach pursuant to article X, section 4 of the California Constitution.[7] The trial court held that this section was "a restatement or codification of the preexisting public trust doctrine as it relates to tidelands and what rights flow from the tidelands." (CT 1577:21-23; 1578:4-8.) Based on its assumption that *Summa* barred any assertion of California's rights in tidelands at Martins Beach, the trial court found that article X, section 4 could have no application. Thus, the trial court concluded that all public trust interests in the property at Martins Beach have been extinguished. However, as explained above, the premise for this holding is defective because neither the original rancho grant nor the deeds through which the Martins Beach entities acquired their title contain any tide and submerged lands.

In any event, even assuming, *arguendo*, that the trial court was correct regarding the Martins Beach entities' ownership of the "off-shore submerged tidelands," it would still not affect California's ability to exercise its police power and regulatory authority, including application of

[7] Article X, section 4 was originally adopted in 1879 as article XV, section 2. The text remains the same.

its principles of property law, over these "off-shore submerged tidelands" or any other portion of the Martins Beach property.

Article X, section 4 reads:

> No individual, partnership, or corporation, claiming or 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 whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of 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.

Article X, section 4 was first adopted in 1879, long after the confirmation process for Rancho Purisima was completed. There is no authority—*Summa* included—that holds that the application of a section of the California Constitution to real property, or the application of any other provision of California law to real property within the state's boundaries, depends upon its substance having been asserted in a rancho patent confirmation process. *Summa* stands only for the proposition that if tidelands existed within a rancho at the time of the Board of Land Commissioners confirmation process and California did not appear and present its property claim during that process, California is now barred from asserting tideland-based *title* claims to those tidelands. (*Summa*, *supra*, 466 U.S. at p. 209.) But there is nothing in *Summa* that in any way restricts the broad police or regulatory power that California and local governments possess over all property within California's borders.

More importantly, whatever the reach of article X, section 4, the mere fact that it is characterized as an embodiment of the public trust does not prevent its application at Martins Beach. Article X, section 4 and much legislation enacted pursuant thereto can be characterized as "embodiments" of the public trust doctrine. Such legislation includes portions of the Coastal Act such as Public Resources Code sections 30210, 30212 (c), and

30214(b) which recognize and codify important rights of public access to California's coastline as well as many other provisions of California law designed to protect coastal resources. (See, e.g. the McAteer-Petris Act, Gov. Code, § 66600 *et seq.*) Regardless of the historic derivation of title to particular pieces of coastal property, the statutory enactments are all valid exercises of California's broad police power and regulatory authority over property within its boundaries.

Therefore, even assuming that the trial court was correct in confirming ownership of the tidelands and submerged lands in the Martins Beach entities, that confirmation of *ownership* does not prevent California, and local governments with regulatory jurisdiction over the property, from asserting all of their police power authority over the property at Martins Beach, including application of all pertinent constitutional, statutory, decisional and common law provisions to the property. A contrary result would establish two classes of property in California: property in which there is no state sovereign public trust ownership interest, which would be essentially lawless, and all other property, which would be subject to California's broad land use and other regulatory authority. This is not the law.

Using the authority of the California Coastal Commission as an example, the Coastal Act can be characterized as an "embodiment" of certain public trust principles. But it is also an embodiment of California's police power over California property. (See e.g. *CREED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 306, 324-325 [Coastal Act is an exercise of California's police power] citing *Candlestick Properties, Inc. v. San Francisco Bay Conservation etc. Com.* (1970) 11 Cal.App.3d 557, 570-571 [legislation creating BCDC is valid exercise of the police power].) In addition to the Coastal Commission's permitting powers, which the trial court recognized in its decision (CT 1565:12-15),

the Commission's authority includes other important exercises of the police power. These include the power to enforce the public access provisions of Coastal Act and to assess penalties for violations of those and other provisions of the Act. (Pub. Resources Code, § 30800 *et seq.*) The trial court's judgment regarding ownership of property at Martins Beach does not affect the Coastal Commission's regulatory authority. This Court should confirm that important principle.

CONCLUSION

For the reasons outlined above, the amici California State Lands Commission and California Coastal Commission urge that this Court reverse the trial court judgment.

Dated: May 11, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached Amicus Brief of California State Lands Commission and California Coastal Commission In Support of Appellant Friends of Martins Beach uses a 13 point Times New Roman font and contains 7,290 words.

Dated: May 11, 2015

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **Friends of Martin's Beach v Martin's Beach 1 et al.**

No.: **A142035**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550.

On May 11, 2015, I served the attached

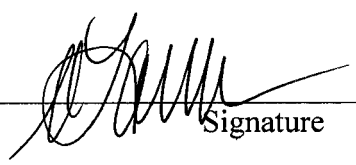
1. **CALIFORNIA STATE LANDS COMMISSION'S AND CALIFORNIA COASTAL COMMISSION'S APPLICATION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF FRIENDS OF MARTIN'S BEACH;**
2. **AMICUS CURIAE BRIEF OF CALIFORNIA STATE LANDS COMMISSION AND CALIFORNIA COASTAL COMMISSION IN SUPPORT OF APPELLANT FRIENDS OF MARTIN'S BEACH**
3. **AMICI CALIFORNIA STATE LANDS COMMISSION'S AND CALIFORNIA COASTAL COMMISSION'S MOTION REQUESTING JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF [PROPOSED ORDER]**
4. **DECLARATION OF JAMES KOEPKE IN SUPPORT OF AMICI CALIFORNIA STATE LANDS COMMISSION AND CALIFORNIA COASTAL COMMISSION'S MOTION REQUESTING JUDICIAL NOTICE; EXHIBITS A THROUGH C ATTACHED HERETO,**

by placing a true copy thereof enclosed in a sealed envelope with the **Golden State Overnight Mail**, addressed as follows:

Honorable Gerald J. Buchwald
San Mateo County Superior Court
400 County Center
Redwood City, CA 94063

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 11, 2015, at Oakland, California.

Ann Lauber
Declarant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