



Free the Beach! Public Access, Equal Justice, and the California Coast

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ARTICLE

FREE THE BEACH!

PUBLIC ACCESS, EQUAL JUSTICE, AND THE CALIFORNIA COAST

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I. INTRODUCTION

The struggle to preserve public access to the beach is spreading across the nation from California to Connecticut and from Florida to the Great Lakes and Washington State. California's beaches belong to all the people. In this Article, we examine the social, policy, legal, and environmental facets of the struggle to ensure public access, coastal protection, and equal justice for all along the California Coast.

The wealthy beachfront enclave of Malibu is a hot spot in the epic struggle for beach access between the public interest and private greed. Media mogul David Geffen, along with the City of Malibu, filed suit to cut off the people's right to reach the beach. Geffen's suit was dismissed six times before he finally gave up and opened a nine-foot path from the highway to the beach. The City of Malibu dropped out of the suit earlier. Wealthy homeowners in Malibu's Broad Beach neighborhood then took the astonishing step of stealing the public beach, using heavy equipment to remove sand from public land and pile it onto their private property, thereby destroying the beach environment and reducing public beach access. The environmental destruction was considerable, including damage to grunion runs, the rack line, marine invertebrates, and intertidal zones; erosion and down coast beach damage; destruction of habitat restoration; and visual and aesthetic impacts. Everyone suffers from efforts to privatize public beaches, but people of color and low-income people suffer first and worst. In Newport Beach, a city council member opposed improvements to a public beach because "with grass we usually get Mexicans coming in there

early in the morning and they claim it as theirs and it becomes their personal, private grounds all day.”² While eighty percent of the 34 million people of California live within an hour of the coast, disproportionately white and wealthy homeowners stand to benefit from the privatization of this public good, while people of color and low-income communities are disproportionately denied the benefit of coastal access.³

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. Rio de Janeiro, like Los Angeles, is marked by some of the greatest disparities between wealth and poverty in the world. Yet Rio’s famous beaches are open to all, rich and poor, black and white. The beach in Rio is the great equalizer. In Florida, however, 60% of the “public” beaches are now “private.”⁴ California’s world famous beaches must remain public for all, not the exclusive province of the rich and famous.

Large parks and beaches are important for their ability to bring together diverse groups where they can encounter each other in an open and inviting atmosphere. Cultural diversity expresses the idea that, at the grass roots level, democracy consists of groups of people engaging with one another to make community. Parks and beaches are vital settings for the fundamental social activity of a democratic society.⁵

State high courts across the country have recently upheld the public right to reach the beach. The Connecticut Supreme Court upheld the First Amendment right of non-residents to use a public beach against efforts by the city of Greenwich to restrict access to its residents.⁶ The State Supreme Courts in Michigan and New Jersey have enforced public access to the beach under the public trust doctrine. Strolling along a Great Lakes beach is no crime, Michigan’s Supreme Court ruled in upholding the time-honored tradition of walking on the beach. The court held that walking along the lakeshore is inherent in the exercise of traditionally protected public rights under the public

2. June Casagrande, *Councilman Opposes Grass Areas on Beach*, DAILY PILOT, June 18, 2003.

3. CALIFORNIA COASTAL COMMISSION, PUBLIC ACCESS ACTION PLAN [*hereinafter PUBLIC ACCESS ACTION PLAN*] at 3 (June 1999). For coverage of wealthy homeowners trying to control access to public beaches, see Timothy Egan, *Owners of Malibu Mansions Cry, "This Sand Is My Sand,"* N.Y. TIMES, Aug. 25, 2002, at 1.

4. Jane Costello, *Beach Access: Where Do You Draw the Line in the Sand?*?, N.Y. TIMES, Jan. 21, 2005.

5. SETHA LOW, DANA TAPLIN, & SUZANNE SCHELD, *RETHINKING URBAN PARKS: PUBLIC SPACE AND CULTURAL DIVERSITY* 210 (2005).

6. *Leydon v. Town of Greenwich*, 777 A.2d 552 (Conn. 2001).

trust doctrine.⁷ The New Jersey Supreme Court held that under the public trust doctrine, a 480 foot wide stretch of upland dry sand beach operated as a private beach club must be available to the general public at a reasonable fee.⁸

This Article surveys policy and legal justifications for public access to the beach and concludes with a series of recommendations. In Part II of this Article, we present a vision for a comprehensive and coherent web of beaches and other public spaces, including parks, school yards, and forests, that will enhance human health and economic vitality for all the people of the Southern California region, with lessons for regions across the country. Part III explores the struggle for equal access to California beaches today and in the past. Part IV discusses the values at stake in the struggle to free the beach. Part V presents the justifications for public access to the beach under the public trust doctrine, federal and state civil rights laws, the First Amendment, and other laws. Part VI describes the demographics of beach communities and suggests the need for further research on how diverse communities use the beach. Part VII addresses the need for transit to trails and beaches. Part VIII presents recommendations to maximize public access to the beach for all.

The struggle to maximize public access to the beach while ensuring the fair treatment of people of all colors, cultures, and incomes is part of the growing urban park movement that is transforming the Los Angeles region into a more livable, democratic, and just community.

II. A COLLECTIVE VISION

Two compelling dreams drive the struggle to free the beach in Southern California and along the California coast. The urban park movement is greening Los Angeles, inspired by a collective vision for a comprehensive and coherent web of parks and natural spaces, schools, and transportation that promotes human health and economic vitality for all, while reflecting the cultural urban landscape and serving the needs of diverse users. Along the entire coast, the California Coastal Trail, supported by coastal advocates and

7. *Glass v. Goeckel*, 473 Mich. 667 (Mich. 2005).

8. The Court highlighted factors including the longstanding public access to and use of the beach, a condition of a coastal development permit requiring access and, arguably, use, the public demand, the lack of publicly owned beaches in the town, and the use of the beach as a business enterprise. *Raleigh Avenue Beach Ass'n v. Atlantis Beach Club, Inc.*, 879 A.2d 112 (N.J. 2005). Beachfront property owners in the state of Washington are seeking to prevent public access to unsubmerged tidelands. The Washington Supreme Court is considering review of the issue to determine whether or not Washington's public trust doctrine extends to pedestrian use of dry sand during low-tide. Cross-Appellant Larson's Petition for Review, filed with Washington Supreme Court in *City of Bainbridge Island v. Annette Brennan* (September 28, 2005) (on file with the Center for Law in the Public Interest); email correspondence from Mickey Gendler, attorney for Cross-Appellant Larson re: Petition for Review (November 16, 2005) (on file with the Center for Law in the Public Interest).

state agencies, is winding its way from Mexico to Oregon to enable all people to reach the beauties of the coast. These dreams are threatened by inequities in access to beaches and natural space. California's Proposition 40, at the time the largest resource bond in United States history, dramatically demonstrates the breadth of desire for free beaches and parks. Communities of color and low-income communities were the strongest supporters of Proposition 40.

A. The Olmsted Vision

In 1930, the firm started by the sons of Frederick Law Olmsted — the man who designed Central Park, invented landscape architecture, and was passionately committed to equal justice through the abolition of slavery—proposed a vision for a green, prosperous, and culturally rich Los Angeles that has yet to be realized. According to the Olmsted Report in words that remain true today:

Continued prosperity will depend on providing needed parks, because, with the growth of a great metropolis here, the absence of parks will make living conditions less and less attractive, less and less wholesome. . . . In so far, therefore, as the people fail to show the understanding, courage, and organizing ability necessary at this crisis, the growth of the Region will tend to strangle itself.⁹

The Olmsted Report also called for the doubling of public beach frontage:

Public control of the ocean shore, especially where there are broad and satisfactory beaches, is one of the prime needs of the Region, chiefly for the use of throngs of people coming from inlands. . . . [T]he public holdings should be very materially increased.¹⁰

The Report proposed the joint use of parks and school grounds to make optimal use of land and public resources. The Report recommended 71,000 acres of parkland, with another 91,000 acres in outlying areas including forests, deserts, and islands. The heart of the program was 440 miles of parks and parkways, with 214 miles of that total in interconnecting parkways.¹¹ The Report recommended the greening of the Los Angeles and San Gabriel Rivers,¹² doubling public beaches, and integrating forests within the park system.¹³ Implementing the recommendations would have cost \$233 million in

9. Olmsted Brothers & Bartholomew and Associates, *Parks, Playgrounds and Beaches for the Los Angeles Region* 1 (1930) [hereinafter Olmsted Report], reprinted in GREG HISE & WILLIAM DEVERELL, EDEN BY DESIGN (2000). The Center's digital edition of the Olmsted vision is available at <http://www.clipi.org/images/g-olmstedlarge.jpg>.

10. Olmsted Report, *supra* note 9, at 7.

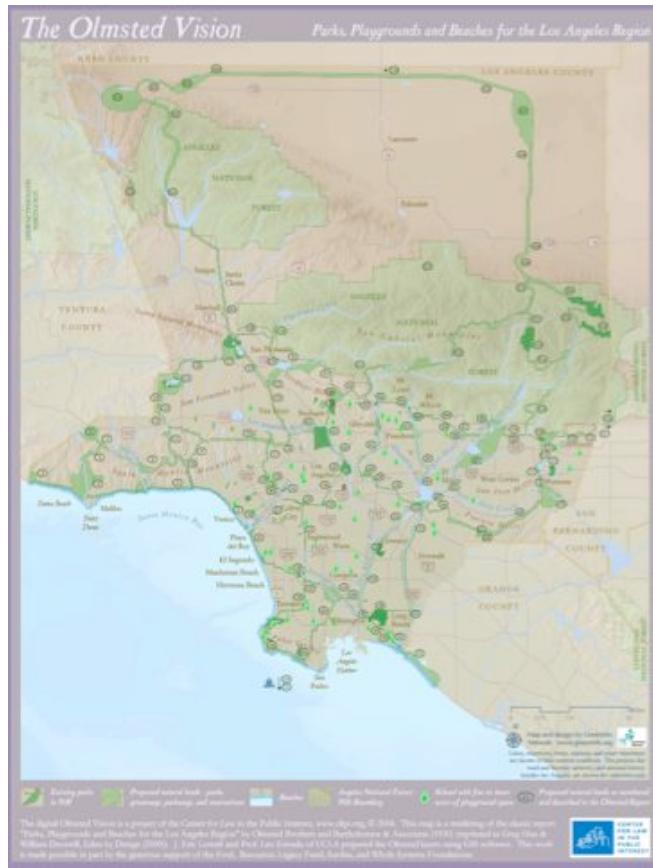
11. *Id.* at 17, 89, 138.

12. *See, e.g., id.* at 129.

13. The Report recognized the need to incorporate the Angeles National Forest, the San Gabriel and San Bernardino Mountains, and other outlying areas, including Catalina Island, to serve the recreation and open space needs of Los Angeles County. *Id.* at 85-88, 92-93.

1930 dollars, taken 40 to 50 years to complete, and required the creation of a regional park authority to levy fees to pay for parks and open space.¹⁴

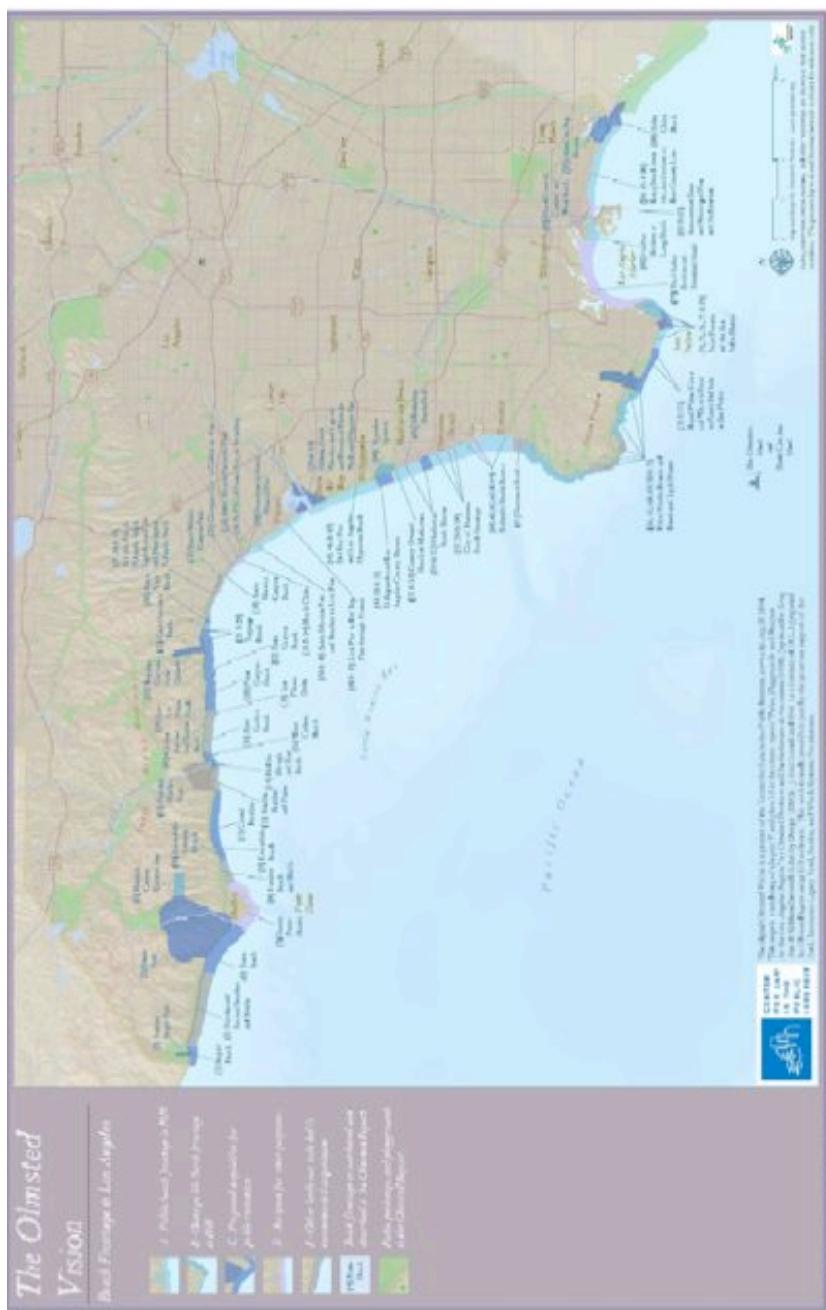
Implementing the Olmsted vision would have made Los Angeles one of the most beautiful and livable regions in the world. Powerful private interests and civic leaders demonstrated a tragic lack of vision and judgment when they killed the Olmsted Report. Only 200 copies were printed, enough only for the members of the blue ribbon commission that oversaw it. Politics, bureaucracy, and greed overwhelmed the Report in a triumph of private power over public space and social democracy.¹⁵



The Olmsted Vision for Parks, Playgrounds, and Beaches

14. *Id.* at 17, 37-43, 100-02, 138.

15. See HISE & DEVERELL, *supra* note 9, at 7-56; Mike Davis, *How Eden Lost Its Garden*, in ECOLOGY OF FEAR 59-91 (1998). In contrast, Seattle, Washington, and Portland, Oregon, recently celebrated the centennial of implementing their own Olmsted plans. See City of Seattle website at www.ci.seattle.wa.us/friendsofoltmstedparks/home.htm and the Portland, Oregon, website dedicated to the Olmsted centennial celebration at web.pdx.edu/~poracsj/OlmstedConf_JP.html.



The Olmsted Vision for Beach Frontage

Los Angeles is still learning the lessons of the need for long term planning. For example, the Los Angeles City Controller recently published an audit of the City Planning Department finding that the Department is cast in a time warp of past practices, old procedures, and outdated technology, to the detriment of its core mission to establish a vision and strategy for responsible and balanced growth. In contrast, a successful planning department has great vision and embraces bold ideas for the future of the region.¹⁶

Today, major parts of Los Angeles are park poor, and there are unfair disparities in access to parks and recreation based on race, ethnicity, income, poverty, youth, and access to cars. Children of color living in poverty with no access to a car suffer from the worst access to parks and recreation, according to a map and study by the Center for Law in the Public Interest using GIS (geographic information systems) tools and 2000 census data. These children and their families and friends do not have parks in their neighborhoods, and do not have fair access to cars or a decent public transit system to reach beaches and parkspace in wealthy areas like Malibu. The same map shows the cruel irony that disproportionately white and wealthy people with fewer children than the county average have the most access to parks and recreation. The people who need the most have the least, while those who need less have the most.¹⁷

A diverse alliance of civil rights, community, environmental, civic, and political leaders is coming together to restore a part of the Olmsted vision and the lost beauty of Los Angeles. Public beaches are an important element of any plan to maximize natural open space in Southern California.¹⁸

16. The audit by Controller Laura Chick is available at <http://clipi.org/blog/index.php?p=198>.

17. See Robert García, Center for Law in the Public Interest, Healthy Parks, Schools, and Communities: Green Access Mapping for the Los Angeles Region (forthcoming 2006). According to a Los Angeles Times study published in 1998 using 1990 census data, there are .3 acres of parks per thousand residents in the inner city, compared to 1.7 acres in disproportionately white and relatively wealthy parts of Los Angeles. Jocelyn Stewart, *Officials Resort to Creativity to Meet Need for Parks*, L.A. TIMES, June 15, 1998 (based on 1990 census data). Six to ten acres is the National Recreation and Park Association standard. See GEORGE FOGG, PARK, RECREATION AND LEISURE FACILITIES SITE PLANNING GUIDELINES (Alexandria, VA: National Recreation and Park Association, 2005); JAMES D. MERTES & JAMES R. HALL, PARK, RECREATION, OPEN SPACE AND GREENWAY GUIDELINES (Alexandria, VA: National Recreation and Park Association, 1995).

