



**POLICY REPORT**

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

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# Free the Beach!

## Public Access, Equal Justice, and the California Coast

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This work is dedicated to Mr. Bernard Bruce and the proud legacy of Bruces' Beach.

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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. California's beaches belong to all the people. The wealthy beachfront enclave of Malibu and media mogul David Geffen nevertheless filed suit to cut off the people's right to reach the beach. A Newport Beach city councilmember opposes 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."<sup>2</sup> People of color and low-income people suffer first and worst from the efforts to privatize public beaches. While eighty percent of the 34 million people of California live within an hour of the coast,<sup>3</sup> disproportionately White and wealthy homeowners stand to benefit from the privatization of this public good, while communities of color and low-income communities are disproportionately denied the benefit of coastal access.

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. California's world famous beaches must also remain public for all, not the exclusive province of the rich and famous.

The Connecticut Supreme Court has recognized 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.<sup>4</sup> A New Jersey appellate court has recognized the right of public access to reach the beach at a private club under the public trust doctrine.<sup>5</sup> A Michigan court, however, has recently limited public access to the beach along Lake Michigan.<sup>6</sup> In Florida, 60% of the "public" beaches are now "private."<sup>7</sup>

Part II of this report presents a vision for a comprehensive and coherent web of beaches and other public space, including parks, school yards, and forests, that will enhance human health and economic vitality for all the people of the Southern California region. Part III explores the struggle for equal access to Southern California's beaches, not only in Malibu and other areas today, but going back in time to Manhattan Beach and mountain beaches in Lake Arrowhead. Part IV discusses the values at stake in the struggle to free the beach. Part V presents the legal and policy 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 users enjoy the beach. Part VII addresses the need for public transportation to the beach. 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

The urban park movement is greening Los Angeles, inspired by a collective vision for a comprehensive and coherent web of parks and recreation, beaches, schools, and transportation that promotes human health and economic vitality for all, while serving the needs of diverse users and reflecting the cultural urban landscape.

### A. The Olmsted Vision

In 1930, the firm started by the sons of Central Park designer Frederick Law Olmsted proposed a network of parks, playgrounds, schools, beaches, forests, and transportation to promote the social, economic, and environmental vitality of the Los Angeles region and the health of its people. 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.<sup>8</sup>

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

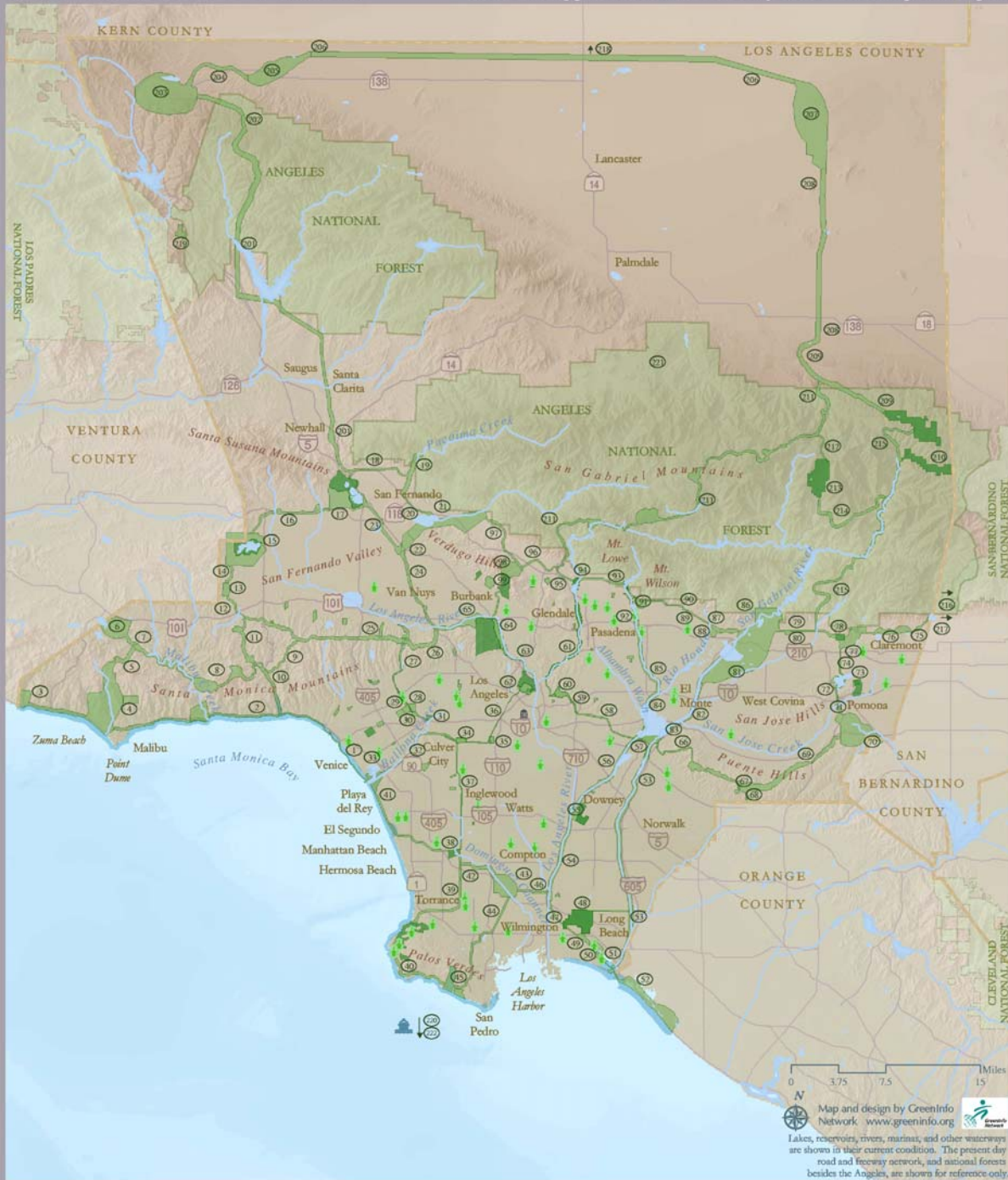
Public control of the ocean shore, especially where there are broad and satisfactory beaches, is one of the prime needs of the Region, chiefly for the use of throngs of people coming from inland. . . . [T]he public holdings should be very materially increased.<sup>9</sup>

