

OCT 9 2012



October 12, 2012

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327.7500
Facsimile
916.441.5507

The Honorable William W. McGuiness, Administrative Presiding Justice
The Honorable Martin J. Jenkins, Associate Justice
The Honorable Peter J. Siggins, Associate Justice
California Court of Appeal
First Appellate District, Division Three
350 McAllister Street
San Francisco, CA 94102-3600

FILED

OCT 15 2012

Court of Appeal - First App. Dist.
DIANA HERBERT

By _____ DEPUTY

Re: *Wachi v. City of Pleasanton* (A131348)
Alameda County Superior Ct Case No: VG10523649
Request for Publication (Rule 8.1120)

Dear Justices McGuiness, Jenkins, and Siggins:

The California State Association of Counties¹ and the League of California Cities² respectfully request publication of the opinion issued on September 26 in the above-named case. Publication of the opinion is warranted because it meets the standards for certification set forth in Appellate Rule 8.1105(c).

One of the important functions of League and CSAC's member cities and counties is to provide recreational opportunities for the residents of this State. A valued component of that function includes creating and providing access to trail systems. These trails range from footpaths that may provide access to beaches, parks

¹ The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

² The League of California Cities is an association of 467 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which comprises 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

The Honorable William W. McGuinness, Administrative Presiding Justice
The Honorable Martin J. Jenkins, Associate Justice
The Honorable Peter J. Siggins, Associate Justice
October 12, 2012
Page 2 of 3

or forests, to a variety of other types of trails that can accommodate bicyclists, runners, equestrians, hikers, in-line skaters, and wheelchair users. Trails provide important societal, social, educational, and economic benefits to a community.

The trail immunity provided in Government Code section 831.4 is critical protection for cities and counties as they continue to provide these important recreational opportunities. As the courts have noted, “[t]he whole point of Government Code section 831.4 is to encourage public entities to keep recreational areas open, sparing the expense of putting undeveloped areas in a safe condition, and preventing the specter of endless litigation over claimed injuries.” (*Armenio v. County of San Mateo* (1994) 28 Cal.App.4th 413, 417; *Hartt v. County of Los Angeles* (2011) 197 Cal. App. 4th 1391, 1399.)

This case adds to the legal literature on this issue of continuing public interest by applying the trail immunity to a set of facts not previously addressed in prior cases. Far from being a brief or conclusory legal decision, the opinion provides a detailed analysis that:

- provides the only clear statement in existing case law that section 831.4 immunity applies to all public entities that enter into cooperative agreements for the development of recreational trails;
- interprets Government Code section 831.4, subd. (c) (which imposes a duty to warn under certain conditions when a trail passes over an easement) as applicable only when the easement crosses over private property, and not publicly-owned property; and
- rejects the argument that an injured party under these facts can be a third party beneficiary to a license agreement between two public entities, where the agreement requires one entity to obtain liability insurance for the benefit of the other.

The League of California Cities and the California State Association of Counties therefore believe that your opinion adds to the law in this important area and addresses an issue of continuing public interest by providing guidance to lower courts on an application of the trail immunities statute that has not previously been the subject of judicial interpretation, and by affirming the legislative immunity that enables this State’s counties to provide important and much needed recreational opportunities through use of

The Honorable William W. McGuiness, Administrative Presiding Justice
The Honorable Martin J. Jenkins, Associate Justice
The Honorable Peter J. Siggins, Associate Justice
October 12, 2012
Page 2 of 3

cooperative agreements with other public entities. CSAC and the League therefore request that the Court publish its opinion.

Respectfully Submitted,



Jennifer B. Henning, SBN 193915
Litigation Counsel
Calif. State Assoc. of Counties

Proof of Service Attached

Proof of Service by Mail
Wachi v. City of Pleasanton
Case No. A131348

I, Mary Penney, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within **REQUEST FOR PUBLICATION** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Proof of Service List

Party	Attorney
Wachi M.D., Kenneth : Plaintiff and Appellant	Timothy Vergil Magill Magill Law Offices 575 East Alluvial Avenue - Suite 102 Fresno, CA 93720 David Joseph St. Louis Law Offices of David J. St. Louis 575 East Alluvial Avenue - Suite 102 Fresno, CA 93720
City of Pleasanton : Defendant and Respondent	Marna Alden Mitchell Dang & Trachuk 1939 Harrison Street - Suite 913 Oakland, CA 94612 Jonathan Peter Lowell Office of the City Attorney P. O. Box 520 Pleasanton, CA 94566
Trial Court	Alameda County Superior Court ATTN: Clerk of the Court 1225 Fallon Street Oakland, CA 94612-4293

and by placing the envelopes for collection and mailing following our ordinary business practice 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 prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 12, 2012, at Sacramento, California.


MARY PENNEY