18. The Center for Law in the Public Interest has worked and published extensively on equal access to parks, beaches, forests, transportation, and related issues at the intersection of social justice, democratic participation, health, and regional planning. See generally Robert García and Erica Flores, *Anatomy of the Urban Park Movement: Equal Justice, Democracy and Livability in Los Angeles* [hereinafter *Urban Parks Movement*], in Robert Bullard, ed., THE QUEST FOR ENVIRONMENTAL JUSTICE: HUMAN RIGHTS AND THE POLITICS OF POLLUTION, published by the Sierra Club (2005); Robert García et al., *We Shall Be Moved: Community Activism As a Tool for Reversing the Rollback* [hereinafter *We Shall Be Moved*], in Denise C. Morgan et al., eds., AWAKENING FROM THE DREAM: PURSUING CIVIL RIGHTS IN A CONSERVATIVE ERA (2005); Robert García and Thomas A. Rubin, *Crossroad Blues: The MTA Consent Decree and Just Transportation*, in Karen Lucas, ed., RUNNING ON EMPTY:

B. The California Coastal Trail

The California Coastal Trail reflects a creative vision and ongoing effort to build a network of publicly accessible coastal trails.¹⁹ California's 1,200 miles coastline is longer than that of every state except Alaska.²⁰ A major goal of the Trail is to bring people to this remarkable and varied coast, whose terrain varies from desert headlands along the Mexican border to redwood-covered mountains at the Oregon line.²¹

The California Coastal Trail has been under development for 25 years, made possible by the efforts of coastal advocates and state agencies.²² The Trail "began with the simple idea that the entire California coastline belongs to all the people, and should be accessible to everyone who will enjoy it with respect."²³ Although California's shoreline "is a national treasure" and one of the state's "greatest draws, much of it remains fenced-off, over-built, or otherwise inaccessible."²⁴ When complete, the Trail will provide travelers a path from Oregon to Mexico through wild, rural, and urban landscapes closely paralleling the shoreline.²⁵

The biggest advance for the Trail occurred in 1998, when the California legislature mandated that the Coastal Conservancy develop a plan and cost estimates for its completion.²⁶ The Trail is designated as California's

TRANSPORT, SOCIAL EXCLUSION, AND ENVIRONMENTAL JUSTICE 221-56 (2004); Robert García and Erica Flores Baltodano, *Healthy Children, Healthy Communities, and Legal Services*, published in a special issue on Environmental Justice for Children in the Journal of Poverty Law and Policy by the National Center on Poverty Law and the Clearinghouse Review (May-June 2005) [hereinafter *Healthy Children, Healthy Communities, and Legal Services*]; *Healthy Children, Healthy Communities: Schools, Parks, Recreation, and Sustainable Regional Planning*, 31 FORDHAM URB. L.J. 101 (2004) (Symposium on Urban Equity); *CEQA and the Urban Park Movement, in EVERYDAY HEROES PROTECT THE AIR WE BREATHE, THE WATER WE DRINK, AND THE NATURAL AREAS WE PRIZE* (2005).

19. California Coastal Trail.Info, Welcome to the California Coastal Trail.info, available at <http://www.californiacoastaltrail.info/cms/pages/main/index.html>; Bob Lorentzen and Richard Nichols, *Hiking the California Coastal Trail Volume One: Oregon to Monterey* [hereinafter *Hiking the California Coastal Trail Volume One*] 9 (2002).

20. *Hiking the California Coastal Trail Volume One*, *supra* note 19 at 14-15.

21. California Coastal Conservancy, *Completing the California Coastal Trail* [hereinafter *Completing the Coastal Trail*] 30 (Jan. 2003).

22. Bob Lorentzen and Richard Nichols, *Hiking the California Coastal Trail Volume Two: Monterey to Mexico* [hereinafter *Hiking the California Coastal Trail Volume Two*] 9-10 (2002).

23. Coastwalk, The California Coastal Trail, available at <http://www.coastwalk.org/CCT/cct.htm>.

24. *Id.*

25. California Coastal Commission, Coastal Access Program: California Coastal Access Trail, available at <http://www.coastal.ca.gov/access/ctrail-access.html>.

26. *Hiking the California Coastal Trail Volume One*, *supra* note 19, at 13-14.

Millennium Legacy Trail. The California Legislature has recognized it as a statewide trail.²⁷ 980 miles of the 1,197-mile route is currently recommended as reasonably safe and worthwhile. 18 miles, however, follow highway shoulders.²⁸ Most of the trail has not yet been marked on the ground or on maps.²⁹ Public action is needed to acquire and develop rights-of-way, and to make improvements on existing public lands.³⁰ The greatest barrier to completing the Trail is private development on coastal bluffs and beaches that has diminished public access and reduced the availability of land.³¹

C. Diversifying Support for Beaches, Parks, and Recreation

In 2002, California voters passed Proposition 40, the largest resource bond in United States history, which provided \$2.6 billion for parks, clean water and clean air, with an unprecedented level of support among communities of color and low-income communities. Proposition 40 passed with the support of 77% of Black voters, 74% of Latino voters, 60% of Asian voters, and 56% of non-Hispanic White voters. Seventy-five percent of voters with an annual family income below \$20,000, and 61% with a high school diploma or less, supported Proposition 40 – the highest among any income or education levels.³²

Proposition 40 demolished the myth that a healthy environment is a luxury that communities of color and low-income communities cannot afford or are not willing to pay for. The diverse support for Proposition 40 was no accident. The Yes on Prop 40 steering committee engaged in strategic outreach to diverse communities. The campaign targeted 500,000 voters with direct mail pieces in English and Spanish, the Proposition 40 website included materials in both languages, and a get-out-the-vote drive targeted diverse communities. African-American ministers called on their congregations to support Proposition 40 from the pulpit the Sunday before the election, and Cardinal Roger Mahony endorsed Proposition 40.³³

Despite their support for environmental public goods, communities of color and low-income communities are disproportionately denied environmental benefits, including beaches. The public recognizes this.

According to a survey on Californians and the environment by the influential Public Policy Institute of California, most California residents believe there are environmental inequities between more and less affluent

27. *Completing the Coastal Trail*, *supra* note 21, at 11.

28. *Hiking the California Coastal Trail Volume Two*, *supra* note 22, at 15.

29. *Id.* at 14.

30. California Coastal Conservancy, California Coastal Commission, and California State Parks, California Coastal Trail Maps, <http://www.coastal.ca.gov/access/coastal-trail-map.pdf>; *Completing the Coastal Trail*, *supra* note 21, at 55.

31. *Completing the Coastal Trail*, *supra* note 21, at 30.

32. L.A. Times, Statewide Exit Poll, Mar. 7, 2004.

33. Robert García served on the executive committee for the Yes on Prop 40 campaign.

communities. Sixty-four percent of Californians say that poorer communities have less than their fair share of well-maintained parks and recreational facilities. Latinos are far more likely than non-Hispanic Whites (72% to 60%) to say that poorer communities do not receive their fair share of parks and recreational facilities. A majority of residents (58%) agree that compared to wealthier neighborhoods, lower-income and minority neighborhoods have more than their fair share of toxic waste and polluting facilities.³⁴ The next Part examines the historic origin of these disparities in Southern California and efforts to correct them.

III. THE STRUGGLE TO FREE THE BEACH

The fact that low-income people of color are disproportionately denied access to beaches and parks is not an accident of unplanned growth, and not the result of an efficient free market distribution of land, but the result of a history and pattern of discriminatory land use and economic policies and practices. Los Angeles pioneered the use of racially restrictive housing covenants, for example. Racial inequities were aggravated by economic policies dating back to the Great Depression and the ensuing decades that had the impact of excluding blacks and increasing income, wealth, and class disparities between blacks and whites. A continuing legacy of the past half century of these discriminatory economic policies is that the average black family in the United States holds just 10% of the assets of the average white family.³⁵ In the past, when beachfront prices were lower, people of color were forbidden from buying, renting or even using beachfront property. Today, when beachfront property has skyrocketed in value, people of color often cannot afford to buy or rent beachfront property. The racial and class disparities in access to beaches reflect the continuing legacy of discriminatory social, land use, and economic policies, practices, and laws. This history and continuing legacy is relevant to understand how Southern California came to be the way it is, and how it could be better.

A. The History and Pattern of Discriminatory Beach Access and Land Use

With few exceptions, Southern California's public beaches were off limits to blacks and other people of color throughout much of the twentieth century. Blacks were limited to the "Inkwell," a half-mile stretch of beach between Pico and Ocean Park Boulevards in Santa Monica, and Bruces' Beach in Manhattan Beach, as discussed below. Professor Lawrence Culver has written a detailed

34. MARK BALDASARE, PUBLIC POLICY INSTITUTE OF CALIFORNIA STATEWIDE SURVEY: SPECIAL SURVEY ON CALIFORNIANS AND THE ENVIRONMENT vi (June 2002).

35. See generally IRA KATZNELSON, WHEN AFFIRMATIVE ACTION WAS WHITE (2005).

analysis of the history of race and recreation, including beaches, in *The Garden and the Grid: A History of Race, Recreation, and Parks in the City and County of Los Angeles*.³⁶ The history is a grim one.

Much of the Los Angeles region was off limits to blacks and other people of color throughout the better part of the twentieth century. Despite the prominent role of blacks in early Los Angeles,³⁷ black residential and business patterns were restricted in response to discriminatory housing and land use patterns in the twentieth century. “Whites only” deed restrictions, housing covenants, mortgage policies subsidized by the federal government, and other racially discriminatory measures dramatically limited access by blacks and other people of color to beaches, housing, jobs, schools, playgrounds, parks, swimming pools, restaurants, transportation, and other public accommodations.³⁸

Los Angeles pioneered the use of racially restrictive housing covenants. The California Supreme Court sanctioned restrictive covenants in 1919 and California courts continued to uphold them as late as 1947. The Federal Housing Authority not only sanctioned restrictions, but developed a recommended formula for their inclusion in subdivision contracts.³⁹ As a result, blacks increasingly became concentrated in South Central Los Angeles.

The landmark Supreme Court decisions in *Shelley v. Kramer*⁴⁰ in 1948 and *Barrows v. Jackson*⁴¹ in 1951 legally abolished racially restrictive housing

36. (Forthcoming 2006). See generally DOUGLAS FLAMMING, BOUND FOR FREEDOM: BLACKS IN LOS ANGELES IN JIM CROW AMERICA 271-72 (2005) [*hereinafter BOUND FOR FREEDOM*]. For discussion on desegregating the beaches, see *id.* at 271-75, 303, 414 n.38.

37. The original settlers in 1781 of El Pueblo de Los Angeles, los Pobladores, included blacks and mulattos. A black man, Francisco Reyes, served as alcalde (mayor) of El Pueblo in 1793, almost two hundred years before Tom Bradley, the first black man elected mayor under statehood. Jean Bruce Poole & Tevvy Ball, *El Pueblo: the Historic Heart of Los Angeles* 11 (2002). The last Mexican governor of California before statehood, Pío Pico, was born of African, Native American, and European ancestry under a Spanish flag. *Id.* at 30-31. Biddy Mason, one of the most prominent citizens and philanthropists of early Los Angeles, was born a slave in Mississippi. She gained her freedom in Los Angeles through a federal court order in 1856, just before the United States Supreme Court held in the *Dred Scott* case that slaves were chattel entitled to no constitutional protections because blacks had “no rights which the white man was bound to respect.” *Scott v. Sandford*, 60 U.S. 393, 407 (1857). She helped found the First African Methodist Episcopal Church, one of the major African American churches in Los Angeles today. Dolores Hayden, *The Power of Place: Urban Landscapes as Public History* 168-87 (1997).

38. See, e.g., Mike Davis, *City of Quartz* 160-64 (1990); Davis, *supra* note 15, at 59-91; California Department of Parks and Recreation, FIVE VIEWS: AN ETHNIC SITES SURVEY FOR CALIFORNIA 68-69 (1988).

39. For example, the Federal Housing Administration Manual of 1938 states: “If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same racial classes. A change in social or racial occupancy generally contributes to instability and a decline in values.” See also Davis, *City of Quartz*, *supra* note 38, at 160-64; Davis, *supra* note 15, at 59-91.

40. 334 U.S. 1 (1948).

41. 346 U.S. 249 (1953).

covenants. Even after those decisions came down, however, the Los Angeles Urban League identified 26 different ploys that white homeowners used to exclude blacks, including payoffs by neighbors to discourage home sales to prospective black buyers, vandalism, cross burnings, bombings, and death threats.⁴² Until the late 1950s, the Code of Ethics of the National Association of Real Estate Boards contained a provision explicitly prohibiting real estate agents from introducing people of color into white neighborhoods. Banks and developers were unwilling to break the racial lines set by white homeowners and real estate agents. “In the postwar era many individual white homeowners, and virtually all the public and private institutions in the housing market, did everything possible to prevent African Americans from living outside areas that were already predominantly black.”⁴³

Though not codified in law, public space in Los Angeles was “tacitly racialized” and there were many obstacles to the amenities of public life including beaches, swimming pools and parks.⁴⁴ For example, blacks were not allowed in the pool in many municipal parks, and in other parks were allowed to swim only on “International Day,” the day before the pool was cleaned. Segregated public pools continued into the 1940s. There were some places of refuge, however. Lincoln Park in East Los Angeles was a popular destination for black youth from South Central and Latino youth from East Los Angeles, who could take the Pacific Electric railroad to reach one of the few parks where they were not feared and despised.⁴⁵

The Center for Law in the Public Interest represented the National Organization for Women in advocating that the application for a coastal development permit by a private club leasing land on a public beach be conditioned on the club eliminating discriminatory membership policies.⁴⁶

B. Malibu

Malibu has been particularly aggressive in restricting access to the beaches alongside its multimillion dollar mansions. Prominent resident David Geffen led the charge, joined by the City of Malibu, in a suit to cut off access to the beach. More recently, property owners literally stole part of the beach, using earthmoving equipment to move sand off the public beach.

At the turn of the century, Malibu consisted of the Topanga Malibu Sequit, a 13,316-acre rancho along a 25-mile stretch of beaches, mountains and

42. JOSH SIDES, L.A. CITY LIMITS: AFRICAN AMERICAN LOS ANGELES FROM THE GREAT DEPRESSION TO THE PRESENT 101 (2003) [hereinafter L.A. CITY LIMITS].

43. *Id.* at 108.

44. *Id.* at 21.

45. *Id.*

46. See *Jonathan Club v. Cal. Coastal Comm'n*, 197 Cal. App. 3d 884 (1988).

canyons, owned by Frederick H. Rindge and later by his widow May.⁴⁷ To pay her taxes after her husband's death, May Rindge began leasing and selling off land parcels to movie celebrities and others.⁴⁸ Parcels like those owned by entertainment mogul David Geffen today carried racially restrictive covenants that were intended to run with the land in perpetuity for the benefit of all beachfront homeowners. Covenants prevented people who were not white from using or occupying beach premises except as domestic servants, and even domestics who were not white were prohibited from using the public beach for bathing, fishing, or recreational purposes. A typical covenant reads:

[S]aid land or any part thereof shall not be used or occupied or permitted to be used or occupied by any person not of the white or Caucasian race, except such persons not of the white or Caucasian race as are engaged on said property in the bona fide domestic employment of the owner of said land or those holding under said owner and said employee shall not be permitted upon the beach part of said lands for bathing, fishing or recreational purposes.⁴⁹

Today, the overwhelmingly white and wealthy enclave of Malibu is 89% non-Hispanic white, 6% Hispanic, 3% Asian or Pacific Islander, 1% Black, 0.2% Native American and 0.2% other. Nearly 25% of Malibu households have an annual income over \$200,000. The median household annual income is \$102,031, according to 2000 census data. In contrast, Los Angeles County is only 31% non-Hispanic white. The median household income is \$42,189. Only 4% of households have an annual income of \$200,000 or more.⁵⁰

The City of Malibu, joined by entertainment mogul David Geffen—Geffen is the “G” in Dreamworks SKG movie studios, with a 2002 net worth of \$3.8 billion, the 44th richest man in the United States—filed suit against the Coastal Commission, the Coastal Conservancy, and the non-profit group Access for All, seeking to cut off the people’s right to reach the beach, despite Geffen’s original offer to dedicate a nine-foot public path to reach the beach from the highway.⁵¹ Geffen dropped his suit in 2005, after the court had dismissed his complaint six times. The City of Malibu dropped out of the case earlier.⁵²

47. LEONARD Pitt & DALE Pitt, LOS ANGELES A TO Z: AN ENCYCLOPEDIA OF THE CITY AND COUNTY [hereinafter LOS ANGELES A TO Z] 313 (1997).

48. *Id.* at 313-14.

49. Malibu property restrictions recorded 1945 (on file with the Center for Law in the Public Interest).

50. U.S. Census 2000 data available at www factfinder census gov and compiled by Greeninfo Network.

51. Forbes, *The 400 Richest People in America*, at 128, 277 (Sept. 30, 2002); City of Malibu and David Geffen v. Access for All et al., Case No. BC277034 (Ca. Superior Court L.A. County 2002). The City of Malibu dropped out of the lawsuit when claims pertaining to it were dismissed in 2004, but Geffen amended his complaint six times. Kenneth R. Weiss, *Mogul Yields Beach Access to Public*, L.A. TIMES, April 15, 2005. Geffen agreed to reimburse the State and Access for All \$300,000 in attorneys fees and costs. Kenneth R. Weiss, *Geffen to Reimburse \$300,000*, L.A. TIMES, April 16, 2005.

52. Williams Booth, *Bali Hoi Polloi: Public Gains Entry at Geffen's Beachhead*, THE WASHINGTON POST, May 27, 2005 at CO1; Deborah England, *History Shows Geffen Made Correct Move in Malibu Dispute*, L.A. DAILY JOURNAL, May 25, 2005; telephone

In June 2005, property owners on Broad Beach in Malibu took the astonishing step of using heavy equipment to steal sand from the public beach and pile it onto their private property.⁵³ The property owners' actions damaged natural resources along the beach and dramatically reduced the amount of public access.⁵⁴ During low to medium tides, some areas along Broad Beach were cut off from public access unless beach users walked on the berm or through access paths in property owners' backyards.⁵⁵



Broad Beach property owners used heavy equipment to steal sand from public land and pile it onto their property.⁵⁶

In addition to reducing public access, the bulldozing at Broad Beach caused significant environmental destruction, including damage to grunion runs, wrack line (seaweed and other associated debris that collect up on the beach due to the tide and wind), dune vegetation, marine invertebrates, and intertidal zones; erosion and down-coast beach damage; destruction of restored habitat; and visual and aesthetic impacts. A variety of invertebrates that make their home in intertidal sand and the organisms that live in the wrack line are significant food sources for shore birds. The earthmoving equipment killed these organisms, and wrack that was present on the upper beach was

conversations with Daniel Olivas, Attorney General Representing the California Coastal Commission in the Geffen lawsuit (March 11, 2005, and April 19, 2005). An attempt by Geffen's neighbors to intervene in the case on the basis that their property would be directly affected by the public accessway was rejected by the California Court of Appeals. *City of Malibu v. Cal. Coastal Comm'n*, 128 Cal. App. 4th 897 (2005).