The Report proposed the joint use of parks, school grounds, and forests to make optimal use of land and public resources. The Report recommended a massive program with 71,000 acres of parkland, with another 91,000 acres in outlying areas. The heart of the program was 214 miles of interconnecting parkways, including a parkway along the Los Angeles River. Implementing the recommendations would have cost \$233 million in 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.<sup>10</sup>

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 the report. Civic leaders killed the Report because of politics, bureaucracy, and greed in a triumph of private power over public space and social democracy.<sup>11</sup>

# The Olmsted Vision

Parks, Playgrounds and Beaches for the Los Angeles Region



-  Existing parks in 1930
-  Proposed natural lands - parks, greenways, parkways, and reservations
-  Beaches
-  Angeles National Forest - 1926 Boundary
-  School with five or more acres of playground space
-  Proposed natural lands as numbered and described in the Olmsted Report

The digital Olmsted Vision is a project of the Center for Law in the Public Interest, [www.clipi.org](http://www.clipi.org), © 2004. This map is a rendering of the classic report "Parks, Playgrounds and Beaches for the Los Angeles Region" by Olmsted Brothers and Bartholomew & Associates (1930) (reprinted in Greg Hise & William Deverell, *Eden by Design* (2000)). J. Eric Lomeli and Prof. Leo Estrada of UCLA prepared the Olmsted layers using GIS software. This work is made possible in part by the generous support of the Ford, Resources Legacy Fund, Surdna, and Whole Systems Foundations.



## The Olmsted Vision for Parks, Playgrounds, and Beaches



Instead, Los Angeles is park poor. Los Angeles has fewer acres of parks per 1,000 residents compared to any major city in the country. Los Angeles has less than one acre of park per thousand residents, compared to the six to ten acres that is the National Recreation and Park Association standard.<sup>12</sup>

There are also vast disparities in access to parks and recreation. In the inner city where low income communities of color disproportionately live, there are .3 acres of parks per thousand residents, compared to 1.7 acres in disproportionately White and relatively wealthy parts of Los Angeles.<sup>13</sup> These communities do not have parks or beaches in their neighborhoods, and do not have fair access to beaches in wealthy White areas like Malibu.

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.<sup>14</sup>

## **B. 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. Prop 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 Prop 40 – the highest among any income or education levels.<sup>15</sup>

Prop 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 Prop 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 Prop 40 website included materials in English and Spanish, and a get-out-the-vote drive targeted diverse communities. African-American ministers called on their congregations to support Prop 40 from the pulpit the Sunday before the election, and Cardinal Roger Mahony endorsed Prop 40.<sup>16</sup>

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

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 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.<sup>17</sup>

### 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, but the result of a continuing history and pattern of discriminatory land use policies and practices in Los Angeles.

#### 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 could enjoy only the "Inkwell," a half-mile stretch beach between Pico and Ocean Park Boulevards in Santa Monica, and Bruce's Beach in Manhattan Beach, as discussed below. Professor Lawrence Culver has prepared a detailed analysis of the history of race and recreation including beaches in Los Angeles, *The Garden and the Grid: A History of Race, Recreation, and Parks in the City and County of Los Angeles*.<sup>18</sup>

Much of the Los Angeles 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,<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> Blacks increasingly became concentrated in South Central Los Angeles.

The landmark Supreme Court decisions in *Shelley v. Kraemer*<sup>22</sup> in 1948 and *Barrows v. Jackson*<sup>23</sup> in 1951 legally abolished racially restrictive housing 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.<sup>24</sup> 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."<sup>25</sup>

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.<sup>26</sup> 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. 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.<sup>27</sup>

## **B. Malibu**

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 canyons, owned by Frederick H. Rindge and later by his widow May.<sup>28</sup> To pay her taxes after her husband’s death, May Rindge began leasing and selling off land parcels to movie celebrities and others.<sup>29</sup> Parcels like those owned by David Geffen today carry 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 or Caucasian from using or occupying beach premises except as domestic servants, and even domestics who were not White or Caucasian 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.<sup>30</sup>

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 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.<sup>31</sup>

The City of Malibu, joined by entertainment mogul David Geffen – Geffen is the “G” in Dreamworks SKG movie studios and in 2002 he was worth \$3.8 billion, the 44<sup>th</sup> 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.<sup>32</sup> Despite Geffen’s original offer to dedicate public access to the beach along his house, Geffen and the City of Malibu filed suit to cut off public access to the beach when Access for All sought to open a foot path from the Pacific Coast Highway to the beach along his house. Geffen finally dropped his suit in 2005, after the court had dismissed his complaint six times. The City of Malibu dropped out of the case earlier.<sup>33</sup>

Although there should be a path every 1,000 feet for the public to reach the beach, in one three-mile stretch of Malibu there is no access at all. Some 14 paths from the road to the beach are open in Malibu's 27 miles of coastline today.<sup>34</sup>

The former Mayor of Malibu publicly proclaimed that he would not enforce the public's right of access. The California Coastal Commission has 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 city.<sup>35</sup>

Although paths to and along the beach should be clear and well marked, the path to Broad Beach in Malibu looks like the entrance to a garbage dump instead of a world-class public beach. Misleading warning signs that discourage beach users mark the entrance.