53. Kenneth R. Weiss and Amand Covarrubias, *Battle Over Broad Beach Takes New Turn, With Earthmoving Equipment*, L.A. TIMES, June 9, 2005, at B3; Jamie Wilson, *Bulldozer Tactics by Malibu's Super-Rich*, The Guardian (London), June 10, 2005, at 17.

54. Letter from California Coastal Commission to Trancas Beach Property Owners Association re: Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings [*hereinafter Bulldozing Letter*] (June 8, 2005) at 2.

55. Bulldozing Letter at 7, *supra* note 54.

56. Photo (left) by Nicolas García (June 11, 2005).

destroyed.⁵⁷ The bulldozing activity also reduced the local sand supply downcoast, at Zuma Beach, one of the most popular, and most accessible, beaches in Malibu and Los Angeles County.⁵⁸

The California Attorney General filed suit on behalf of the Coastal Commission and State Lands Commission against the Trancas Property Owners Association, which represents property owners along Broad Beach, for violation of the Coastal Act, interference with legal public access to the beach, and conversion of beach minerals as a result of the bulldozing in July 2005.⁵⁹ The matter is in litigation over whether the homeowners are liable for fines up to \$15,000 a day for their actions, as of November 2005.⁶⁰

In August 2003, California Coastal Commission member Sara Wan visited Broad Beach in Malibu accompanied by a reporter for the *Los Angeles Times* and other members of the press to exercise her right to use the beach. Commissioner Wan arranged the visit to Broad Beach after receiving multiple complaints from beach visitors who were harassed while visiting the beach.⁶¹ During Commissioner Wan's beach visit, a private security guard on an all-terrain vehicle ordered her to leave. When she refused, five armed sheriff's deputies arrived to remove her from the beach. Commissioner Wan, armed with maps of public paths to and along the beach, showed the deputies that the beach was public and she was standing where she had a right to be. "What do I know? I'm just a dumb sheriff's deputy," one officer was quoted as saying.⁶²

In the wake of this incident, the Coastal Commission published a detailed guide with maps showing public paths to and along Broad Beach.⁶³ The Los Angeles County Sheriff's Office has agreed to train its deputies to enforce the public's right to the beach.

The Center for Law in the Public Interest and others, on behalf of California residents Bernard Bruce, Carol Jacques, and Edwin Rosales, demanded that the California Coastal Commission enforce the public's rights under state laws by issuing a cease and desist order to eliminate illegal signs, fences, all-terrain vehicles, and public harassment in Broad Beach.⁶⁴ For more

57. Bulldozing Letter at 7, *supra* note 54.

58. *Id.* at 8.

59. *Cal. Coastal Comm'n and State Lands Comm'n v. Trancas Property Owners Association*, Case No. SC 086150 (Ca. Superior Court L.A. County July 6, 2005).

60. Sara Lin, *Newport Residents Will Be Ordered to Restore Dunes: The state Coastal Commission says the sand was removed to improve ocean views*, L.A. TIMES, Nov. 29, 2005.

61. Comments by Commissioner Sara Wan at California Coastal Commission Meeting, August 12, 2005 (Costa Mesa, CA).

62. Kenneth R. Weiss, *A Malibu Civics Lesson: Beach Is Open*, L.A. TIMES, Aug. 25, 2003. Ironically, there was a similar media event to open up public access to the beach in Malibu in 1907, resulting in an arrest. Deborah England, *History Shows Geffen Made Correct Move in Malibu Dispute*, L.A. DAILY JOURNAL, May 25, 2005.

63. The guide is available at <http://www.clipi.org/pdf/broadbeachaccess.pdf>.

64. Letter to California Coastal Commission from Center for Law in the Public Interest, et al. re: *Commission Cease & Desist Order No. CCC-05-CD-9 (Trancas Property Owners Association, Malibu)* (Aug. 8, 2005) (on file with the Center for Law in the Public

than a year the Commission had been negotiating with the Trancas Property Owners Association to end the use of illegal signs, fencing, and all-terrain vehicles. Ultimately, the Commission unanimously voted to issue a cease and desist order against the Trancas Property Owners Association in August 2005.⁶⁵

The California Coastal Commission also issued cease and desist orders to the City of Malibu to force it to remove boulders that were used to block public parking at the beach. That was the first time the Commission issued cease and desist orders against a municipality.⁶⁶

Many other problems remain in Malibu. Although there should be a path every 1,000 feet for the public to reach the beach, some beaches in Malibu have inadequate access or no access at all.⁶⁷ According to Steve Hoye, Executive Director of Access for All, some 14 paths from the road to the beach are open in Malibu's 27 miles of coastline today.⁶⁸ The City of Malibu claims that in fact there are 28 paths—still a far cry from enough.⁶⁹

Although paths to and along the beach should be clear and well marked, the path to Broad Beach in Malibu looks more like the entrance to a garbage dump than a world-class public beach, with misleading warning signs and trash

Interest). Bernard Bruce, the grandson of the original owners and developers of Bruce's Beach, the black beach resort in Manhattan Beach that was demolished in the 1930s, has made a life-long commitment to ensure equal access to the beach. Carol Jacques opposes the privatization of public space and is committed to equal access to public beaches for all. She was a child when her family was forcibly evicted from Chavez Ravine, a bucolic Latino community near downtown Los Angeles through the 1950s. The City of Los Angeles forcibly evicted the residents and destroyed their homes and way of life with promises of affordable housing. The City then broke its promises and sold the land to the Dodgers, who drowned Chavez Ravine in a sea of asphalt to build Dodger Stadium and 50,000 places for cars to park with not a single place for children to play. Edwin Morales is a youth soccer coach. Every Friday evening or Saturday afternoon, Mr. Morales takes his 10-14 year-old youths to the beach to train. According to Mr. Morales, the children, who live in inner city communities, improved in school, developed important leadership and interpersonal skills, and exhibited fewer behavioral problems once they began participating in organized sports. The weekly visits to the beach—which encourage youth to have fun while they train—contribute to the students' improved performance on and off the soccer field.

65. Sara Lin, *Public's Use of Beach Is Affirmed: Malibu homeowners group must forgo signs and security guards, coastal panel says*, L.A. TIMES, Aug. 15, 2005, at B1.

66. Interview with California Coastal Commission official (Sept. 2002).

67. Malibu Local Coastal Program Land Use Plan [*hereinafter* Local Coastal Plan] adopted by California Coastal Commission 33-36 (Sept. 13, 2002). The Local Coastal Plan requires vertical access every 1,000 feet of shoreline at Trancas/Broad Beach, Paradise Cove, Escondido Beach—Malibu Cove Colony, Latigo Beach, Amarillo and Puerco Beach, Malibu Beach, Carbon Beach, La Costa/Las Flores Beaches, Big Rock Beach, and Las Tunas Beach. Some of these beaches have no access at all and others require more access or improved access at existing paths. Local Coastal Plan at 33-36.

68. Email to Robert García from Steve Hoye, Access for All (Jan. 25, 2005).

69. Jonathan Friedman, *Surfrider Behind Scathing Report on Malibu*, THE MALIBU TIMES, June 8, 2005.

cans that discourage beach users.⁷⁰



Malibu residents discreetly pass keys around to a prison-like gate with iron bars and barbed ribbon wire that blocks access to a secluded path leading to the so-called “Malibu Riviera.” as illustrated in the following image of the “Prison Beach” in Malibu.⁷¹



The sign on the prison-like gate blocking access to the beach in Malibu reads:
“Right to pass by permission and subject to control of owner.”⁷²

Even local efforts to ameliorate the situation have been blocked by other residents. Prominent Malibu beachfront property owners, including wealthy

70. The signs and some of the garbage cans are placed and maintained by the County of Los Angeles, but the placement of additional residential garbage cans and other property in front of accessways frustrates public access.

71. Field investigation by the Center for Law in the Public Interest (2002).

72. Photo by Robert García (2002).

businessman and lawyer Richard Riordan, the former mayor of Los Angeles and California Secretary of Education, opened a million-dollar parcel of beachfront property a mile down the coast from their own houses to mitigate additions to their houses that blocked the public's view of the ocean. As a result, downstream property owners closer to the dedicated parcel brought suit to block that public beach. Basing its decision on the strong public policy favoring coastal access, the California Court of Appeal upheld the decision of the Coastal Commission to accept the parcel as a public beach as an off-site mitigation measure.⁷³

A Malibu property owner in Lechuza Beach recently complained to a state agency official that she opposes inner city youth coming to Lechuza Beach, after a hearing on improving public access there at which the representative of a non-profit organization spoke eloquently about teaching inner city youth life skills through outdoor activities.⁷⁴

Some Malibu residents have asked the Metropolitan Transportation Authority to curtail bus service to Point Dume, even though this would require domestic workers, who are disproportionately people of color, to walk long distances to and from the Pacific Coast Highway to reach the homes of wealthy Point Dume residents where they work.⁷⁵

Not content to cut off public access to the beach, Malibu residents are also trying to cut off public access to state parks and trails that run through the Santa Monica Mountains within the coastal zone.⁷⁶

The City of Malibu and some Malibu residents have sought to impede the public from enjoying the benefits of public beaches, parks, and trails, while Malibu's residents enjoy the benefits of public tax subsidies. Malibu and its residents benefit from local, state, and federal subsidies for protection against fires, floods, and mudslides.⁷⁷ Some Malibu coastal homeowners call sheriff's deputies at taxpayers' expense to prevent the public from using public beaches.

In fact, the residential community of Malibu would not exist today if the state had not built the Pacific Coast Highway, using the power of eminent domain over the opposition of landowner May Rindle after 24 years of

73. See *La Costa Beach Homeowners' Ass'n v. Cal. Coastal Comm'n*, 101 Cal. App. 4th 804 (2002).

74. Telephone conversation with agency official, June 16, 2005.

75. Email correspondence between MTA personnel regarding regular requests from residents to curtail bus service (Oct. 29, 2002) (on file with the Center for Law in the Public Interest); Letter to Scott Page at MTA from Point Dume Homeowners Association regarding curtailing bus service (Feb. 25, 1992) (on file with the Center for Law in the Public Interest).

76. Daryl Kelley, *Visitors to Park Are Told Not to Take a Hike*, L.A. TIMES, Aug. 19, 2005 at B1.

77. See generally Mike Davis, *The Case for Letting Malibu Burn*, in ECOLOGY OF FEAR, *supra* note 15, at 93-148; Joan Didion, *Quiet Days in Malibu*, reprinted in David L. Ulin, WRITING LOS ANGELES: A LITERARY ANTHOLOGY 502-03 (2002); W.W. ROBINSON & LAWRENCE CLARK POWELL, THE MALIBU 74-79 (1958).

litigation, thereby paving the way for the public roads that today's residents use to reach their beachside homes.⁷⁸ In 1923, the United States Supreme Court upheld the condemnation as a constitutional taking for a legitimate public use in words that resonate in present day disputes over coastal access. The Court held that public uses "may extend to matters of public health, recreation, and enjoyment," and that the highway would afford "persons desiring to travel along the shore . . . with a view of the ocean on one side and of the mountain range on the other, constituting . . . a scenic highway of great beauty."⁷⁹

In seeking to prevent the public from using the beach, Malibu cites concerns about traffic congestion, parking, trash, and security. But just about every Los Angeles neighborhood today faces congestion, parking, sanitation, and personal security concerns, without cutting off public access to parks, streets, trails, and other public goods. Malibu residents can too. If Malibu residents do not like the public on the public beach, there is a simple solution: move.



Sign on Broad Beach in Malibu reads "Private Beach & Residences: Walk Thru Access Only to Next Public Beach 300 Yards South."⁸⁰

The city of Malibu is the not the only government body impeding public

78. See LOS ANGELES A TO Z, *supra* note 47, at 313; ROBINSON & POWELL, *supra* note 77, at 30-38.

79. Rindge Company et al. v. County of Los Angeles 262 U.S. 700, 707 (1923); Deborah England, *History Shows Geffen Made Correct Move in Malibu Dispute*, L.A. DAILY JOURNAL, May 25, 2005.

80. Photo by Robert García (2003).

access. The County of Los Angeles has failed to open public paths at La Costa and Carbon Beaches along the Malibu coast. According to deed restrictions developed years ago by the Coastal Commission and filed by the respective owners of the properties, the paths are supposed to provide public access to the beaches, but only the County of Los Angeles can open them. The County's decision to keep the gates locked contributes to the inaccessibility of California's most beautiful beaches.⁸¹

In 2002, the California Coastal Commission adopted a local coastal plan requiring Malibu to maximize public access to the beach while ensuring the fair treatment of people of all races, cultures, and incomes.⁸² This is the first time an agency has implemented the statutory definition of environmental justice under California law (discussed below), setting a precedent for other agencies throughout the state. Commissioner Pedro Nava told the *Los Angeles Times* he hoped to set a precedent for other communities, ensuring that visitors are not excluded because of their income or race.⁸³ The Commission adopted the provision in response to the advocacy of the Center for Law in the Public Interest on behalf of a diverse alliance.⁸⁴

Malibu has largely succeeded in deterring the public from exercising its right to use Malibu beaches. Much of the Pacific Coast Highway through Malibu consists of an unbroken wall of private houses on the beach side. People generally do not know that the beach belongs to the people and do not know how to reach the beach.

C. Manhattan Beach and Bruce's Beach

When Manhattan Beach was incorporated in 1912, a two-block area on the ocean was set aside for African-Americans. Charles and Willa Bruce built a black beach resort there, the only resort in Southern California that allowed blacks. Bruce's Beach offered ocean breezes, bathhouses, outdoor sports, dining, and dancing to African-Americans who craved a taste of Southern California's good life.

81. Phone conversation with California Coastal Commission official, July 22, 2004.

82. Local Coastal Plan, *supra* note 67, at 9.

83. Seema Mehta, *Land-Use Plan OK'd for Malibu*, L.A. TIMES, Sept. 14, 2002.

84. See Letter to California Coastal Commission from Robert García, et al., regarding Equal Access to California's Beaches (Sept. 12, 2002). See also García, *We Shall Be Moved*, *supra* note 18; Robert García, et al., Center for Law in the Public Interest, *Equal Access to California's Beaches* [hereinafter Beach Access Policy Brief].



Hayride at Bruces' Beach circa 1920s.⁸⁵

As coastal land became more valuable and the black population in Los Angeles increased—bringing more African-Americans to Bruces' Beach—so did white opposition to the black beach.

Manhattan Beach condemned the black beach in the 1920s, driving out the black community. A phony “no trespassing” sign was posted on the “private beach” owned by the city. City officials pressured black property owners to sell at prices below fair market value and prevailed through condemnation proceedings in the 1930s. Bruces’ Beach, the nearby Peck’s Pier, which was the only pier that allowed blacks, and the surrounding black neighborhood were destroyed.⁸⁶ Several black homes in the area were burned down.⁸⁷ Manhattan Beach initially tried to lease the land to a private individual as a whites-only beach, but relented in the face of civil disobedience organized by the NAACP.⁸⁸

85. Image courtesy of the Los Angeles County Public Library.

86. See Cecilia Rasmussen, *L.A. Then and Now: Resort Was an Oasis for Blacks Until Racism Drove Them Out*, L.A. TIMES, July 21, 2002; Cecilia Rasmussen, *Community Profile: Manhattan Beach*, L.A. TIMES, Nov. 29, 1996.

87. BOUND FOR FREEDOM, *supra* note 36, at 414.

88. *Id.* at 271-75.

To cross racial lines at any beach was to court conflict, arrest, and violent assault. “They made it miserable for you. Sand would get kicked over on your place and all the rest of it.”⁸⁹ Santa Monica banned dance halls and blocked a proposed black resort near the Inkwell in the early 1920s.⁹⁰ In 1937, a man impersonating a sheriff’s deputy ordered black visitors to leave Pacific Palisades. When the black folks refused, the “officer” threatened violence but ultimately left.⁹¹



This photograph from the early 1920s shows a disappointed black family at the dividing line banning blacks from the white sections of Santa Monica Beach.⁹²

In the 1980s, disproportionately white affluent communities persuaded the Southern California Rapid Transit District (RTD) to end direct bus service between South Central Los Angeles and the beachfront communities to its west. According to the sworn deposition testimony of a former Metropolitan Transportation Authority (MTA) official, bus service was changed at the request of Manhattan Beach residents so inner city residents could not travel directly to the beach there without transferring.⁹³ This not only increased the

89. *Id.* at 272 (quoting Charles Matthews).

90. *Id.* at 272-73.

91. *Id.* at 414 n.36. Prof. Flaming concludes that beach segregation “needs to be researched more thoroughly.” *Id.*

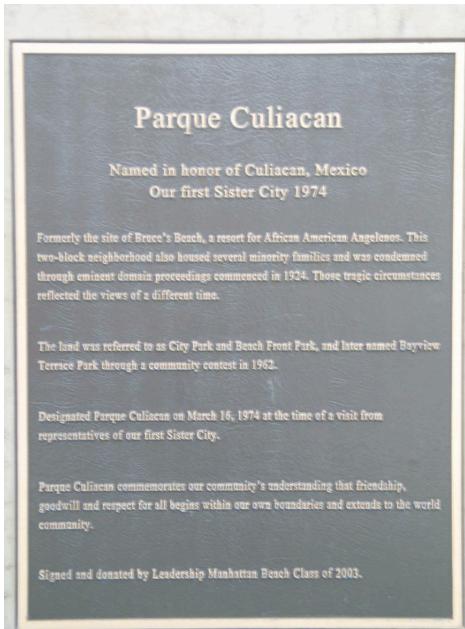
92. Image from CAROLYN KOZA COLE & KATHY KOBAYASHI, SHADES OF LA: PICTURES FROM ETHNIC FAMILY ALBUMS 92 (1996).

93. Deposition testimony of former Metropolitan Transportation Authority (MTA) official in *Labor/Community Strategy Center v. Los Angeles County Metropolitan*

amount of time it took to reach the beach, it effectively deterred people of color from going to the beach at all because of the amount of time and hassle it took to get there. RTD also granted the request of residents of the Palos Verdes Peninsula cities that buses from the inner city not climb the Palos Verdes hill.⁹⁴

Today the site of Bruces' Beach is marked by a small park and parking lot. Manhattan Beach residents in 2003 placed a plaque there that downplays the history of the people and the place:

Formerly the site of Bruces' Beach, a resort for African American Angelenos. This two-block neighborhood also housed several minority families and was condemned through eminent domain proceedings commenced in 1924. Those tragic circumstances reflected the views of a different time.



Plaque where the African-American resort Bruces' Beach was located.⁹⁵

D. From Sea to Summit

Lake Arrowhead, the major mountain lake near Los Angeles, reflects how the public stands to lose public beaches if greedy privatization efforts are not stopped. Racially restrictive covenants prevented people of color from occupying or using Arrowhead property in the 1920s and beyond.⁹⁶ Land on the lake owned by the federal government was exchanged for land northwest of

Transportation Authority (1996). RTD was the predecessor agency of MTA.

94. *Id.*

95. Photo by Nícolas García (2005).

96. STAN BELLAMY, *MY MOUNTAIN, MY PEOPLE VOL. I: ARROWHEAD!* 188 (2000).

the lake in the 1920s. Today, private mansions and businesses ring the lake. Only the wealthy can live in what is now known as “the Beverly Hills of the Mountains.” There is no public access to the beaches at Lake Arrowhead.⁹⁷ Arrowhead is a grim prologue for California’s coast if efforts to privatize the coast succeed.

E. Santa Barbara

The Santa Barbara area, northwest of Los Angeles, has also seen beach access disputes.

Billionaire Wendy McCaw—the owner of the Santa Barbara News-Press newspaper and a self-styled “environmentalist”—went to court to block the public’s right to use a 500-foot strip of beach 80 feet below her 25-acre bluff-top estate overlooking the Pacific Ocean. The California Court of Appeal ruled against McCaw and the United States Supreme Court refused to hear her case.⁹⁸

More tragic is the unfortunate story of the Gaviota Coast beyond urban Santa Barbara. In November 1999, Congress directed the National Park Service to do a feasibility study of the Gaviota Coast in order to determine if the area meets the criteria for designation as a unit of the National Park System and to evaluate the most effective way to protect it. The 76-mile segment of the coast stretches from U.C. Santa Barbara to Vandenberg Air Force Base.⁹⁹ The Gaviota Coast is rich with biodiversity and includes about 50% of the state’s remaining rural coastline, even though it represents only 15% of the 300-mile Southern California coastline.¹⁰⁰ A national seashore would protect the 76 miles of beaches, cliffs, and grasslands by limiting development and making it easier for public agencies to buy land for permanent conservation.

Property owners in Hollister Ranch, a community of large estates within the Gaviota coastal zone, were some of the most vocal opponents to the national seashore.¹⁰¹ When Congress ordered the National Park Service study,

97. John W. Robinson, *The San Bernardinos* 127, 127-32 (1989).

98. Cole v. County of Santa Barbara, No. B147339, 2001 Cal. App. Unpub. LEXIS 699 (Dec. 17, 2001), cert. denied, 537 U.S. 973 (2002). See also Daniel v. County of Santa Barbara, 288 F.3d 375 (9th Cir. 2002), cert. denied, 537 U.S. 973 (2002). See generally Barbara Whitaker, *Ruling Clears Way to Ease Beach Access in California*, N.Y. TIMES, Oct. 23, 2002; David G. Savage & Kenneth R. Weiss, *Justices Bolster Beach Access*, L.A. TIMES, Oct. 22, 2002.

99. Letter from U.S. Dept. of the Interior to Congress submitting final Gaviota Coast Feasibility Study [hereinafter DOI Letter to Congress], available at <http://www.nps.gov/pwro/gaviota/transmittal-Pombo.pdf>

100. Gaviota Coast Conservancy website, <http://www.gaviotacoastconservancy.org/coast.html>.

101. The Hollister Ranch web site proudly proclaims:

The sprawling Hollister Ranch is located behind 24-hour guarded gates on a 14,000-acre working cattle ranch. Each of these exclusive 100-acre ocean-view properties offer security,

Hollister Ranch property owners tried three times to scuttle the study in court. When litigation failed, homeowners mounted a major lobbying campaign to oppose the study.¹⁰²



Wealthy homeowners bullied the National Park Service into rejecting a plan to protect the 76-mile Gaviota Coast in Southern California as a national seashore.¹⁰³

The National Park Service's final Feasibility Study concluded that the Gaviota Coast is suitable, but not feasible, for inclusion in the National Park System. The primary reason for the finding that it is not feasible is "strong opposition from study area landowners [which] makes it unlikely that effective [National Park Service] management could occur."¹⁰⁴ In other words, wealthy homeowners bullied the federal government into abandoning a public beach.

F. Newport Beach and Orange County

In June 2003, Newport Beach city councilmember Richard Nichols publicly proclaimed his opposition to improvements to a public beach because "with grass we usually get Mexicans coming in there early in the morning and they claim it as theirs and it becomes their personal, private grounds all day."¹⁰⁵ As *Los Angeles Times* columnist Steve Lopez noted, "If not for the likes of

privacy and solitude. Three beach cabanas and 8 1/2 miles of private beach frontage are used exclusively by the owners of the 133 parcels within California's most unique community.
<http://www.hollister-ranch.com>.

102. Kenneth R. Weiss, *Status as National Seashore Rejected for Gaviota Coast*, L.A. TIMES, March 10, 2004 at B1.

103. Image courtesy of the National Park Service, available at <http://www.nps.gov/pwro/gaviota/>.

104. DOI Letter to Congress, *supra* note 99, at 1.

105. June Casagrande, *supra* n.2.

Newport Beach is overwhelmingly white and wealthy: the population is 89% non-Hispanic white compared to just 51% in surrounding Orange County; 26% of Newport Beach households gross over \$150,000 annually compared to 10% in Orange County. Source: 2000 U.S. census data; GreenInfo Network.

Nichols letting loose now and then, we'd have to constantly remind ourselves why we have civil rights attorneys."¹⁰⁶ The City Council voted not to ask Councilmember Nichols to resign, but issued a warning against demonstrations of bias and prejudice in the future.¹⁰⁷



A Newport Beach councilman opposes grass at Corona del Mar State Beach because "with grass we usually get Mexicans."¹⁰⁸

In the southern Orange County community of San Clemente, the agency responsible for toll roads in the County, has proposed a toll road extension that threatens San Onofre State Beach and public access to the beach. The "preferred alignment" for a proposed toll road extension would run a highway through San Onofre State Beach, eliminating precious open space on the California coast, impacting world-famous Trestles Beach, forcing the closure of San Mateo Campground, and destroying habitat for endangered or threatened species. The proposed project would obliterate a public trail from

106. Steve Lopez, *Councilman Visits Archie Bunker Dimension to Justify Comments*, L.A. TIMES, June 20, 2003.

107. City Council Minutes, City of Newport Beach, Regular Meeting, July 8, 2003, available at www.city.newport-beach.ca.us/CouncilAgendas/2003/Mn07-08.htm; see also City of Newport Beach City Council Report to Honorable Mayor and Members of City Council from Office of the City Attorney Re: A resolution of the city council of Newport Beach disapproving comments made by council member Richard Nicholas that stereotype or evidence an intolerance of people of Hispanic origin and that indicate he has formed a position relative certain aspects of a city project based on the fact that people of Hispanic origin would be using public property and requesting his resignation, available at www.city.newport-beach.ca.us/CouncilAgendas/2003/i07-0815.htm (July 8, 2003) (City Council approved the resolution with amendment).

108. June Casagrande, *supra* n.2. Image courtesy of the City of Newport Beach, available at <http://www.city.newport-beach.ca.us/CdMStateBeach/>.

the campground to the beach or dramatically reduce the quality of experience for trail users who would have to go under a concrete structure to reach the beach.¹⁰⁹ The Center for Law in the Public Interest submitted opposition to the toll road extension to the California State Parks and Recreation Commission because the project raises serious legal and policy issues limiting public beach access.¹¹⁰

The California Coastal Commission has ordered beach dwellers who hired a bulldozer operator to flatten protected sand dunes blocking their ocean views, at a cost that could rise into the hundreds of thousands of dollars. The Commission said that the midnight bulldozing of the 150-foot section of dunes in Newport Beach—four-foot-high mounds that provide refuge for threatened birds—was illegal and that the dunes, which are protected by state law, must be restored. The order is likely to require the residents to hire a restoration biologist to oversee rebuilding of the mounds, plant the proper native dune plant species, and continue monitoring the site for several years.¹¹¹

G. Trinidad: Beach Access in Northern California

The tiny town of Trinidad in Northern California has faced potential bankruptcy as a result of legal fees spent fighting a beachfront homeowner who wants to close a public trail to the beach that passes down his driveway and behind the two houses he owns.¹¹² Trinidad homeowner John Frame has a view of one of the most beautiful stretches of coastline in the state. He fought the town of Trinidad to shut down the path to the beach in front of his property for eleven years. In order to avoid bankruptcy caused by litigation fees, the town settled with the homeowner, conveying to him the right of way to the trail.¹¹³

The California Coastal Commission, which holds an easement on the public trail to allow public access to the beach, intervened and obtained a court

109. See Dan Weikel, *Route for O.C. Tollway Disputed*, L.A. TIMES, Nov. 5, 2005; Gillian Flaccus, *Wave Riders Fear Road Will Threaten Surfing Spot*, L.A. DAILY JOURNAL, Nov. 8, 2005, at 2; Transportation Corridor Agencies website, “About TCA—Background and History,” http://www.tcagencies.com/home/about_history.htm (last visited November 9, 2005); California Department of Parks and Recreation, Public Comments on the Foothill-South Highway 241 Toll Road Extension Draft Environmental Impact Report/Supplemental Environmental Impact Report, Aug. 2, 2004, available at <http://www.parks.ca.gov/pages/843/files/state%20parks%20comments%20on%20soctiip%20eis-seir%208-2-04.pdf> (last visited November 3, 2005).

110. Letter from Robert Garcia, Center for Law in the Public Interest, to California Department of Parks and Recreation, Nov. 3, 2005, re: Save San Onofre State Beach, Protect Public Access to the Beach, and Oppose 241 Toll Road Extension, available at www.clipi.org/blog/wp-content/LettertoCAParksandRecreSanOnofre.pdf.

111. Lin, *supra* note 60.

112. Hank Sims, *Town Is on Brink Over Trail at Sea's Edge*, L.A. TIMES, Oct. 27, 2003 at B5.

113. *Id.*

order to reopen the trail. Forced to defend itself against the homeowner, Trinidad—the fourth-smallest city in California—was forced to consider bankruptcy, a county takeover, or a tax increase to pay its legal bills and keep the public beach free for all.¹¹⁴ Shortly before the case was due to go to trial, the Coastal Commission, City of Trinidad, and Mr. Frame reached an agreement that will preserve the public access trail.¹¹⁵



The tiny town of Trinidad was forced to consider bankruptcy to pay legal fees to fight a property owner who wants to close a public trail to the beach.¹¹⁶

H. A Glimpse of a Possible Future

According to recent reports, almost every acre of the Southern California coastline from San Clemente to Seal Beach that has not been formally set aside for open space is or will soon be developed. In Orange County, virtually all of the coast is spoken for and plans are underway to develop the remaining parcels of privately-owned land at the edges of the county. As with most coastal communities, home prices near the beach “even by the standards of today’s frenzied market have reached exceptional heights.”¹¹⁷ For example, homes alongside Crystal Cove State Park and overlooking the Pacific Ocean will sell at a starting price of \$2.5 million for the land alone. Among the many housing developments planned for Orange County’s coastline, several acres of

114. Hank Sims, *supra* note 112.

115. Telephone conversation with Chris Tiedemann, attorney for the Coastal Commission, November 16, 2005. The parties have filed a settlement agreement with the court and continue to work on the details necessary to keep the trail open for all. *Id.*

116. Photo by Robert García (2003).

117. *Id.*

parkspace will be set aside, but it remains to be seen how the build-out of the shoreline will impact access to the beach.¹¹⁸ As the developments rise, now is the time for coastal advocates to work to free the beach. In the next Part, we examine the values behind the continuing struggle.

IV. WHY BEACHES MATTER: THE VALUES AT STAKE

Beaches are fun. Fun is not frivolous. Fun is a fundamental value. The United States was founded in part for the pursuit of happiness. The United Nations recognizes the right to play as a fundamental human right.¹¹⁹ Having fun goes hand-in-hand with recreation, health, and the other values at stake in preserving public access to the beach, including environmental protection, public health, economic vitality, and fundamental democratic principles of public access, equal justice, and community.

From an environmental perspective, beaches are among the most dynamic landscapes on the planet and one of our most precious natural resources.¹²⁰ Biodiversity and the ecological integrity of the planet's coasts are necessary and irreplaceable. Beaches support many species that are important to marine and land-based ecosystems.¹²¹

The human health implications of the need for beaches, parks, school yards, forests, and active recreation are profound.¹²² Beaches provide people with a place to be active as an important site for all kinds of outdoor recreation.

Outdoor recreation through beach access has major public health implications. If current trends in obesity and inactivity continue, today's youth will be the first generation in this nation's history to face a shorter life expectancy than their parents.¹²³ This health crisis costs the United States over \$100 billion each year. The epidemic of obesity, inactivity, and related diseases like diabetes is shortening children's lives and destroying the quality of their lives. In California, 73% of fifth, seventh, and ninth graders did not achieve minimum physical fitness standards in 2004. In the Los Angeles Unified

118. *Id.*

119. *Declaration of the Rights of the Child*, Proclaimed by General Assembly resolution 1386 (XIV) of 20 November 1959, Principle 7; *United Nations' Convention on the Right of the Child*, General Assembly resolution 44/25 of 20 November 1989, Article 31.

120. Surfrider Foundation, *State of the Beach* (2002) on inside and outside cover pages.

121. Karin Martin, *Beach Is Alive*, Making Waves, April 2004 (Editor's note), at www.surfrider.org/makingwaves/makingwaves20-2/7.asp.

122. See generally García, *Healthy Children, Healthy Communities and Legal Service Providers*, *supra* n.18.

123. Eloisa Gonzalez, MD, MPH, L.A. County Dept. of Public Health, testimony Jan. 21, 2004, LAUSD Citizens' School Bond Oversight Committee. See generally Editorial, *The Schools Go Flabby*, L.A. TIMES, May 22, 2004; Jennifer Radcliffe, *Going to War against the Epidemic of Childhood Obesity*, Jan. 27, 2004; Cara Mia DiMassa, *Campus Crowding Can Make PE a Challenge*, L.A. TIMES, Nov. 19, 2003.

School District (LAUSD), 87% of students are not physically fit.¹²⁴

Overweight and unfit children face a greater risk of developing lung disease, diabetes, asthma, and cancer.¹²⁵ Type 2 diabetes, formerly known as adult-onset diabetes, now affects millions of overweight and inactive children at younger and younger ages.¹²⁶ As a result, children are more likely to suffer long range effects including death, loss of limbs, and blindness. The obesity and inactivity crisis costs the United States \$117 billion in lost productivity and medical costs.¹²⁷

This crisis is not just the result of individual eating or exercise habits. Children, adolescents, and adults cannot become more physically active and fit if they do not have accessible, safe, and affordable opportunities to be active, including public beaches.¹²⁸

Low-income communities and communities of color suffer from shortages of natural space in their neighborhoods, which contributes to inactivity and obesity. Physical inactivity is more prevalent among women than men, among blacks and Hispanics than whites, among the less affluent than the more affluent, and among older than younger adults.¹²⁹

Beaches provide opportunities for physical fitness and health. The most frequently used facilities for physical activity are informal and include streets, public open spaces, and beaches.¹³⁰ Living within close proximity to the coast is positively associated with recommended levels of exercise.¹³¹ The ocean view alone may have health benefits. Views of nature have been linked to a variety of positive health outcomes in adults and children.¹³²

124. Cal Dep't. of Ed. website, at www.cde.ca.gov/ta/tg/pf/index.asp; Cara Mia DiMassa, *Here's the Skinny: Most Students Aren't*, L.A. TIMES, Nov. 25, 2004.

125. *Id.* at 18.

126. GOLD COAST COLLABORATIVE, A HEALTH CRISIS IN PARADISE 3 (Sept. 2003).

127. U.S. DEPT. HEALTH & HUMAN SERVICES, THE SURGEON GENERAL'S CALL TO ACTION TO PREVENT AND DECREASE OVERWEIGHT AND OBESITY 9-10 (2001).

128. See U.S. Dept. of Health and Human Services and U.S. Department of Education, *Promoting Better Health for Young People Through Physical Activity and Sports*, available online at <http://www.cdc.gov/nccdphp/dash/presphysactpt> (Fall 2001).

129. U.S. DEPT. OF HEALTH AND HUMAN SERVICES, PHYSICAL ACTIVITY AND HEALTH: A REPORT OF THE SURGEON GENERAL [*hereinafter SURGEON GENERAL*] 200 (1996); Patricia Barnes, *Physical Activity Among Adults: United States, 2000*, Advance Data, No. 333, U.S. Dept. Health and Human Services (May 14, 2003); POLICY LINK, REGIONAL DEVELOPMENT AND PHYSICAL ACTIVITY: ISSUES AND STRATEGIES FOR PROMOTING HEALTH EQUITY 9-12 (Nov. 2002) [*hereinafter POLICY LINK*].

130. B. Giles-Corti, et al. *The relative influence of individual, social and physical environment determinants of physical activity*, 54 SOC. SCI. & MED. 1793 (2002).

131. *Id.* at 1794; Neville Owen, Ph.D. et al., *Understanding Environmental Influences on Walking: Review and Research Agenda*, 27 AM. J. PREVENTATIVE MED. 69 (2004).

132. See R. Kaplan, *Nature at the Doorstep: Residential Satisfaction with Nearby Environment*, 2 Journal of Architectural and Planning Research, 115-127 (1985); F. E. Kuo, *Coping with Poverty: Impacts of Environment and Attention in the Inner City*, 33 ENV'T. & BEHAVIOR, 5-34 (2001); C. M. Tennesen et al., *Views to Nature: Effects on Attention*, 15 J.