Misleading warning signs and garbage cans deter users from public beaches in Malibu.<sup>36</sup>

Other prominent Malibu beachfront homeowners, including wealthy businessman and lawyer Richard Riordan, former Mayor of Los Angeles and California Secretary of Education, donated a million-dollar parcel of beachfront property a mile down the coast from their own homes to mitigate additions to their homes that blocked the public's view of the ocean. As a result, downstream homeowners closer to the donated parcel brought suit to block that public beach. Basing its decision on the strong public policy for coastal access, the California Court of Appeal upheld the decision of the Coastal Commission to accept the parcel as a public beach.<sup>37</sup>

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 a “private” beach in the so-called “Malibu Riviera,” as illustrated in the following image of the “Prison Beach” in Malibu.<sup>38</sup>



The sign on this prison-like gate blocking access to the beach in Malibu reads: “Right to pass by permission and subject to control of owner.”<sup>39</sup>

The County of Los Angeles has failed to open public paths at La Costa Beach and Carbon Beach 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 access to the public to La Costa and Carbon Beach, 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.

Phony “private beach” signs along the Malibu coast deter innocent beach goers from “trespassing” on public land by citing no trespassing statutes and threatening sanctions. Private security guards intimidate those who dare to walk the coast.



Sign on Broad Beach in Malibu reads “Private Beach & Residences: Walk Thru Access Only to Next Public Beach 300 Yards South.”<sup>40</sup>

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.<sup>41</sup> 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. Coastal 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.<sup>42</sup> The Coastal Commission adopted the provision in response to the advocacy of the Center for Law in the Public Interest on behalf of a diverse alliance.<sup>43</sup>

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 be on the beach. 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 she had a right to be on the public beach. “What do I know? I’m just a dumb sheriff’s deputy,” one officer was quoted as saying.<sup>44</sup>

In the wake of that incident, the Commission has taken important steps to maximize public access to the beach. The Commission has ordered an end to phony “no trespassing” and “private beach” signs on Broad Beach in Malibu, and to security guards on all-terrain vehicles who harass the public. The Commission has published a guide with maps showing public paths to and along the beach.<sup>45</sup> The Los Angeles County Sheriff’s Office has agreed to train its deputies to enforce the public’s right to the beach.

The City of Malibu has sought to impede the public from enjoying the benefits of public beaches, while at the same time 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 during Malibu’s periodic natural disasters.<sup>46</sup> In fact, the residential community of Malibu would not exist today if the state had not built the Pacific Coast Highway through the power of eminent domain over landowner opposition in 1926 after 17 years of litigation, thereby paving the way for the public roads that today’s residents use to reach their beachside homes.<sup>47</sup> Malibu residents can call sheriff’s deputies at taxpayers’ expense to prevent the public from using public beaches. 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, clean up, and personal security concerns.

Malibu to date 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**

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 that allowed Blacks in Southern California. Bruces’ Beach offered ocean breezes, bathhouses, outdoor sports, dining, and dancing to African Americans who craved a taste of Southern California’s good life.



Hayride at Bruces' Beach Circa 1920s.<sup>48</sup>

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 – the only pier that allowed Blacks – and the surrounding Black neighborhood were destroyed.<sup>49</sup> Several Black homes in the area were burned down.<sup>50</sup> 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.<sup>51</sup>

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.”<sup>52</sup> Santa Monica banned dance halls and blocked a proposed Black resort near the Inkwell in the early 1920s.<sup>53</sup> 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.<sup>54</sup>

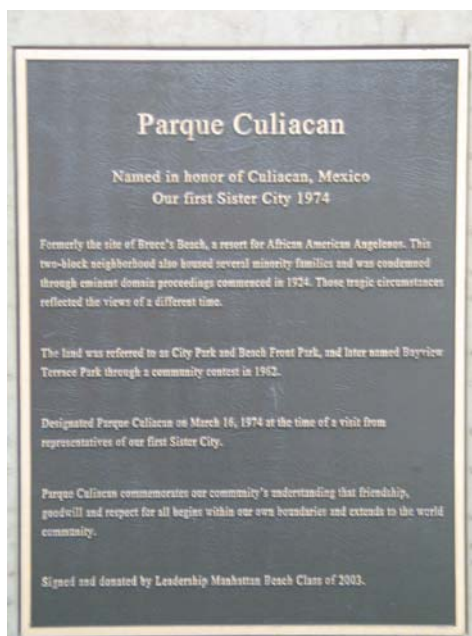


This photograph from the early 1920s showing a disappointed Black family at the dividing line banning Blacks from the White sections of Santa Monica Beach.<sup>55</sup>

In the 1980s, disproportionately White and affluent communities persuaded the Southern California Rapid Transit District (RTD) to end direct bus service between South Central and beach-front communities to the 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 so inner city residents could not travel directly to the beach there without transferring.<sup>56</sup> This not only increased the 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 the Palos Verdes Peninsula cities that buses from the inner city not climb the Palos Verdes hill.<sup>57</sup>

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 whitewashed 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 at Parque Culiacan where the African American resort  
Bruces' Beach was located.<sup>58</sup>

#### **D. From Sea to Summit**

Lake Arrowhead is the major mountain lake near Los Angeles. In the 1920s and beyond, racially restrictive covenants prevented people of color from occupying or using Arrowhead property.<sup>59</sup> Land on the lake owned by the federal government was exchanged for land northwest of 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.<sup>60</sup> Arrowhead is a prologue for California’s coast if efforts to privatize the coast succeed.