The health costs of urban sprawl should inform land use and planning decisions to create and preserve beaches, green space, walkable neighborhoods with mixed land uses, and limited road construction balanced by transit alternatives.¹³³ “[A]pplying public health criteria to land-use and urban design decisions could substantially improve the health and quality of life of the American people.”¹³⁴

Regular physical activity is associated with enhanced health and reduced risk for all-cause mortality, heart disease, diabetes, hypertension, and cancer.¹³⁵ Physical activity for children and adolescents helps to build and maintain healthy bones, muscles, and joints, and helps prevent or delay the development of high blood pressure.¹³⁶ Natural spaces are also linked to improved mental health. Physical activity relieves depression and anxiety.¹³⁷

Physical activity at beaches can promote positive choices and help reduce youth violence, crime, drug abuse, and teen pregnancy.¹³⁸ Beach sports and activities along with recreation programs promote human development, like field trips organized by the Surfrider Foundation’s “Respect the Beach” coastal and surf educational program.

Sports and recreation also build character, pride, self esteem, teamwork, leadership, concentration, dedication, fair play, mutual respect, social skills, and healthier bodies; help keep children in school; help develop academic skills; and increase access to higher education.¹³⁹ Physically fit students perform better academically.¹⁴⁰ Male athletes are four times more likely to be admitted to Ivy League colleges than other males; for female athletes, the

ENV’T. PSYCH. 77-85 (1995).

133. See Richard J. Jackson, MD, MPH & Chris Kochtitzky, MSP, *Creating a Healthy Environment: The Impact of the Built Environment on Public Health*, SPRawl WATCH CLEARINGHOUSE MONOGRAPH SERIES, PUBLIC HEALTH/LAND USE MONOGRAPH 5, available at <http://www.sprawlwatch.org/Jackson>; POLICY LINK, *supra* note 129, at 15.

134. Jackson, *supra* note 133, at 5.

135. Surgeon General, *supra* n.128, at 7, 85-87, 90-91, 102-03, 110-12, 127-30, 135.

136. U.S. Dept. of Health and Human Services and U.S. Department of Education, *Promoting Better Health for Young People Through Physical Activity and Sports* 7 (Fall 2001), at <http://www.cdc.gov/nccdphp/dash/presphysactrpt>.

137. A. Faber Taylor, et al., *Coping with ADD: The surprising connection to green play settings*, ENV’T & BEHAVIOR 33, 54-77 (2001); A. Faber Taylor, et al., *Views of Nature and Self-Discipline: Evidence from Inner City Children*, J. ENV’T. PSYCH. (2001); SURGEON GENERAL, *supra* note 133, at 135-36, 141.

138. See Russell R. Pate et al., *Sports Participation and Health-Related Behaviors Among US Youth*, ARCHIVES PEDIATRICS & ADOLESCENT MED. (Sept. 2000); see also U.S. Dep’t. of Health and Human Services, *Physical Activity Fundamental to Preventing Disease* [hereinafter *Physical Activity Fundamental*] 9 (June 20, 2002); *Gangs, Crime and Violence in Los Angeles: Findings and Proposals from the District Attorney’s Office* (1992).

139. *Id.* See Anastasia Loukaitou-Sederis & Orit Stieglitz, *Children in Los Angeles Parks: A Study of Equity, Quality, and Children Satisfaction with Neighborhood Parks*, 73 (4) TOWN PLANNING REV. 1-6 (2002).

140. Ca. Dep’t of Ed., Press Release, Dec. 10, 2002.

advantage is even greater.¹⁴¹

In the aftermath of the riots and rebellion following the acquittals of the police for the Rodney King beating in Los Angeles, gang members issued a manifesto calling for peace and listing the shortage of parks and natural space as one of their major concerns.¹⁴²

Beaches can promote economic vitality for all. California has the largest ocean economy in the nation and a large portion of that economy revolves around the state's beaches. Ocean-related activities in California produced a gross state product (GSP) of \$42.9 billion and provided almost 700,000 jobs and more than \$11.4 billion in wages and salaries in 2000.¹⁴³ Tourism and recreation accounted for the largest proportion of employment (76.8%) and GSP (58%).¹⁴⁴ The total economic impact of the tourism and recreation sector of the ocean economy in California in 2000 was over \$22 billion.¹⁴⁵ Coastal tourism makes California competitive in international tourism because studies show beaches are the leading international tourist destination.¹⁴⁶ A full 63% of all Californians make at least one visit to a California beach each year, 2.5 times the national average, and most (85%) of all beach visits in California are made in Los Angeles, Orange, and San Diego Counties.¹⁴⁷ According to the National Ocean Economic Program, beachgoers place a high value on beach visits, above and beyond what they actually spend. Estimates of the total value of beach-going, including market and non-market values, exceed \$5 billion annually.¹⁴⁸ Improvements to beaches, including improved beach access, would lead to more beach visitors, which in turn would have a positive impact on the economy.¹⁴⁹

Access to beaches for all is necessary for equal justice. Beaches are a public forum where people exercise their First Amendment rights of association and expression. Professor Regina Austin eloquently describes the equal justice values underlying the preservation of public space, like beaches, for all: the good life requires the good fight against biased and excessive constraints on leisure at every level. The fight must stay focused on securing freedom from discrimination and segregation in leisure, and from the obstacles that make living a good life impossible. Enlargement of the public sphere and

141. WILLIAM G. BOWEN & SARAH A. LEVIN, ET AL., RECLAIMING THE GAME: COLLEGE SPORTS AND EDUCATIONAL VALUES (2003).

142. Loukaitou-Sederis & Stieglitz, *supra* note 139, at 1-6.

143. National Ocean Economics Program, *California's Ocean Economy*, Report to the Resources Agency, State of California 1 (July 2005).

144. *Id* at 26.

145. *Id.* at 123.

146. *Id.* at 105.

147. *Id.* at 109-11.

148. *Id.* at 109, 112.

149. See *id.* at 106.

access to the good life are good for everyone.¹⁵⁰ The struggle for beaches, parks, and open space can bring people together to create the kind of community where they want to live and raise children.¹⁵¹ The Surfrider Foundation speaks about its own “unique constituency and culture” centered around the beach.¹⁵² As a matter of simple justice, all people are entitled to the good life on the beach.¹⁵³

Social justice and stewardship of the earth motivate spiritual leaders, including Cardinal Roger Mahony, and the Justice and Peace Commission of the Catholic Archdiocese of Los Angeles, to actively support equal access to parks and natural space.¹⁵⁴ Nobel Peace Prize Laureate Rigoberta Menchú has praised the work of the Center for Law in the Public Interest to promote equal access to parks and recreation as a way of saying no to war, no to violence, and giving children hope.¹⁵⁵

In October 2004, the Nobel Peace Prize Committee awarded the Peace Prize to the Kenyan woman Wangari Muta Maathai for planting trees and speaking out for women. “In managing our resources and in sustainable development, we plant the seeds of peace,” according to Ms. Maathai.¹⁵⁶ The

150. Regina Austin, “*Not Just for the Fun of It!: Governmental Restraints on Black Leisure, Social Inequality, and the Privatization of Public Space*, 71 S. CAL. L. REV. 667, 711-12 (1998).

151. *Urban Parks Movement*, *supra* note 18; ROBERT GARCÍA, ET AL., CENTER FOR LAW IN THE PUBLIC INTEREST, DREAMS OF FIELDS: SOCCER, COMMUNITY, AND EQUAL JUSTICE 17 (2002).

152. Surfrider Foundation, *Strategic Plan*, “Surfrider’s Unique Strengths and Assets” (ratified by the Board of Directors on Jan. 23, 1999).

153. Patrick T. Tierney, et al., USDA, Forest Service, Pacific Southwest Research Station, *Cultural Diversity of Los Angeles County Residents Using Undeveloped Natural Areas* 5 (1998). Beaches are prime locations for Latino families to gather and spend time together. See Deborah S. Carr & Deborah J. Chavez, *A Qualitative Approach to Understanding Recreation Experiences: Central American Recreation in the National Forests of Southern California* [*hereinafter Central American Outdoor Recreation*] in CULTURE, CONFLICT, AND COMMUNICATION IN THE WILDLAND-URBAN INTERFACE 181, 184-94 (A.W. Ewert, D.J. Chavez, A.W. Magill eds., 1993); Deborah J. Chavez, *Mexican-American Recreation: Home, Community & Natural Environment* [*hereinafter Mexican-American Outdoor Recreation*], proceedings paper, Hawaii International Conference on Social Sciences 5 (2003); Anastasia Loukaitou-Sideris, *Urban Form and Social Context: Cultural Differentiation in the Uses of Urban Parks* [*hereinafter Urban Form and Social Context*], 14 J. PLANNING & ED. & RESEARCH 89, 101-02 (1995).

154. GARCÍA, DREAMS OF FIELDS, *supra* note 151, at 10; Julia Romano, *A Controversial Woman of Peace*, SANTA MONICA BAY WEEK, Nov. 21, 2002. According to the United States Catholic Conference, for example, Catholics show their respect for the Creator through stewardship and care for the earth as a requirement of their faith. United States Catholic Conference, Inc., Washington D.C. (1999). The United Nations has published an interfaith book of reflection for action. See LIBBY BASSETT, ET AL., EARTH AND FAITH (2000). Extensive information about spirituality and the environment is available at various web sites. See, e.g., Coalition for the Environment and Jewish Life of Southern California, www.CoejLSC.org.

155. See video of Ms. Menchu at <http://clipi.org/ourwork/menchutum.html>.

156. Patrick E. Tyler, *Kenyan Environmentalist Wins Nobel Prize for Peace*, N.Y.

award for Ms. Maathai is an explicit mainstream recognition that there is more at stake than traditional environmental values in protecting the earth. We are fighting for peace and justice in seeking equal access to public resources for all.



All people have the right to enjoy the serenity of a sunset on the beach.

Framing the values at stake to appeal to different stakeholders to support public access to the beach is consistent with Professor George Lakoff's call for a progressive movement built around shared values that define who progressives are, encompassing strategic campaigns on many different issue areas and programs.¹⁵⁷ The next Part considers the articulation of these values through law.

V. LEGAL AND POLICY JUSTIFICATIONS FOR BEACH ACCESS

Public access to the beach is protected under the public trust doctrine and other state laws. State laws also prohibit phony beach signs that purport to define what is and is not a public beach, and the use of all-terrain vehicles by

TIMES, Oct. 8, 2004.

157. Professor Lakoff identifies six types of progressives with shared values: (1) socio-economic: issues are a matter of money and class; (2) identity politics: our group deserves its share now; (3) environmentalists: respect for the earth and a healthy future; (4) civil libertarians: freedoms are threatened and have to be protected; (5) spiritual progressives: religion and spirituality nurture us and are central to a fulfilling life; (6) anti-authoritarians: we have to fight the illegitimate use of authority. See GEORGE LAKOFF, DON'T THINK OF AN ELEPHANT! KNOW YOUR VALUES AND FRAME THE DEBATE (2004); GEORGE LAKOFF, MORAL POLITICS: HOW LIBERALS AND CONSERVATIVES THINK (2002).

security guards to harass the public on public beaches.

The discriminatory impacts of restricting beach access are prohibited by federal and state civil rights laws. The First Amendment also protects public access to the beach.

A. State Conservation Laws Protect Equal Access to the Beach

The right to public access to the beach under state law stems from the public trust doctrine, the California Constitution, and California statutory law, including the California Coastal Act and civil rights and environmental justice laws.

1. The Public Trust Doctrine

Public access to the beach is protected under the public trust doctrine. The right to public access can be traced back to English common law and Roman law.¹⁵⁸ In 1892, the United States Supreme Court decided *Illinois Central Railroad v. Illinois*, which remains the principle authority on the public trust doctrine in the United States.¹⁵⁹ According to the Court, title to tide waters and the land below the high water mark is held in trust for the people of the state so that the people can navigate the waters, conduct commerce over them, and fish in them free from obstruction and interference by private parties.¹⁶⁰ Management and control over the property held by the state in trust for the people cannot be relinquished by transfer of the property.¹⁶¹ “The control of the State for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in lands and waters remaining.”¹⁶²

California, with approximately 1,200 miles of coastline, not including islands and major embayments, is one of the leading states in developing the public trust doctrine.¹⁶³ Preserving the right to public beaches was a condition of California joining the Union.¹⁶⁴ In California, all land below the mean high

158. See *City of Berkeley v. Superior Court*, 26 Cal. 3d 515 (1980). Spanish and Mexican law also recognized the public trust doctrine. *National Audubon Society v. Superior Court*, 33 Cal. 3d 419, 434 n.15 (1983). Commentators suggest that public trust rights guaranteed by the Treaty of Guadalupe Hidalgo serve as an independent basis for the public trust doctrine in California. *Id.*

159. See *City of Berkeley*, 26 Cal. 3d 515, 521.

160. *Illinois Central R.R. Co. v. Illinois*, 146 U.S. 387, 452 (1892).

161. *Id.* at 453.

162. *Id.*

163. Katherine E. Stone, *Sand Rights: A Legal System to Protect the Shores of the Sea*, 29 STETSON L. REV. 709, 711, 717 (2000).

164. California acquired title as trustee to waterways upon its admission to the union. *National Audubon Society*, 33 Cal. 3d 419, 434 (citing *City of Berkeley*, 26 Cal. 3d 515,

tide line is public.¹⁶⁵ Although the public trust doctrine has traditionally been used to protect the public's right to navigation, commerce, and fisheries, it also protects the right to bathe, swim, fish, hunt, and boat, as well as the use of the bottom of navigable waters for anchoring, standing, or other purposes.¹⁶⁶ Furthermore, the doctrine protects the public right to tidelands.¹⁶⁷

The California Supreme Court held in *National Audubon Society v. Superior Court* that the principle values plaintiffs sought to protect—scenic views of a lake and its shore, purity of air, and the use of the lake for nesting and feeding—are recreational and ecological and among the purposes of the public trust.¹⁶⁸ This is the strongest case for protecting public waters for purposes other than fishing or navigation, including aesthetics and recreation, under the public trust doctrine.¹⁶⁹

The public trust doctrine is consistent with the California statutory definition of environmental justice, as discussed below.

2. The California Constitution

Public access to the beach is protected under the California Constitution, which affirms the common law public trust doctrine. Article X, Section 4

521).

165. Lechuza Villas v. California Coastal Comm'n, 60 Cal. App. 4th 218 (1997); Cal. Civ. Code §§ 670 & 830.

166. Marks v. Whitney, 23 Cal. 3d 251, 259 (1971).

167. *Id.* The uses of tidelands encompass changing public needs. *Id.* at 259.

168. National Audubon Society v. Superior Court, 33 Cal. 3d 419 (1983).

169. *Id.* at 435. Courts and commentators have explored the application of the public trust doctrine to the dry sand on beaches. In 1972, the New Jersey Supreme Court held that the public trust doctrine applied to the municipally-owned dry sand beach immediately landward of the high water mark to the vegetation line. *Borough of Neptune City v. Borough of Avon-by-the-Sea*, 61 N.J. 296, 309 (1972). In 1984, the New Jersey Supreme Court considered whether, apart from the public's right to enjoy tidelands, the public has a right to access through, and use of, the dry sand area not owned by a municipality, but by a quasi-public homeowners' association. *Matthews v. Bay Head Improvement Ass'n*, 471 A.2d 355 (N.J. 1984). The court held that membership in the association must be open to the public at large and that the public must be assured access to the common beach property during specific hours; furthermore, they must not be denied the right to access the ocean through the sand to swim and bathe, nor be denied the right to use the dry sand incidental to those activities. *Id.* at 332. "The bather's right in the upland sands is not limited to passage. Reasonable enjoyment of the foreshore and the sea cannot be realized unless some enjoyment of the dry sand areas is also allowed." *Id.* at 326. One advocate urges the application of the public trust doctrine to "sand rights" in California and elsewhere. Katherine E. Stone argues that California's coastal beaches are public and used for the public benefit. Beach erosion threatens the well-being of entire communities by causing, for example, the loss of tourist revenue. As Stone explains, "Depriving coastline beaches of sand needed to replenish them will result in an injury to the interests of the public at large... . [T]he continued supply of sand to the beaches of California confers a significant public benefit." Stone, *supra* note 163, at 711-12, 720-21.

prohibits any person or entity with a claim to or possession of tidal lands or a harbor, bay, inlet, estuary, or other navigable water, to exclude the right of way to such water when required for any “public purpose.” The California Supreme Court includes recreational purposes among “public purposes” for this provision.¹⁷⁰

In order to implement this constitutional protection, the California legislature enacted California Government Code section 66478.3, which declares that public access to public natural resources is essential to the health and well-being of all citizens of California.

3. California Statutory Law Generally

California’s statutory law demonstrates a strong public policy in favor of public and equal access to the coast. The California Coastal Act of 1976 is the main body of law governing California’s coastal zone, which extends seaward three miles and extends inland anywhere from 1,000 yards to several miles.¹⁷¹ The California Coastal Commission, created by voter initiative in 1972 and permanently authorized by the Coastal Act in 1976, is responsible for protecting the state’s natural and scenic resources along the coast through enforcement of the Coastal Act.¹⁷²

The Coastal Act and Coastal Commission are discussed more fully below. This section summarizes statutory law related to California beaches that is not contained in the Coastal Act.

A basic principle governing California’s shoreline is that land below mean high tide is public. California owns all land below tide water and below the ordinary high-water mark within the state.¹⁷³ As a rule of thumb, wet sand is public. Dry sand can be private, but subject to easements or agreements that entitle the public to use the beach, as discussed below.

California defines “public beach” as any beach area used for recreational purposes that is owned, operated, or controlled by the State, a state agency, or a

170. See *Gion v. Santa Cruz*, 2 Cal. 3d 29, 42-43 (1970) (citing case law from 1935 to 1955 and stating that the California Constitution “clearly indicates that we should encourage public use of shoreline areas whenever that can be done consistently with the federal Constitution”).

171. ELIZABETH G. HILL, LEGISLATIVE ANALYST’S OFFICE, IMPROVING COASTAL ACCESS AND DEVELOPMENT MITIGATION 3 (January 2005).

172. *Id.* A private citizen has the authority to file a lawsuit to enforce the duties imposed on the Coastal Commission and other state and local government entities under the Coastal Act. Cal. Pub. Res. Code § 30804.

173. California Civil Code § 670 provides that the State is the owner of all land below tide water, and below ordinary high-water mark, bordering upon tide water within the State; of all land below the water of a navigable lake or stream; of all property lawfully appropriated by it to its own use; of all property dedicated to the State; and of all property of which there is no other owner.

local agency.¹⁷⁴

California protects public access to beaches and coastal lands.¹⁷⁵ No local agency can sell, lease, or transfer real property located between the high water line of the Pacific Ocean and the nearest public street or highway without reserving in the public the right of access over such property.¹⁷⁶ Moreover, water fronts are to remain open to free and unobstructed access by people from public streets and highways and these public streets, highways, and other public rights of way must, in turn, remain open to the free and unobstructed use of the public from such waters and water fronts.¹⁷⁷

4. The California Coastal Act

The legislature passed the California Coastal Act of 1976 in response to deterioration in the quality and availability of recreational land along the California coast. The goals of the Coastal Act are to preserve and expand public access to and along the coast, maximize recreation opportunities consistent with conservation and property rights, protect and restore scenic and visual qualities, and promote public participation in decisions affecting coastal planning, conservation, and development.¹⁷⁸

5. The California Coastal Commission and Offers to Dedicate

The California Coastal Commission is charged with implementing the California Coastal Act.¹⁷⁹ The Coastal Act authorizes the Commission to issue permits for development in the coastal zone and to place conditions on the permits to mitigate the adverse effects of the development.¹⁸⁰

The Coastal Commission has come under attack by property rights advocates who resent its role in regulating development along the coast. The

174. Cal. Gov. Code § 54090.

175. Cal. Gov. Code § 53035.

176. Cal. Gov. Code § 53036. A local agency or its grantee can make an alternate route available to the public if such route “gives equal or greater public access to the Pacific Ocean in the same immediate vicinity.” *Id.*

177. Cal. Gov. Code § 39933.

178. Cal. Pub. Res. Code §§ 30001.5, 30001.5(c), 30006, 30220, 30221, and 30251.

179. See Cal. Pub. Res. Code § 30330.

180. HILL, *supra* note 171, at 3. The California Coastal Act requires local governments within the coastal zone to develop a Local Coastal Program (LCP) to ensure that development in its jurisdiction complies with the Coastal Act. LCPs must be certified and reviewed regularly by the Coastal Commission. Local governments with certified LCPs issue development permits in their jurisdiction. The Coastal Commission reviews these permits only if a decision by the local government is appealed. The Coastal Commission issues permits in all other jurisdictions, including Malibu, which now has a certified LCP but is not yet issuing coastal development permits.

Center for Law in the Public Interest and others filed a “friend of the court” brief on behalf of the Mexican American Legal Defense & Education Fund, Latino Urban Forum, and twenty-six other organizations in the California Supreme Court in *Marine Forests v. California Coastal Commission*, which recently upheld the constitutionality of the Coastal Commission.¹⁸¹

A common form of mitigation takes place in the form of “offers to dedicate” (“OTD”) public access to the beach from the highway, or along the beach. A property owner who wishes to develop coastal property can offer to dedicate a portion of the property to public use in exchange for, and as a condition of, receiving a coastal development permit.¹⁸² For example, a beachfront property owner may offer to dedicate access to a path from the highway to the beach (a “vertical OTD”) in exchange for a permit to build onto his or her house. A property owner may also offer to dedicate access to land that runs parallel to the ocean above the mean high tide line (a “lateral OTD”).¹⁸³ While OTDs are recorded legal documents that run with the land—typically for twenty-one years from the date of recording—OTDs are only *offers* of easements.¹⁸⁴ Until the offer is accepted by a government agency or a non-profit organization, the interest belongs to the property owner.¹⁸⁵

The Legislative Analyst’s Office recently published a report with recommendations for improving the Coastal Commission’s model of mitigation for coastal permits.¹⁸⁶ The Office is particularly concerned about the loss of access to the beach in the years between the time that an OTD is granted by a landowner and accepted by a non-profit or government entity. It typically takes 10 to 20 years for the Coastal Commission to identify an organization or government entity to accept the OTD, during which time the public is denied access to the beach.¹⁸⁷

181. *Marine Forests Soc. v. Cal. Coastal Comm’n*, 36 Cal. 4th 1 (2005). See also Kenneth R. Weiss & Gregg Jones, *Davis Signs Coastal Commission Bill*, L.A. TIMES, Feb. 21, 2003.

182. *Id.* In *Nolan v. Cal. Coastal Comm’n*, 483 U.S. 825 (1987), the United States Supreme Court held that the requirement to mitigate development as a permit condition is not an unconstitutional “taking” of private property if there is a clear nexus between the development’s adverse impact and the required mitigation of that development. In *Dolan v. City of Tigard*, 512 U.S. 374 (1994), the United States Supreme Court ruled that the nature and extent of the development permit conditions must be roughly proportional to the adverse impact of the development.

183. HILL, *supra* note 171, at 10. Other types of OTDs include trail OTDs, which provide recreation access within the coastal zone, and nonaccess OTDs, which are mainly conservation dedications. *Id.*

184. PUBLIC ACCESS ACTION PLAN, *supra* note 3, at 13-14.

185. *Id.* at 14. See also Cal. Pub. Res. Code § 30212(a)(3) (“Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.”)

186. Recommendations by the Legislative Analyst’s Office are summarized and incorporated into Part VIII of this Policy Report.

187. HILL, *supra* note 171, at 8.

After an agency or non-profit organization accepts an OTD, the accepting agency is responsible for providing safe public access while protecting private property rights.¹⁸⁸ Once an OTD is accepted, the easement remains in the public domain.¹⁸⁹

The acceptance of OTDs is critical to ensuring public and equal access to the beach. As of July 2004, 79% of lateral OTDs have been accepted, 20% remain outstanding offers, and less than 1% have expired. For vertical OTDs, 71% have been accepted, 27% remain outstanding, and 2% have expired.¹⁹⁰ In 2002, California passed legislation that declares the state's intent to accept OTDs that are about to expire in order to prevent permanent loss of public accessways. Under that legislation, the California Coastal Conservancy must accept all public access OTDs that are within 90 days of their expiration, and must open at least three accessways every year.¹⁹¹ The state has a long way to go before all outstanding OTDs have been accepted and the accessways are opened to the public. Nearly 30% of outstanding OTDs are scheduled to expire by 2007.¹⁹²

6. Stopping False Beachfront Signs

Phony signs on Broad Beach in Malibu limit public access to the beach based on false claims of where the mean high tide is and what constitutes a public or private beach. These signs constitute illegal coastal developments without a permit.¹⁹³ The content of the signs is also improper—signs direct people off areas covered by public access easements, and even off state tidelands.

Under the Coastal Act, the definition of “development” includes “the placement or erection of any solid material or structure” on land or in water.¹⁹⁴ Signs purporting to identify the mean high tide line and “private property” signs constitute development under this definition and cannot be erected without a valid coastal development permit.¹⁹⁵ To the degree these signs change the intensity of the use of the land or water, they are considered developments and they violate additional aspects of the Coastal Act.¹⁹⁶

Only the State Lands Commission has authority to establish the high tide

188. PUBLIC ACCESS ACTION PLAN, *supra* note 3, at 14.

189. *Id.*

190. Hill, *supra* note 171, at 10.

191. Hill, *supra* note 171, at 15.

192. *Id.* at 12.

193. See Cal. Pub. Res. Code § 30600.

194. Cal. Pub. Res. Code § 30106.

195. See Cal. Pub. Res. Code § 30600.

196. Cal. Pub. Res. Code § 30106 (“development” includes “any change in the density or intensity of use of land” and a “change in the intensity of the use of water.”)

line.¹⁹⁷ There has not been an official survey of the mean high tide line since the 1920s.¹⁹⁸ The phony signs are not based on official surveys of the mean high tide line and are invalid for that reason.

The Coastal Commission ordered an end to such phony “no trespassing” and “private beach” signs in Malibu in August 2005.¹⁹⁹



Well below the high water line, an illegal sign in wet, public sand in Malibu reads: “Private Property. Do Not Trespass. Calif. Penal Code Sec. 602(N). Private Property Line Begins 30 Feet Toward the Ocean From This Sign.” Signs stretch as far as the eye can see.²⁰⁰

Public paths in Malibu that are blocked by garbage cans and misleading signs deter beach visitors and are inconsistent with the Coastal Act. In order to

197. Cal. Pub. Res. Code § 6301. *See also* Cal. Pub. Res. Code §§ 6201, 6357.

198. Kenneth R. Weiss, *Reflections on 2001: Beach Access*, L.A. TIMES, Dec. 30, 2001, at B1.

199. Sara Lin, *Public's Use of Beach Is Affirmed: Malibu homeowners group must forgo signs and security guards, coastal panel says*, L.A. TIMES, Aug. 15, 2005, at B1.

200. Photo by Robert García (2003). Penal Code 602(n) cited in the sign refers to misdemeanor trespass for “Refusing or failing to leave land, real property, or structures belonging or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner . . . or (2) the owner.” Cal. Penal Code § 602(n).

maximize public access to and along the coast, the Coastal Act requires paths from public roads to the ocean,²⁰¹ and paths must be conspicuously posted.²⁰² Development in the coastal zone must not interfere with the public's right of access to the sea, including access to dry sand and rocky coastal beaches up to the first line of terrestrial vegetation.²⁰³

7. Stopping All-Terrain Vehicles on Public Beaches

The Coastal Commission has ordered an end to the use of all-terrain vehicles (ATVs) by security guards who harass the public on public beaches.²⁰⁴ The use of ATVs constitutes development under the Coastal Act, insofar as ATVs change the intensity of land or water use (by increasing use of the land by security guards and reducing use of beaches by the public) or causing non-agricultural removal of vegetation by treading on the vegetation.²⁰⁵



Patrolling Broad Beach on an all-terrain vehicle.²⁰⁶

B. Federal and State Civil Rights Laws

Federal and state laws prohibit both intentional discrimination and

201. Cal. Pub. Res. Code § 30212.

202. Cal. Pub. Res. Code § 30210.

203. Cal. Pub. Res. Code § 30211. New developments must provide public access from the nearest roadway to the shoreline (vertical access) and along the coast (horizontal or lateral access). Cal. Pub. Res. Code § 30212.

204. Letter to California Coastal Commission from Center for Law in the Public Interest, et al. re: *Commission Cease & Desist Order No. CCC-05-CD-9 (Trancas Property Owners Association, Malibu)*, *supra* note 64.

205. See Cal. Pub. Res. Code § 30106. In one case, the state appellate court held that "sand extraction activities" may constitute development under the Coastal Act. ATVs arguably result in the removal of sand. *Monterey Sand Co. v. Cal. Coastal Comm'n*, 191 Cal. App. 3d 169 (1987).

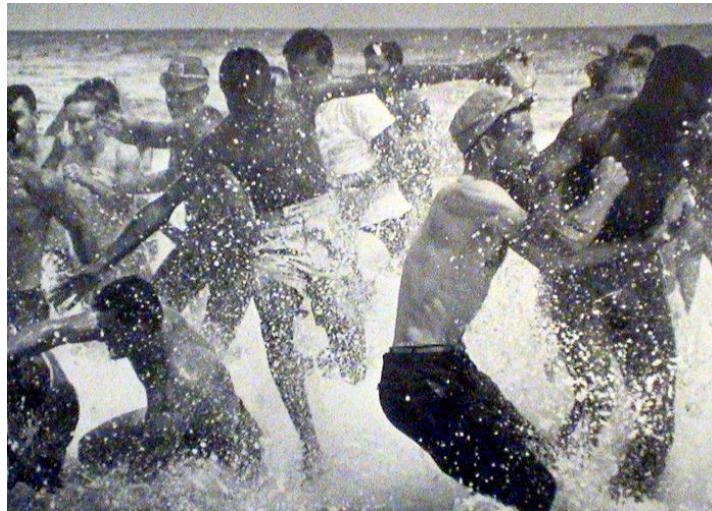
206. Photo by Robert García 2004.

unjustified discriminatory impacts for which there are less discriminatory alternatives. Privatizing California's public beaches could be found impermissible under each standard.

1. Intentional and Disparate Impact Discrimination

In August 1957, the United States Supreme Court rejected as unconstitutional racial segregation in the enjoyment of public beaches and bathhouses maintained by public authorities in Maryland and the City of Baltimore.²⁰⁷ Unfortunately, the decision did not stop continued segregation at public beaches and in public pools throughout the country.

The Southern Christian Leadership Conference (SCLC), led by Martin Luther King, Jr., conducted a "wade in" at a segregated beach in St. Augustine, Florida, on June 25, 1964. Participants were attacked. SCLC's St. Augustine campaign ended when President Lyndon Johnson signed the Civil Rights Act of 1964 in July.²⁰⁸



"Wade in" at a segregated beach in St. Augustine, Florida, on June 25, 1964.²⁰⁹

Title VI of the Civil Rights of 1964 and its implementing regulations prohibit both (1) intentional discrimination based on race, color or national origin, and (2) unjustified discriminatory impacts for which there are less discriminatory alternatives, by applicants for or recipients of federal funds

^{207.} Mayor & City Council of Baltimore City v. Dawson, 350 U.S. 877 (1955) (granting motion and affirming judgment of lower court decision in Dawson v. Mayor & City Council of Baltimore City, 220 F.2d 386 (1955)).

^{208.} A week earlier, during a "swim in" at a segregated motel pool, the owner poured skin-burning chemicals into the pool. DIANE MCWHORTER, A DREAM OF FREEDOM 114 (2004).

^{209.} *Id.*

including beach front municipalities such as Malibu. Title VI provides: “No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”²¹⁰

The regulations that every federal agency has enacted pursuant to Title VI bar criteria or methods of administration by recipients of federal funds that have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of a program with respect to individuals of a particular race, color, or national origin.²¹¹

California law also prohibits intentional discrimination and unjustified discriminatory impacts under Government Code section 11135, which is closely analogous to Title VI.²¹²

In addition, California law defines environmental justice as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”²¹³ According to the California State Lands Commission, which has jurisdiction over the State’s beaches, this definition of environmental justice “is consistent with the Public Trust Doctrine principle that the management of trust lands is for the benefit of all of the people.”²¹⁴

An important purpose of the statutory civil rights schemes is to ensure that recipients of public funds not maintain policies or practices that result in racial discrimination. For example, the City of Malibu receives substantial federal and state funds including subsidies for protection against fire, flood, and mudslides and for transportation and highways, and its actions result in discriminatory impacts, as discussed above. To receive federal funds, a recipient must certify that its programs and activities comply with Title VI and its regulations.²¹⁵ In furtherance of this obligation, recipients such as Malibu must collect, maintain, and provide upon request timely, complete, and

210. 42 U.S.C. § 2000d (2004). The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution also prohibits intentional discrimination. *See also* Section 1983 of the Civil Rights Act of 1871.

211. Cf. 43 C.F.R. 7.30 (nondiscrimination statement for recipients of federal funds from the Department of Interior, which has jurisdiction over National Parks and other public lands.).

212. *See* Cal Gov. Code § 11135 *et seq.*; 22 CCR § 9810.

213. Cal. Gov. Code § 65040.12. The Governor’s Office of Planning and Research is to implement this code section.

214. California State Lands Commission, Environmental Justice Policy (October 1, 2002), *at* http://www.slc.ca.gov/Policy%20Statements/Policy_Statements_Home.htm.

215. *Guardians Ass’n v. Civil Service Comm’n*, 463 U.S. 582, 629 (1983) (Justice Marshall, concurring in part and dissenting in part).

accurate compliance information.²¹⁶

Below, we outline the legal analysis that applies to a municipality like Malibu. A municipality like Malibu can comply with federal and state civil rights laws by implementing the recommendations in Section VIII below, rather than by responding to litigation, to ensure equal access to public resources for all.

a. Discriminatory Impacts

There are three prongs to the discriminatory impact inquiry under the Title VI regulations—and, by analogy, under California Government Code section 11135: (1) whether an action by a recipient of federal funding such as Malibu has a disproportionate impact based on race, ethnicity, or national origin; (2) if so, the recipient bears the burden of proving that any such action is justified by business necessity; and (3) even if the action would otherwise be justified, the action is prohibited if there are less discriminatory alternatives to accomplish the same objective.²¹⁷

Applying the discriminatory impact standard to Malibu:

(1) The disproportionately wealthy and non-Hispanic white City of Malibu restricts access to the beach, a public good. This disproportionately burdens people of color and low-income communities, who are denied the benefits of access to the beach, and disproportionately privileges non-Hispanic white people, who enjoy the benefits of beach access.

(2) There is no business necessity to justify the discriminatory burdens and benefits of restricting public access to the beach. Malibu's claims about litter, traffic, parking, bathrooms, and security do not justify denying public access to the public beach. The law mandates equal access for all. Other cities provide public access to the beach. Malibu can too.

(3) There are less discriminatory alternatives than restricting public access to the beach to address Malibu's claimed litter, traffic, parking, bathrooms, and security issues. Communities up and down the California coast, in other states, and around the world provide access to the beach for all. Malibu can provide trash cans, bathrooms, and clean up services. Shuttles and other public transportation can alleviate congestion and parking problems on crowded beach days, as discussed below. Police officers and private security guards can provide security without excluding the public, as they do in other neighborhoods. There is no reason to think security concerns are heightened in Malibu sufficiently to outweigh the right to public and equal access to the beach.²¹⁸

216. Cf. Executive Order 12,898 on Environmental Justice (Feb. 11, 1994).

217. Larry P. v. Riles, 793 F.2d 969, 983 (9th Cir. 1984).

218. See Low, *supra* note 5, at 9-26, 111-31.

b. Intentional Discrimination

To evaluate an intentional discrimination claim, courts consider the following kinds of evidence: (1) the impact of the action and whether it bears more heavily on one racial or ethnic group than another; (2) any history of discrimination; (3) any departures from procedural norms; (4) any departures from substantive norms; (5) whether the decision maker knows of the harm its decision will cause; and (6) a pattern or practice of discrimination.²¹⁹

Applying the intention discrimination standard to Malibu:

(1): The discriminatory impacts have been discussed above.

(2) and (6): There is a history and pattern of intentional discrimination against communities of color and low-income communities that has prevented them from using the beach, as documented above.