#### **E. Santa Barbara**

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.<sup>61</sup>

In November 1999, Congress directed the National Forest Service to do a feasibility study of the Gaviota Coast in California 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.<sup>62</sup> 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.<sup>63</sup> 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. Hollister Ranch homeowners reportedly patrol “their” eight miles of beachfront, driving surfers off at gunpoint.<sup>64</sup> When Congress ordered the National Park Service study, 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.<sup>65</sup>



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.<sup>66</sup>

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.”<sup>67</sup> 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 that he opposes improvements to a public beach there 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.”<sup>68</sup> The Councilmember’s statement is just one more indication that people of color continue to be unwelcome at public beaches. As *Los Angeles Times* columnist Steve Lopez noted, “If not for the likes of Nichols letting loose now and then, we’d have to constantly remind ourselves why we have civil rights attorneys.”<sup>69</sup> Members of the Newport Beach City Council publicly scolded the Councilmember for his comments and considered his resignation. After much public discussion, the City Council voted not to ask Councilmember Nichols resign, but issued a warning against demonstrations of bias and prejudice in the future.<sup>70</sup>



A Newport Beach councilman opposes grass at Corona del Mar State Beach because “with grass we usually get Mexicans.”<sup>71</sup>

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.”<sup>72</sup> 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 parkspace will be set aside, but it remains to be seen how the build-out of the shoreline will implicate access to the beach.<sup>73</sup>

### **G. Trinidad**

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.<sup>74</sup> 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.<sup>75</sup>

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

against the Coastal Commission, Coastal Conservancy, and Trinidad continues.<sup>76</sup> Forced to defend itself against the homeowner, Trinidad—the fourth-smallest city in California—has had to consider bankruptcy, a county takeover, or a tax increase to pay its legal bills and keep the public beach free for all.<sup>77</sup>



The tiny town of Trinidad has been forced to consider bankruptcy to pay legal fees stemming from a fight with a property owner who wants to close a public trail to the beach.<sup>78</sup>

#### **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.<sup>79</sup> Having fun goes hand-in-hand with recreation, health, and other values at stake in preserving public access to the beach.

From an environmental perspective, beaches are among the most dynamic landscapes on the planet and one of our most precious natural resources.<sup>80</sup> Biodiversity and ecological integrity of the planet's coasts are necessary and irreplaceable. Beaches support many species that are important to marine and land-based ecosystems.<sup>81</sup>

The human health implications of the need for beaches, parks, school yards, forests, and active recreation are profound.<sup>82</sup> Beaches provide people with a place to be active through swimming, surfing, boogie-boarding, kayaking, jogging, beach soccer, beach volleyball, paddle ball, throwing a Frisbee, walks along the water, or just wading in the surf.

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.<sup>83</sup> 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, only 27% of fifth, seventh, and ninth graders achieved minimum physical fitness standards in 2004. In the Los Angeles Unified School District (LAUSD), 87% of students are not physically fit.<sup>84</sup>

Overweight and unfit children face a greater risk of developing lung disease, diabetes, asthma, and cancer.<sup>85</sup> Type 2 diabetes, formerly known as adult-onset diabetes, now affects millions of overweight and inactive children at younger and younger ages.<sup>86</sup> 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.<sup>87</sup>

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.<sup>88</sup>

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.<sup>89</sup>

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.<sup>90</sup> Living within close proximity to the coast is positively associated with recommended levels of exercise.<sup>91</sup> 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.<sup>92</sup>

The health costs of urban sprawl should inform land use and planning to create and preserve beaches, green space, walkable neighborhoods with mixed land uses, and limited road construction balanced by transit alternatives.<sup>93</sup> “[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.”<sup>94</sup>

Regular physical activity is associated with enhanced health and reduced risk for all-cause mortality, heart disease, diabetes, hypertension, and cancer.<sup>95</sup> 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.<sup>96</sup> Natural spaces are also linked to improved mental health. Physical activity relieves depression and anxiety.<sup>97</sup>

Physical activity at beaches can promote positive youth development and help reduce youth violence, crime, drug abuse, and teen pregnancy.<sup>98</sup> 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 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.<sup>99</sup> Physically fit students perform better academically.<sup>100</sup> Male athletes are four times more likely to be admitted to Ivy League colleges than other males; for female athletes, the advantage is even greater.<sup>101</sup>

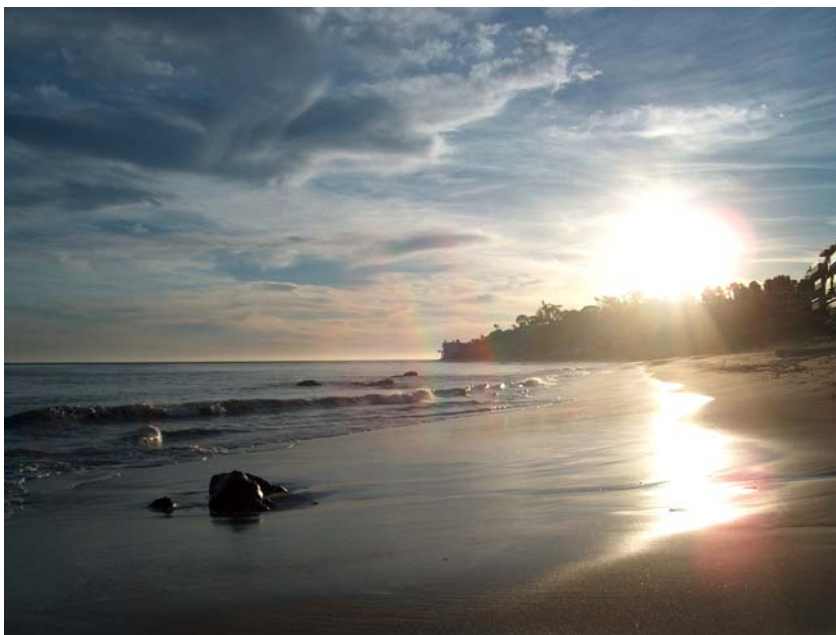
In the aftermath of the riots and rebellion following the acquittals of the police for the Rodney King beating in Los Angeles, gang members issued a manifesto calling for peace and listing the shortage of parks and natural space as one of their major concerns.<sup>102</sup>

Beaches can promote economic vitality for all. Californians value beaches at \$942 million per year. The present worth of future economic value from public beaches is \$17.5 billion.<sup>103</sup> Spending for coastal-related recreation in California represented almost 3 percent of the total economic activity in California in 1995, created more than 500,000 jobs, and constituted over 4% of statewide employment.<sup>104</sup> In 1998, California beaches generated \$14 billion dollars of direct revenue. Adding indirect benefits, California beaches contributed \$73 billion dollars to the national economy. In 1998, beaches in California generated 883,000 jobs across the country.<sup>105</sup>

Access to beaches for all is necessary for equal justice and democracy. 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 for the mass of people freedom from discrimination and segregation in leisure, freedom from the obstacles that make living a good life impossible. Enlargement of the public sphere and access to the good life should be good for everyone.<sup>106</sup> 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.<sup>107</sup> The Surfrider Foundation speaks candidly about its own “unique constituency and culture” centered around the beach.<sup>108</sup> As a matter of simple justice, all people are entitled to the good life on the beach.<sup>109</sup>

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.<sup>110</sup> Nobel Peace Prize Laureate Rigoberta Menchú has praised the Center's work to promote equal access to parks and recreation as a way of saying no to war, no to violence, and giving our children hope.

In October 2004, the Nobel Peace Prize Committee awarded the Peace Prize to the Kenyan woman Wangari Muta Maathai for the simple acts of 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.<sup>111</sup> The 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.

Articulating 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.<sup>112</sup>

## **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 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 common law England and Roman law.<sup>113</sup> 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.<sup>114</sup> 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.<sup>115</sup> Management and control over the property

held by the state in trust for the people cannot be relinquished by transfer of the property.<sup>116</sup> “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.”<sup>117</sup>

California is one of the leading states in developing the public trust doctrine, which has approximately 1,000 miles of coastline, not including islands and major embayments.<sup>118</sup> Preserving the right to public beaches was a condition of California joining the Union.<sup>119</sup> In California, all land below the mean high tide is public.<sup>120</sup> 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, boating and general recreation purposes, and the use of the bottom of navigable waters for anchoring, standing, or other purposes.<sup>121</sup> Furthermore, the doctrine protects the public’s right in and to tidelands.<sup>122</sup> The uses of tidelands encompasses changing public needs.<sup>123</sup>

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.<sup>124</sup> 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.<sup>125</sup>

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 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.<sup>126</sup>

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 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.<sup>127</sup> 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.<sup>128</sup>

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.<sup>129</sup> 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 local agency.<sup>130</sup>

California protects public access to beaches and coastal lands.<sup>131</sup> 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.<sup>132</sup> 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.<sup>133</sup>

#### **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.<sup>134</sup>

#### **5. The California Coastal Commission**

The California Coastal Commission is charged with implementing the California Coastal Act.<sup>135</sup> 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.<sup>136</sup>

A common form of mitigation takes place in the form of "offers to dedicate" 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.<sup>137</sup> 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").<sup>138</sup> While OTDs are recorded legal documents that run with the land – typically for 21 years from the date of recording – OTDs are only *offers* of easements.<sup>139</sup> Until the offer is accepted by a government agency or a nonprofit organization, the interest belongs to the property owner.<sup>140</sup>

The Legislative Analyst's Office (LAO) recently published a report with recommendations for improving the Coastal Commission's model of mitigation for coastal permits.<sup>141</sup> The LAO 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.<sup>142</sup>

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.<sup>143</sup> Once an OTD is accepted, the easement remains in the public domain.<sup>144</sup>

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.<sup>145</sup> 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.<sup>146</sup> 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.<sup>147</sup>

## **6. Illegal Signs**

Phony signs on Broad Beach in Malibu falsely claim to define where the mean high tide line is, and what constitutes a public or private beach, and to limit public access to the beach accordingly. These signs constitute illegal coastal developments without a permit.<sup>148</sup> 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.<sup>149</sup> 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.<sup>150</sup> 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.<sup>151</sup>

Only the State Lands Commission has authority to establish the high tide line.<sup>152</sup> There has not been an official survey of the mean high tide line since the 1920s.<sup>153</sup> The phony signs are not based on official surveys of the mean high tide line and are invalid for that reason.