(3) and (4): There are procedural and substantive irregularities in Malibu's limiting access to the beach. The California Coastal Commission has issued cease and desist orders to force Malibu to remove boulders used to block public parking at the beach. Malibu refused to develop a local coastal plan, and then refused to implement the plan developed by the Coastal Commission.²²⁰ Instead, the City of Malibu sought a local referendum on whether to accept or reject the coastal plan²²¹ and filed suit against the Coastal Commission to block implementation of the plan.²²²

(5) Malibu decision-makers know the impact of their actions in restricting public access to the beach. The issue has received extensive news coverage nationally and internationally. City officials are on notice because of the organizing efforts to support access for all, including testimony and written submissions by the Center for Law in the Public Interest and others at public hearings.²²³

219. See *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265 (1977); U.S. DEP'T JUSTICE, CIVIL RIGHTS DIVISION, TITLE VI LEGAL MANUAL at 49-53 and authorities cited (Sept. 1998).

220. Editorial, *Interagency Spats Muddy the Waters*, L.A. TIMES, Dec. 1, 2002.

221. See City of Malibu website at <http://www.ci.malibu.ca.us/index.cfm?fuseaction=nav&navid=204>.

222. Editorial, *Interagency Spats Muddy the Waters*, *supra* note 220. The court ruled that Malibu could not hold a referendum to block implementation of the coastal plan and the city was ultimately forced to implement the plan. See City of Malibu website at <http://www.ci.malibu.ca.us/index.cfm?fuseaction=nav&navid=204>.

223. García, *We Shall Be Moved*, *supra* note 18; García, Beach Access Policy Brief, *supra*; Letter from Robert García, et al., to California Coastal Commission regarding Equal Access to California's Beaches (Sept. 12, 2002); Letter to Governor Gray Davis from Robert García et al., regarding SB 1962 (Polanco) and Equal Access to California's Beaches (Sept. 12, 2002); Letters to California Coastal Commission from Robert García, et al., regarding Equal Access to the Beach (Dec. 9, 11, and 12, 2002); Letter to California Coastal Commission from Robert García, regarding Equal Access to the Beach (July 14, 2004).

c. Enforcing Civil Rights Protections

Despite cutbacks in enforcement of civil rights protections in federal courts, it is important to keep in mind that both intentional discrimination and unjustified discriminatory impacts remain unlawful under federal and state law as a matter of simple justice: it is unfair to use public tax dollars to subsidize discriminatory intent and discriminatory impacts.²²⁴ Recipients of federal and state funds like Malibu remain obligated to prohibit both.

The planning and administrative process are available to fight discriminatory impacts, as the California Coastal Commission has done in requiring Malibu to maximize public access to the beach while ensuring the fair treatment of people of all races, cultures, and incomes.²²⁵ State civil rights and environmental justice protections can be enforced and strengthened, such as California's Government Code section 11135 and statutory environmental justice definition. The same kinds of evidence can be as persuasive in the planning process, administrative arena, and court of public opinion, as in a court of law. Similar evidence is relevant to prove both discriminatory intent and discriminatory impact. Civil rights and environmental claims can be combined to strengthen protections in areas like coastal access.

Elected officials should be increasingly sensitive to, and held accountable for, the impact of their actions on communities of color, especially now that people of color are in the majority in forty-eight out of the 100 largest cities in the country.

d. Responding to Stated Concerns

The following is a discussion of various concerns that have been raised about the struggle for equal access to public beaches.

There is no direct evidence of intentional racial discrimination against people of color using the beach.

There is direct evidence of intentional discrimination against people of color using the beach, including the statement by the city councilmember that he opposes beach improvements because "with grass we usually get Mexicans,"²²⁶ and the complaint to an agency official by a beachfront property owner that she opposes beach improvements because she does not want inner city children using the beach.²²⁷

While residents of exclusive enclaves often articulate their desire to live there because of the fear of crime, "this rationale does not hold up" based on

224. See, e.g., *Alexander v. Sandoval*, 532 U.S. 275 (2001); *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002).

225. Local Coastal Program, *supra* note 67.

226. June Casagrande, *Councilman Opposes Grass Areas on Beach*, DAILY PILOT, June 18, 2003.

227. Telephone conversation with agency official, June 16, 2005.

crime statistics, according to Professor Setha Low's study of gated suburban communities.²²⁸ The evidence of fear based on race is often repressed and hidden from view.²²⁹ "The discourse of fear encompasses many social concerns, about class, race, and ethnic exclusivity and gender," and this helps account for "the social construction and social production of places where the well-to-do live."²³⁰ More often than not, gated communities and enclave developments are "strateg[ies] for regulating and patrolling an urban poor comprised predominantly of Latino and black minorities."²³¹

The history of intentional racial discrimination in the 20th Century, such as racially restrictive housing covenants, is not relevant to show intentional racial discrimination because the past is over and such covenants are not enforceable anymore anyway.

The United States Supreme Court recognizes that the history of racial discrimination is evidence of intentional discrimination in the present.²³²

Limiting public access to the beach is not based on intentional discrimination against people of color. The intent is to prevent anyone who does not own beachfront property from using the beach, including white people.

Racial discrimination is not limited to intentional discrimination; it includes unjustified discriminatory impacts for which there are less discriminatory alternatives. Cutting off public access to the beach disproportionately benefits white people, who disproportionately own and have access to private beachfront property. People of color are equally entitled to the benefits of public access to the beach. Cutting off public access disproportionately denies people of color the benefits of the beach. People of color disproportionately do not own or have access to private beaches. Malibu, for example, is 89% non-Hispanic white, 6% Hispanic, 3% Asian or Pacific Islander, 1% Black, 0.2% Native American and 0.2% other. In contrast, Los Angeles County is only 31% non-Hispanic white.²³³

The real problem is that beachfront property is so expensive. High property values keep more people from the beach, and motivate property owners to protect their investment by creating private enclaves that exclude others.

The high price of beachfront property is a reason to keep public beaches free for all, to provide the greatest good for the greatest number. Public beaches

228. SETHA LOW, BEHIND THE GATES: LIFE, SECURITY, AND THE PURSUIT OF HAPPINESS IN FORTRESS AMERICA 131 (2003).

229. *Id.* at 148.

230. *Id.* at 152.

231. *Id.* at 17.

232. See *supra* note 119.

233. U.S. Census 2000 data, www factfinder census gov. Compiled by Greeninfo Network.

are a democratic commons that make the joys of the beach available to everyone, including people who cannot afford to buy beachfront property. Beaches illustrate elements of economic public goods. The market will not provide enough of this public good. The government should therefore create public beaches. The high price of beachfront property is not a reason to privatize public beaches and exclude others.

Opponents claim that advocates are divisive and confrontational when they “play the race card” to invoke federal and state civil rights protections against intentional discrimination and disparate impact discrimination. Analyzing racial discrimination is not divisive and confrontational; *the fact that there is racial discrimination* is divisive and confrontational. Equal justice for all is not a game to be played like cards.

Opponents claim that the fact that some people of color own or have access to private beachfront property demonstrates that there is no racial discrimination. No, that just shows that discrimination is not completely effective.

2. First Amendment Access to the Beach

In *Leydon v. Town of Greenwich*, the Connecticut Supreme Court held that a Greenwich municipal code limiting a town park and beach to town residents and their guests violated the First Amendment rights of freedom of association and expression.²³⁴

The court determined that a beach is a traditional public forum because it has characteristics of a public park, such as shelters, open space, parking, walkways, trails, and picnic areas. Limits on access to the beach, therefore, must be justified under the highest level of scrutiny.²³⁵ “The government can exclude a speaker from a traditional public forum only when the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest.”²³⁶ The Court concluded that the town of Greenwich had “failed to explain why the ordinance’s virtual ban on nonresidents is a reasonable time, place, or manner restriction on the use of the park by nonresidents,” and that the ordinance was not narrowly tailored to

234. *Leydon v. Town of Greenwich*, 777 A.2d 552, 567 n.22 (Conn. 2001). The Greenwich municipal code parallels some of the arguments advanced by Malibu residents in opposing public access. Arguments that regulations are meant to “avoid excessive congestion” and “protect the environment and prevent further ecological destruction” mask the more sinister motive of excluding “undesirables” from low-income communities of color.

235. *Id.* at 342-43. The Court noted that it did not “mean to suggest that a municipal beach without some or all of the other attributes of Greenwich Point would not constitute a park – and, therefore, a traditional public forum – for first amendment purposes.” *Id.* at 343 n.29.

236. *Id.* at 343, (quoting *Ak. Ed. Television Comm’n v. Forbes*, 523 U.S. 666, 677 (1998)).

serve compelling state interests.²³⁷

Applied to Malibu, cutting off access to public beaches is not a reasonable time, place, or manner restriction, and is not narrowly tailored to serve any compelling state interest. To the contrary, the public interest lies in providing public access to public beaches.

3. Equal Access to Public Accommodations

In *U.S. v. Allen*, the United States Court of Appeals for the Ninth Circuit recognized that parks—and, by extension, beaches—are places of public accommodation that must remain accessible to all, regardless of race, color, religion, or national origin.²³⁸

In *Allen*, the court determined plaintiffs had a right to be free of discrimination under Title 42 of the United States Code § 2000a, which provides:

“All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.”

The Ninth Circuit found the defendants violated Title 18 of the United States Code § 241, which makes it unlawful for “two or more persons to conspire to injure, oppress, threaten, or intimidate any person in any State . . . in the free exchange or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States.”

In *Allen*, white supremacist park patrols scared away people of color from the park.²³⁹ In Malibu, “beach patrols” of private security guards along with phony “private beach” signs scare off beach-goers from public beaches.

Having set forth the legal standards for beach access, we turn in the next Part to social science-based efforts to understand current patterns of beach use and proposed strategies for diversifying beach access.

IV. DIVERSIFYING BEACH ACCESS

We begin this Part by reviewing the demographic evidence of disparities in beach access based on race and class. We then consider patterns of beach use among various racial and ethnic groups and the reasons for these patterns with an eye toward increasing beach use and access.

237. *Leydon*, 777 A.2d 552.

238. See *U.S. v. Allen*, 341 F.3d 870 (2003).

239. *Id.* at 873–75.

A. The Demographics of Beach Communities

Demographic studies show what we all know is true: people who live along the beach in general are disproportionately non-Hispanic white and wealthy. This is true in Malibu, Newport Beach, and beach communities generally throughout Los Angeles County. *See Table 1.*

The City of Santa Barbara is disproportionately white, but not disproportionately wealthy, compared to the state and county. This may be due to the fact that the city of Santa Barbara, unlike Malibu and Newport Beach, is not only a coastal community, but extends from the coast inland quite a distance into the hills.

Table 1: Demographics of Malibu, Santa Barbara, and Newport Beach²⁴⁰

	California	Malibu	Los Angeles County	Santa Barbara	Santa Barbara County	Newport Beach	Orange County
Total Population	33,871,648	12,575	9,519,338	92,325	399,347	70,032	2,846,289
Non-Hispanic White	47%	89%	31%	58%	57%	89%	51%
Hispanic/Latino	32%	6%	45%	35%	34%	5%	31%
Black	7%	1%	10%	2%	2%	0.5%	2%
Native American	1%	0.2%	1%	1%	1%	0.3%	1%
Asian and Pacific Islander	11%	3%	12%	3%	4%	4%	14%
Other	17%	2%	24%	16%	15%	1%	15%
Median Household Income	\$47,493	\$102,031	\$42,189	\$47,498	\$46,677	\$83,455	\$58,820
Household Income \$150,000 or more	7%	36%	6%	8%	7%	26%	10%

240. U.S. Census 2000 data, <http://www.factfinder.census.gov>.

According to a study by University of Southern California students (the USC Coastal Demographic Study), people living along the Los Angeles coastline are disproportionately non-Hispanic white and wealthy, compared to the state and county: 68% are non-Hispanic white, 16% are Latino, nearly 8% are Asian, and less than 5% are Black.²⁴¹ See Table 2.

Long Beach is the only exception to the rule. There, the percentage of non-Hispanic whites is less than in the state and county, and the median household income is lower. This may be because Long Beach, unlike other coastal communities in Los Angeles, extends far inland and a good portion of the coastline is dedicated to the Port of Long Beach. Moreover, as is true for many port towns, Long Beach has historically been a working class neighborhood.²⁴²

According to the USC Coastal Demographic Study, the Asian population was lower than the county and state percentages in all the coastal communities surveyed, except in Rolling Hills and Rancho Palos Verdes/Palos Verdes. Nevertheless, even in Rolling Hills and Rancho Palos Verdes/Palos Verdes, the percentage of Asians was significantly lower than the percentage of whites.

In all coastal communities, the black population was too small to be significant.²⁴³

The median household income in each coastal community (except Long Beach, as explained above) is higher than the median household income of Los Angeles County:

241. Scott Anderson & Mike Godfre, University of Southern California Geography Department, *Coastal Demographic: Los Angeles Pilot Project 1-2* (2003) (on file with the Center for Law in the Public Interest). The study analyzed beach communities from Malibu to Long Beach using census tracks directly along the coast and/or approximately one mile inland. The tracts containing Los Angeles International Airport and Long Beach Harbor were omitted because they contained negligible data. *Id.*

242. John H. M. Laslett, *Historical Perspectives: Immigration and the Rise of a Distinctive Urban Region, 1900-1970*, in ETHNIC LOS ANGELES 54 (Roger Waldiner and Mehdi Bozorgmehr eds., 1996).

243. *Id.*

Table 2: Demographics of Coastal Communities in Los Angeles County²⁴⁴

Community	Total Population	Non-Hispanic White	Latino	Asian	Median Household Income ²⁴⁵
Malibu	18,528	85%	6%	3%	\$102,052
Pacific Palisades	17,143	89%	4%	5%	\$125,711
Santa Monica	54,341	74%	12%	6%	\$50,435
Venice (Ocean Park)	24,639	61%	24%	3%	\$48,101
Marina del Rey	14,837	80%	6%	7%	\$74,444
Playa del Rey	16,830	70%	11%	8%	\$67,651
El Segundo	15,970	78%	10%	7%	\$61,385
Manhattan Beach	29,017	86%	5%	5%	\$102,739
Hermosa Beach	18,442	85%	7%	4%	\$81,883
Redondo Beach	27,107	77%	10%	8%	\$61,142
Torrance	11,026	80%	7%	10%	\$72,920
Palos Verdes Estates	13,340	6%	3%	17%	\$123,996
Rancho Palos Verdes	21,525	64%	4%	25%	\$104,552

244. *Coastal Demographic: Los Angeles Pilot Project* at 5 (on file with the Center for Law in the Public Interest). The demographic chart compiled for the USC Coastal Demographic study is based on 2000 census tract data. Students combined data for census tracks approximately one-mile from the coastline and then divided the census tracts into coastal communities.

245. The USC Coastal Demographic study analyzed beach communities using census track data so the household income data is an average of the median household incomes of the census tracts within one “community” as defined by the study.

Rolling Hills	1,871	77%	5%	14%	\$200,001
L.A. Harbor	34,878	58%	28%	4%	\$51,482
Long Beach	100,920	47%	31%	9%	\$41,587
Los Angeles County (for comparison)	9,519,338	49%	45%	12%	\$42,289
California (for comparison)	33,871,648	60%	32%	11%	\$47,493

B. Diversity and Beach Use

People from different racial and ethnic groups use parks differently, constructing meanings for natural space based on their own values, cultures, histories, and traditions, according to a study of cultural differences in the use of urban parks.²⁴⁶ The recreational patterns of people of color in parks suggests that there may be cultural differences in how people use and view beaches. This suggests the need for studying recreation patterns to ensure fair access to beaches that meet the needs of all people, regardless of race, culture, or income.

1. Beach Visitation Study

Recent research on beach visitation suggests that blacks, Hispanics, Native Americans, and non-Hispanic whites in Southern California tend to visit different beaches, but conclusive data is not yet available.

In a recent beach visitation study, beaches with higher visitation by people of color (defined to include blacks, Hispanics, and Native Americans) include San Clemente City, Capistrano, Long Beach, Cabrillo, Torrance, Redondo, Dockweiler, Mother's, Nicholas Canyon, and County Line. Visitation to these beaches by people of color was one standard deviation above average.²⁴⁷

Beaches with lower visitation by people of color (one standard deviation below average) include San Onofre South, San Clemente, Poche, Doheny, Santa Ana River, Surfside, El Segundo, Topanga, and El Pescador.²⁴⁸

Visitation by people of color to Malibu's Surfrider Beach was close to the average, but so few people visited other Malibu beaches (Westward, Las Tunas, and La Piedra) that the relative proportion of visitation by people of

246. See Loukaitou-Sideris, *supra* note 153, at 100-01.

247. The analysis is on file with the Center for Law in the Public Interest.

248. *Id.*

color at those beaches is unknown.²⁴⁹

Gathering and analyzing more data about beach use and recreation patterns is important to better understand whether access is equally available to all and how access may be improved. For example, several of the beaches listed above as having very low visitation by people of color charge fees to use the beach and have limited free parking available. Unfortunately, little rigorous research has been devoted to studying the implications of user fees, public transportation, and other issues relevant to making beaches available to all. Surveys about beach use in Southern California have focused on the economics of beaches and water quality. Nevertheless, a substantial and growing database regarding beach visitation can be used to examine the social patterns of beach use.

2. Diversity and Natural Spaces

So far, research on recreation patterns among people of color in parks and forests suggests the need for further study of beach recreation patterns.

According to one study, for example, parks are primarily social gathering places for Hispanics.²⁵⁰ African Americans, more than any other racial group, tend to engage in sports in parks.²⁵¹ Non-Hispanic whites tend to value a park solely for its passive qualities—its greenness, landscaping, and natural elements. They tend, as a result, to engage in solitary, self-oriented uses.²⁵² Asian-American (specifically, Chinese) families were rare in parks studied. This may reflect the failure of the parks to meet the needs of the Asian-American community.²⁵³ Most studies on leisure and urban recreation have delineated the activity patterns of the non-Hispanic white population, rather than users or the population as a whole.²⁵⁴

Two different studies on Central Americans and Mexican-Americans, respectively, reached similar conclusions about how these groups use forests.²⁵⁵ In the study of forest users of Central American descent, for example, creeks were the central focus of activity and attention.²⁵⁶ Common activities included socializing, napping, listening to the radio, and playing cards or dominoes. Sunbathing was extremely uncommon and sitting in the shade was preferred to sitting in the sun. Few people wore bathing suits, even in the water—they simply wore their regular clothes. Children did not bring toys to play with in

249. *Id.*

250. Loukaitou-Sideris, *supra* note 153, at 94-95.

251. *Id.* at 95.

252. *Id.*

253. *Id.* at 95-96.

254. *Id.* at 92, 95.