The Coastal Commission has ordered an end to such phony "no trespassing" and "private beach" signs.



Well below the high water line, an illegal sign in wet 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.<sup>154</sup>

In order to maximize public access to and along the coast, the Coastal Act requires paths from public roads to the ocean,<sup>155</sup> and paths must be conspicuously posted.<sup>156</sup> 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.<sup>157</sup> Public paths in Malibu that are blocked by garbage cans and misleading signs deter beach visitors and violate the Coastal Act.



Paths that prominently feature garbage cans, “CLOSED” signs, and misleading warnings deter beach visitors at a public path in Malibu.

## 7. All-Terrain Vehicles

The Coastal Commission has ordered an end the use of all-terrain vehicles (ATVs) by security guards who harass the public on public beaches. 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.<sup>158</sup>



Patrolling Broad Beach on an all-terrain vehicle.<sup>159</sup>

### B. Federal and State Civil Rights Laws

Federal and state laws prohibit both intentional discrimination and unjustified discriminatory impacts for which there are less discriminatory alternatives. Privatizing California's public beaches is impermissible under each standard.

#### 1. Intentional and Disparate Impact Discrimination

Title VI of the Civil Rights of 1964 and its implementing regulations prohibit both intentional discrimination based on race, color or national origin, and unjustified discriminatory impacts for which there are less discriminatory alternatives, by applicants for or recipients of federal funds 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."<sup>160</sup>

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.<sup>161</sup>

California law prohibits intentional discrimination and unjustified discriminatory impacts under Government Code section 11135.<sup>162</sup>

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.”<sup>163</sup> According to the California State Lands Commission, which has jurisdiction over the State’s beaches, the 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.”<sup>164</sup>

An important purpose of the statutory civil rights schemes is to assure 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. To receive federal funds, a recipient must certify that its programs and activities comply with Title VI and its regulations.<sup>165</sup> In furtherance of this obligation, recipients such as Malibu must collect, maintain, and provide upon request timely, complete, and accurate compliance information.<sup>166</sup>

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.<sup>167</sup> Unfortunately, the decision did not deter 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 by segregationists. SCLC’s St. Augustine campaign ended when President Lyndon Johnson signed the Civil Rights Act of 1964 in July.<sup>168</sup>



“Wade in” at a segregated beach in St. Augustine, Florida, on June 25, 1964.<sup>169</sup>

### **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.<sup>170</sup>

Applied 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, 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, 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 like 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.<sup>171</sup>

### **b. Intentional Discrimination**

To evaluate an intentional discrimination claim, courts consider the following kinds of evidence: (1) the impact of the action, 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.<sup>172</sup>

Applied to the City of 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.<sup>173</sup> Instead, the City of Malibu sought a local referendum on whether to accept or reject the coastal plan<sup>174</sup> and filed suit against the Coastal Commission to block implementation of the plan.<sup>175</sup> Malibu's former mayor proclaimed that he will not enforce the public's right of access to the beach. (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.<sup>176</sup>

### **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 discrimination.<sup>177</sup> 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.<sup>178</sup> 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.

## **2. First Amendment Access to the Beach**

The Connecticut Supreme Court in *Leydon v. Town of Greenwich* 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.<sup>179</sup>

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.<sup>180</sup> "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."<sup>181</sup> 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 serve compelling state interests.<sup>182</sup>

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. Quite to the contrary, the public interest lies in providing public access to public beaches.

### **3. Equal Access to Public Accommodations**

The United States Court of Appeals for the Ninth Circuit in *U.S. v. Allen* 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.<sup>183</sup>

In *Allen*, the court determined plaintiffs had a right to be free of discrimination under Title 42 of the United States Code section 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 defendants violated Title 18 of the United States Code section 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.<sup>184</sup> In Malibu, “beach patrols” of private security guards along with phony “private beach” signs scare off beach-goers from public beaches.

## **VI. Diversifying Beach Access**

### **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 and Newport Beach, and in 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. The City of Santa Barbara extends from the coast inland quite a distance into the hills.

**Table 1: Demographics of Malibu, Santa Barbara, and Newport Beach**<sup>185</sup>

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

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.<sup>186</sup> See Table 2.

Long Beach is the only exception to the rule, where 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.<sup>187</sup>

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 in any of the coastal communities.<sup>188</sup>

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.

**Table 2: Demographics of Coastal Communities in Los Angeles County<sup>189</sup>**

<b>Community</b>	<b>Total Population</b>	<b>Non-Hispanic White</b>	<b>Latino</b>	<b>Asian</b>	<b>Median Household Income<sup>190</sup></b>
<b>Malibu</b>	18,528	85%	6%	3%	\$102,052
<b>Pacific Palisades</b>	17,143	89%	4%	5%	\$125,711
<b>Santa Monica</b>	54,341	74%	12%	6%	\$50,435
<b>Venice (Ocean Park)</b>	24,639	61%	24%	3%	\$48,101
<b>Marina del Rey</b>	14,837	80%	6%	7%	\$74,444
<b>Playa del Rey</b>	16,830	70%	11%	8%	\$67,651
<b>El Segundo</b>	15,970	78%	10%	7%	\$61,385
<b>Manhattan Beach</b>	29,017	86%	5%	5%	\$102,739
<b>Hermosa Beach</b>	18,442	85%	7%	4%	\$81,883
<b>Redondo Beach</b>	27,107	77%	10%	8%	\$61,142
<b>Torrance</b>	11,026	80%	7%	10%	\$72,920
<b>Palos Verdes Estates</b>	13,340	76%	3%	17%	\$123,996
<b>Rancho Palos Verdes</b>	21,525	64%	4%	25%	\$104,552
<b>Rolling Hills</b>	1,871	77%	5%	14%	\$200,001
<b>L.A. Harbor</b>	34,878	58%	28%	4%	\$51,482
<b>Long Beach</b>	100,920	47%	31%	9%	\$41,587
<b>Los Angeles County (for comparison)</b>	9,519,338	49%	45%	12%	\$42,289
<b>California (for comparison)</b>	33,871,648	60%	32%	11%	\$47,493

## **B. Diversity and Beach Use**

People from different racial and ethnic groups use parks differently, constructing meaning 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.<sup>191</sup> 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 Visitor 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 the beach visitation study, beaches with higher visitation by people of color (defined to include Blacks, Hispanics, and Native Americans) include San Clemente City Beach, Capistrano

Beach, Long Beach, Cabrillo Beach, Torrance Beach, Redondo Beach, Dockweiler Beach, Mother's Beach, Nicholas Canyon, and County Line. Visitation to these beaches by people of color was one standard deviation above average.<sup>192</sup>

Beaches with lower visitation by people of color (one standard deviation below average) include San Onofre South State Beach, San Clemente State Beach, Poche Beach, Doheny State Beach, Santa Ana River, Surfside Beach, El Segundo Beach, Topanga Beach, and El Pescador Beach.<sup>193</sup>

Visitation by people of color to Malibu's Surfrider Beach was close to the average, but so few people visited the other Malibu beaches (Westward Beach, Las Tunas, and La Piedra) that the relative proportion of visitation by people of color at those beaches is unknown.<sup>194</sup>

Gathering data about beach use and recreation patterns is important to better understand whether access is equally available to all. 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 now exists and can be used to examine the social patterns of beach use in Southern California.

## **2. Diversity and Natural Spaces**

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, the park is primarily a social gathering place among Hispanics.<sup>195</sup> African Americans, more than any other racial group, tend to engage in sports.<sup>196</sup> Non-Hispanic Whites tend to value a park solely for its passive qualities – its greenness, landscaping, and natural elements. Non-Hispanic Whites tend to engage in reclusive, self-oriented uses.<sup>197</sup> Asian American (Chinese) families were rare in parks studied. This may reflect the failure of the parks to meet the needs of the Asian-American community.<sup>198</sup> 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.<sup>199</sup>

Two different studies on Central Americans and Mexican Americans, respectively, reached similar conclusions about how these groups use forests.<sup>200</sup> In the study of forest users of Central American descent, for example, creeks were the central focus of activity and attention.<sup>201</sup> 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 the creek, using plastic cups, spoons, and empty pop containers to play with instead.<sup>202</sup> 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.<sup>203</sup> Similarly, nuclear and extended members of Mexican American families are included in leisure activities, leading to large group sizes.<sup>204</sup>

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.<sup>205</sup> Families avoided large, open, grassy areas and favored shaded sites near the creek.<sup>206</sup>

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

### **3. Explaining Differences**

Research suggests various explanations for differences in ethnic and racial recreation patterns.<sup>207</sup>

The *ethnicity hypothesis*, for example, suggests 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.<sup>208</sup>

The *marginality hypothesis* suggests under-participation of ethnic and racial groups results primarily from limited economic resources and historical and ongoing patterns of discrimination.<sup>209</sup> Social norms of inclusion and exclusion operate in public spaces, including places of recreation.<sup>210</sup> 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.<sup>211</sup>

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

## **VII. Beaches and Transit**

### **A. Access to Cars Limits Access to Beaches**

People of color in Southern California are disproportionately poor.<sup>212</sup> Low-income people and people of color disproportionately lack access to a vehicle and disproportionately depend on public transit to get around town.<sup>213</sup> Access to beaches is therefore limited to people of color and low-income people by virtue of the transit options available to them.

### **B. Efforts to Limit Public Transit**

Manhattan Beach residents prevailed upon MTA to cut off direct bus service from Watts to the beach in the 1980s, as discussed above.

Malibu residents have recently asked MTA 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.<sup>214</sup>

### C. Public Transportation

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.<sup>215</sup> The study concluded 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.<sup>216</sup> 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.<sup>217</sup> 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.<sup>218</sup> Several beautiful Malibu beaches located beyond Trancas Canyon are simply not accessible by public transportation.<sup>219</sup>

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.<sup>220</sup>

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.<sup>221</sup>

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.<sup>222</sup>

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 inner-city communities ranges from \$1 to \$2.60, depending on distance.<sup>223</sup> 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”<sup>224</sup> and to increase awareness of and ridership on MTA beach routes.<sup>225</sup> 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.”<sup>226</sup>



MTA recently began a campaign to help people reach the “sun, surf, and sand” by bus.<sup>227</sup>

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.<sup>228</sup> 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.<sup>229</sup> 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 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.<sup>230</sup>



Riverside and Orange Counties provide beach train programs.<sup>231</sup>

The Beach Train is one way to travel to the beach, but the cost may be prohibitive to many.<sup>232</sup> 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.