255. See generally *Central American Outdoor Recreation*, *supra* note 153; *Mexican-American Outdoor Recreation*, *supra* note 153.

256. *Central American Outdoor Recreation*, *supra* note 153, at 184-94, 188.

the creek, using plastic cups, spoons, and empty soda containers as toys instead.²⁵⁷ Nearly all the groups studied prepared food. Central Americans tended to recreate in large groups and modify the site as needed to serve their recreation needs.²⁵⁸ Similarly, nuclear and extended members of Mexican-American families are included in leisure activities, leading to large group sizes.²⁵⁹

In a third study of Latinos in the San Bernardino National Forest, many families did not use picnic tables and barbecues because they were located in direct sunlight.²⁶⁰ Families avoided large, open, grassy areas and favored shaded sites near the creek.²⁶¹

These studies suggest the need for better understanding of the recreational interests and needs of Latinos and other racial groups at beaches.

3. Explaining Differences

Research suggests two potential explanations for differences in ethnic and racial recreation patterns.²⁶²

The *ethnicity hypothesis* posits that ethnic and racial participation patterns result from culturally based differences in value systems, norms, and leisure socialization patterns. Even when variables such as income, gender, area of residence, and household size are statistically controlled, ethnic and racial differences in participation patterns persist.²⁶³

The *marginality hypothesis* suggests that under-participation of ethnic and racial groups results primarily from limited economic resources and historical and ongoing patterns of discrimination.²⁶⁴ Social norms of inclusion and exclusion operate in public spaces, including places of recreation.²⁶⁵ Because people of color often occupy a subordinate position and hold a low station in the status hierarchy, they are less desired as leisure companions, leading to the creation of leisure spaces that are identified as non-Hispanic white or otherwise.²⁶⁶

These theories and others may help us to better understand the recreation patterns of people of color at beaches. Part VII examines transportation to the

257. *Id.* at 188-98.

258. *Id.* at 190.

259. *Mexican-American Outdoor Recreation*, *supra* note 153, at 5.

260. Deborah J. Chavez, *Adaptive Management in Outdoor Recreation: Serving Hispanics in Southern California*, 17 (3) WEST. J. APPLIED FORESTRY 132 (July 2002).

261. *Id.*

262. *Mexican-American Outdoor Recreation*, *supra* note 153, at 2.

263. *Id.*

264. *Id.*

265. Austin, *supra* note 150, at 694.

266. *Id.*

beach, which impacts access and use.

VII. TRANSIT TO TRAILS AND BEACHES

Southern California should develop and implement a strategic plan for a “Transit to Trails” program to take people to beaches, forests, parks, lakes, and other public natural spaces. A Transit to Trails program would serve all the people of the region, but would be particularly useful to the working poor with limited or no access to cars who are disproportionately people of color and low income.²⁶⁷ Transit to Trails would reduce traffic congestion, and parking problems, improve air quality, and reduce run-off of polluted water into rivers and the ocean. It would also reduce dependency on the automobile and fossil fuels.

People of color are disproportionately poor.²⁶⁸ Low-income people and people of color disproportionately lack access to a vehicle and depend on public transit to get around.²⁶⁹ Their access to beaches is therefore often limited

267. See generally García & Rubin, *supra* note 18, at 221-56 (2004). On the need for transit to the forests, see Ron Frescas, Chris Martin, & Christine Steenken, Public Transportation to Local National Forests (2004), available at <http://clpi.org/publications/forests.html>.

268. U.S. Census 2000 data, www.datafinder.census.gov. Compiled by Greeninfo Network.

Californians Living Below Poverty

	Total Population	Non-Hispanic Whites	Latinos	African Americans	Asians
California	14%	8%	22%	22%	13%
Southern California	16%	8%	22%	23%	13%
Los Angeles County	18%	9%	24%	24%	14%
Orange County	10%	5%	19%	12%	12%
Ventura County	9%	5%	17%	12%	7%
San Bernardino County	16%	10%	21%	23%	14%
Riverside County	14%	9%	21%	21%	15%

269. U.S. Census 2000 data available at www.datafinder.census.gov and compiled by Greeninfo Network; García & Rubin, *supra* note 18.

Californians Who Lack Access to a Vehicle

	Total Population	Non-Hispanic Whites	Latinos	African Americans	Asians
California	10%	7%	14%	18%	10%
Southern California	10%	7%	15%	18%	8%
Los Angeles County	13%	8%	17%	20%	10%
Orange County	6%	5%	10%	7%	6%
Ventura County	5%	4%	8%	7%	4%
San Bernardino County	8%	6%	9%	15%	5%
Riverside County	7%	6%	9%	12%	4%

by the lack of access to cars and to a decent transit system.

In 2003, students at the University of Southern California conducted a study to determine the accessibility of Los Angeles and Orange County beaches using public transportation (the USC Transit Study).²⁷⁰ The study confirmed that people of color and economically disadvantaged communities disproportionately lack efficient access to the beach.

Bus stops up to half a mile from a public path to the beach create a significant burden for those walking with children, beach blankets, beach towels, food, and other recreational gear.²⁷¹ To ensure access, bus stops should be a short walking distance to the beach.

Beaches in Malibu were the most inaccessible of all beaches using public transportation.²⁷² There is only one bus route that serves the beaches of Malibu and service is terminated at Trancas Canyon, several miles short of Leo Carillo State Beach, located at the northwest end of Malibu.²⁷³ Several beautiful Malibu beaches located beyond Trancas Canyon are simply not accessible by public transportation.²⁷⁴

From East Los Angeles, travel time to the beach averaged one hour (not including walking to and from the bus stop). It took 73 minutes to get to Santa Monica beach and 157 minutes to get to Zuma Beach in Malibu.²⁷⁵

From South Los Angeles, it took up to one and a half hours to reach most beaches. Travel to Zuma Beach required almost three hours on the bus. In the low-income community of Inglewood, residents could reach Playa del Rey in 26 minutes, but it would take 81 minutes to reach Cabrillo Beach and 105 minutes to reach Malibu Pier.²⁷⁶

People who live in Long Beach could access beaches in Long Beach in about 40 minutes. From Wilmington, beaches in Long Beach were equally accessible, but it would take over three hours to travel from Wilmington to Zuma Beach on public transit.²⁷⁷

All of the travel routes studied required at least one transfer, with half of the routes requiring two. The cost of travel by public transit to beaches from

270. Mike Agrimis, et al., University of Southern California Geography Department, *Equity and Beach Access in Los Angeles* (2003) (on file with the Center for Law in the Public Interest). The USC Beach Transit Study identified departure points in heavily Latino, African-American, and low-income communities. A variety of beaches in Los Angeles and Orange County were used as arrival points. The study used the MTA online TripPlanner service, coupled with field research related to bus service and paths to the beach. *Id.*

271. *Id.* at 3.

272. *Id.* at 1-2.

273. *Id.* at 3.

274. *Id.* at 4.

275. *Id.* at 2.

276. *Id.*

277. *Id.* at 2-3.

inner-city communities ranges from \$1 to \$2.60, depending on distance.²⁷⁸ Round-trip travel for an entire family could prove to be cost-prohibitive to many.

The USC Transit Study was conducted before MTA launched a bus-to-beach campaign in the summer of 2004. “Go Metro to the beach” was intended “to inform the public of bus routes serving the beach areas/communities”²⁷⁹ and to increase awareness of and ridership on MTA beach routes.²⁸⁰ During the campaign, the MTA website featured a large map that identified “over 20 bus routes that deliver sun, surf and sand for a fraction of the price of parking and gas.”²⁸¹



MTA began a campaign to help people reach the “sun, surf, and sand” by bus.²⁸²

The audiences targeted in the “Go Metro to the beach” campaign included teens, young adults, and young families. Brochures, large ads, and other posters were produced in English and Spanish and distributed to MTA operating divisions and customer centers from June 2004 to August 2004.²⁸³ Additional research is necessary to analyze the impact of this program.

For eight years, the Riverside County Transportation Commission and Orange County Transportation Authority have chartered a Metrolink train to take Inland Empire residents to San Clemente and Oceanside.²⁸⁴ Round-trip fare from the end of the line is \$11 for children (\$100 for a season pass) and \$16 for adults (\$150 for a season pass), although passengers who get on the

278. *Id.* at 6-9.

279. Letter to Erica Flores at the Center for Law in the Public Interest from John N. Carpenter, MTA Records and Information Coordinator, regarding Request for Public Records (Oct. 7, 2004).

280. MTA Project Brief, Beach Routes (Mar. 29, 2004).

281. Los Angeles Metropolitan Transportation Authority website at www.mta.net.

282. Image courtesy of the Los Angeles Metropolitan Transportation Authority website at www.mta.net.

283. MTA Project Brief, *supra* note 280. Information collected from MTA through a public records request did not include any information about ridership rates or demographics on beach routes during the Metro to the beach campaign.

284. Matthew Lopas, *A Rail Trip Like a Day at the Beach*, L.A. Times, June 25, 2004, at B4.

train closer to the beach pay half price. Small ice chests, boogie boards, and folding chairs are allowed on the train, but surfboards, bicycles, and alcohol are not.²⁸⁵



Riverside and Orange Counties provide beach train programs.²⁸⁶

The Beach Train is one way to travel to the beach, but the cost may be prohibitive to many.²⁸⁷ Nevertheless, some beaches served by the Beach Train, such as San Clemente, tend to be used at higher levels by people of color, according to the beach visitor study discussed above.

Programs like “Go Metro to the beach” and the Beach Train could serve as best practice examples for transit to trails and beaches.

In the remainder of this paper, we consolidate recommendations to ensure public access and equal justice for everyone along the California Coast.

VIII. RECOMMENDATIONS TO MAXIMIZE PUBLIC ACCESS TO THE BEACH FOR ALL

We recommend the following steps for maximizing access to the beach while ensuring the fair treatment of people of all colors, cultures, and incomes.

285. *Id.*

286. Images courtesy of Riverside County Transportation Commission website at <http://www.rctc.org/transportation/metrolink.asp> and Orange County Transportation Authority website at <http://www.octa.net/busrail/metro/beach.asp>.

287. *Id.*



The City of San Francisco provides five miles of open access at Ocean Beach alone.²⁸⁸

People should go to the beach and have fun. Every beach outing is a victory for public access. Paths to and along the beach should be clear and well marked with user-friendly signs. Beach signs should explain that the California coast belongs to all the people, with maps showing public access. Beaches should have well-maintained toilets and trash cans. There should be affordable buses or shuttles to the beach, with bus stops within a short walking distance of each access path. There should be pedestrian cross walks to and from beach access paths to get across traffic safely. There should be ample parking near the beach access paths.



Paths to beaches should be clearly marked with inviting language.²⁸⁹

288. Photo by Robert García (2004).

289. Photo by Robert García (2004).

Appropriate signs and law enforcement must protect the right to reach the beach. Phony and misleading “no trespassing” and “private beach” signs should be banned and removed from public beaches. Private security guards should be prohibited from harassing the public on public beaches. All-terrain vehicles should be prohibited on public beaches. Local law enforcement agencies should zealously enforce the public’s right to use the beach, rather than harass people. Law enforcement officials including sheriff’s deputies should be educated about the public’s right of access to the beach.



Public beaches can easily provide garbage cans, recycling bins, and toilets.²⁹⁰

Public education campaigns must inform the public that the beach belongs to all the people, and that public beaches must be safeguarded from environmental destruction. Regional access guides and maps, including public transportation routes, should be published and distributed to educate the public about how to reach the beach and their right of access. Public education campaigns should include “Your Rights at the Beach” pamphlets, public displays, signs, artwork, photographic and artistic histories of public beaches, mass e-mailings, and websites. Campaigns in schools should educate young people about their rights, about stewardship of the beach, and about the history of discriminatory access to the beach. Children’s books can provide valuable, fun education opportunities about the beach. Beachfront property owners and visitors alike must understand the impacts of environmental destruction of the beach, including the use of earthmoving equipment and illegal development on the beach. Such activities cause damage to the wrack line, dune vegetation, marine invertebrates, habitat restoration, and intertidal zones, cause erosion and

290. Photo by Robert García (2004).

down coast beach damage and visual and aesthetic impacts, and reduce public access.

Strategic media campaigns will help inform the public about beach access and focus public dialogue. Radio and television shows, newspaper articles and editorials, and even comic strips like Doonesbury should address beach access, disparities in beach access, and the legal, policy, and historical justifications for beach access.²⁹¹

Diverse coalitions must work together to support equal access to the beach. Activists should organize diverse coalitions in strategic campaigns focusing on the different values at stake, to bring people together to support broader access to the beach. Social justice and environmental organizations should collaborate substantively and to seek funding to advocate for equal access to the beach. This Article is the result of a collaborative effort between the Center for Law in the Public Interest and Surfrider Foundation with funding from the Ford Foundation and others. Traditional environmental organizations should support equal access and not be afraid of alienating their wealthy donors who own beach front properties.

Southern California should develop and implement a strategic plan for a “Transit to Trails” program to take people to trails, beaches, parks, forests, lakes, and other public natural space. A Transit to Trails program would serve all the people of the region, but would be particularly useful to the working poor with limited or no access to cars who are disproportionately people of color and low income people, including women, children, the elderly, and the disabled, and would promote environmental values.

The Coastal Commission must provide the information necessary to support informed decision making. The California Coastal Commission must gather, analyze and publish information about beach access throughout the coast of California. Mapping the entire coastline with existing accessways and Census 2000 demographic data using Geographic Information Systems (GIS) based on race, ethnicity, income, access to cars, and other salient factors will help agencies, the legislature, and the public identify beach access hotspots and the interplay between coastal access and coastal demographics. Using the detailed Broad Beach access guide as a model, the Coastal Commission should map public beaches from Oregon to Mexico and make current access guides for all coastal communities available on its website and accessible to the public.

Local Coastal Plans must support public access to the beach. The California Coastal Commission has adopted a local coastal plan requiring Malibu to maximize public access to the beach while ensuring the fair treatment of people of all races, cultures, and incomes. Malibu must implement

291. See, e.g., Daniel B. Wood, *Can't Reach the Beach? Turf War on Malibu's Coast*, CHRISTIAN SCIENCE MONITOR, Sept. 23, 2002; Daniel B. Wood, *D-Day in Malibu: A Battle for the Beach*, CHRISTIAN SCIENCE MONITOR, July 10, 2003 (“The case of entertainment mogul David Geffen - now in the courts - was fodder for Garry Trudeau's 'Doonesbury' comic strip last fall.”); Weiss, *supra* note 51.

this mandate. Other coastal communities such as Newport Beach, Santa Barbara, Hollister Ranch, and Trinidad should take action to maximize public access while ensuring fair treatment of people of all races, cultures, and incomes.

Legislation must support public access to the beach. The California legislature and former Governor Davis reaffirmed principles of coastal access through Senate Bill 1962, which provides a safety net for beach access. SB 1962 requires the Coastal Conservancy to accept easements for access to the beach that are within three months of their expiration date.²⁹² Reports to the Legislature on the progress of SB 1962 should explicitly address how the Conservancy is maximizing public access while ensuring the fair treatment of people of all colors, cultures, and incomes. Coastal advocates, legislators, and the Coastal Commission should support key recommendations by the Legislative Analyst's Office (LAO) for improving the Coastal Commission's model of mitigation for coastal permits.²⁹³

- * Support legislation requiring the State Coastal Conservancy to accept responsibility for maintenance of and liability for public accessways until a long-term third-party is identified so that the Coastal Commission can require the permittee to develop the accessway upon completion of the permitted development.
- * Require the permittee to fund future mitigation development when an offer to dedicate is a permit condition (this shifts the costs of opening and maintaining an offer to dedicate).
- * Increase existing development permit fees to fund ongoing operation costs associated with easements.
- * Support legislation requiring that accessway construction be started within one year of acceptance of an offer to dedicate, and completed within three years.²⁹⁴

Resource bonds must provide for equal access to the beach. Any resource bonds to benefit or protect the coast should require maximizing public access to the beach while ensuring fair treatment of people of all races, cultures, and incomes as a condition of any expenditures or grants, and provide funding for access to and along the beach.

Litigation is always an option. Activists should file affirmative lawsuits to enforce public access when necessary and combat litigation by wealthy enclaves and property owners who seek to cut off public access to the beach. Foundations should fund litigation as well as non-litigation forms of advocacy to support equal access to the beach.²⁹⁵

292. Cal. Pub. Res. Code § 31402.2.

293. See HILL, *supra* note 171.

294. *Id.*

295. PENDA D. HAIR, LOUDER THAN WORDS: LAWYERS, COMMUNITIES AND THE STRUGGLE FOR JUSTICE 6 (Report to the Rockefeller Foundation (2001)).

Thou shalt not steal the beach. Whether through litigation or through straightforward theft, the privileged and powerful will act to seize public beaches. Advocates must work to build a public consensus to stop such actions.

IX. CONCLUSION

An impressive nine in ten Californians say the quality of the beach and ocean is just as important to them personally as for the overall quality of life and economy in the state, according to a February 2006 survey as this Article was going to press. Residents say the condition of the coast is very important (61%) or somewhat important (30%) on a personal level, very important (70%) or somewhat important (24%) to the state's quality of life, and very important (63%) or somewhat important (30%) to the economy.²⁹⁶ Moreover, majorities across regions and political parties agree, although Republicans are less likely to say any of these issues are very important. "Californians treasure the ocean and the state's beaches," said statewide survey director Mark Baldassare from the Public Policy Institute in California.²⁹⁷ "These attitudes run deep and wide across political parties, coastal and inland areas, and in the growing Latino population—to ignore them could be politically perilous."²⁹⁸

Four of the central lessons of the movements for environmental quality and justice are that communities of color disproportionately suffer from environmental degradation, are disproportionately denied the benefits of public goods like beaches, lack the information necessary to understand the impact of public policy decisions on their lives, and are denied full and fair participation in the decision making process.

The struggle to maximize public access to the beach while ensuring the fair treatment of people of all colors, cultures, and incomes can learn from these lessons to build bridges between traditional environmentalists and diverse communities and keep the beach free for all and for future generations.

Free the beach!

296. Mark Baldassare, *Special Survey on Californians and the Environment: Ignoring Environmental, Coastal Concerns Could Be Perilous for California Politicos in 2006 Election Year* (Feb. 23, 2006) (on file with the Center for Law in the Public Interest).

297. *Id.*

298. *Id.*

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