## VIII. Recommendations to Maximize Public Access to the Beach for All

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



The City of San Francisco provides five miles of open access at Ocean Beach alone.<sup>233</sup>

1. *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.<sup>234</sup>

2. *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.<sup>235</sup>

3. *Public education campaigns must inform the public that the beach belongs to all the people.* 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, a photographic and artistic history 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.
4. *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.<sup>236</sup>
5. *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 Policy Report 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. Traditional environmental organizations should support equal access and not be afraid of alienating their wealthy donors who own beach front properties.

6. *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 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.
7. *Legislation must support public access to the beach.* The California legislature and 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.<sup>237</sup> 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.
  - 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 construction of accessways be started within one year of acceptance of an offer to dedicate, and completed within three years.
8. *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.
9. *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 of 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 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.

10. *Litigation is always an option.* Activists should file affirmative lawsuits to enforce public access when necessary and combat litigation by wealthy enclaves and homeowners 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.<sup>238</sup>

## **IX. Conclusion**

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 benefits 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 build bridges between traditional environmentalists and diverse communities and keep the beach free for all and for future generations.

Free the beach!

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<sup>1</sup> Robert García is Executive Director and Counsel and Erica Flores Baltodano is Assistant Director and Counsel at the Center for Law in the Public Interest. Edward Mazzarella is Director of Chapters at Surfrider Foundation. We are grateful to Amanda Kochanek at GreenInfo Network for her inspired mapping and demographic analyses. This Policy Report was made possible in part by the generous support of the Ford Foundation.

<sup>2</sup> June Casagrande, *Councilman Opposes Grass Areas on Beach*, Daily Pilot, June 18, 2003.

<sup>3</sup> California Coastal Commission, *Public Access Action Plan* [Hereinafter “Public Access Action Plan”] at 3 (June 1999); Timothy Egan, *Owners of Malibu Mansions Cry, “This Sand Is My Sand,”* N.Y. Times, Aug. 25, 2002, at 1.

<sup>4</sup> *Leydon v. Town of Greenwich*, 777 A.2d 552 (Conn. 2001).

<sup>5</sup> *Matthews v. Bay Head Improvement Ass’n*, 471 A.2d 355 (N.J. 1984).

<sup>6</sup> John Flesher, *Michigan High Court Will Hear Case on Great Lakes Beaches*, L.A. Daily Journal, March 8, 2005, at 4.

<sup>7</sup> Jane Costello, *Beach Access: Where Do You Draw the Line in the Sand?*, N.Y. Times, Jan. 21, 2005.

<sup>8</sup> 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 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. Olmsted Report at 85-88, 92, 93. The Center's digital edition of the Olmsted vision is available at <http://www.clipi.org/images/g-olmsteadlarge.jpg>.

<sup>9</sup> Olmsted Report at 7.

<sup>10</sup> Olmsted Report at 17, 37-43, 100-02, 138.

<sup>11</sup> See Hise & Deverell, *Eden by Design*, *supra*, at 7-56; Mike Davis, “How Eden Los 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/friendsofolmstedparks/home.htm](http://www.ci.seattle.wa.us/friendsofolmstedparks/home.htm) and the Portland, Oregon, website dedicated to the Olmsted centennial celebration at [web.pdx.edu/~porackj/OlmstedConf\\_JP.html](http://web.pdx.edu/~porackj/OlmstedConf_JP.html).

<sup>12</sup> National Recreation and Parks Association, “National Park Land Standards,” April 18, 2000, at [http://www.ci.cedar-park.tx.us/parks/park\\_standards.html](http://www.ci.cedar-park.tx.us/parks/park_standards.html).

<sup>13</sup> Jocelyn Stewart, *Officials Resort to Creativity to Meet Need for Parks*, L.A. Times, June 15, 1998 (based on 1990 census data).

<sup>14</sup> 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, and regional planning. See generally Robert García et al., *Anatomy of the Urban Parks Movement: Equal Justice, Democracy and Livability in Los Angeles* [hereinafter “Urban Parks Movement”], in book edited by Dr. Robert Bullard on Environmental Justice to be published by the Sierra Club (forthcoming 2005); Robert García and Thomas A. Rubin, *Crossroad Blues: The MTA Consent Decree and Just Transportation*, in Karen Lucas, ed., *Running on Empty: Transport, Social Exclusion, and Environmental Justice* 221-56 (2004); Robert García et al., *Healthy Children, Healthy Communities: Schools, Parks, Recreation, and Sustainable Regional Planning* [hereinafter “Healthy Children, Healthy Communities”], 31 *Fordham Urban Law Journal* 101 (2004) (Symposium on Urban Equity); 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* (forthcoming 2005).

<sup>15</sup> L.A. Times, Statewide Exit Poll, Mar. 7, 2004.

<sup>16</sup> Robert García served on the executive committee for the Yes on Prop 40 campaign.

<sup>17</sup> Mark Baldasare, *Public Policy Institute of California Statewide Survey: Special Survey on Californians and the Environment* vi (June 2002).

<sup>18</sup> (Forthcoming 2005). 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.

<sup>19</sup> 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, Pio 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

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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).

<sup>20</sup> See, e.g., Mike Davis, *City of Quartz* 160-64 (1990); Davis, “How Eden Lost Its Garden,” *supra*, at 59-91; California Department of Parks and Recreation, *Five Views: An Ethnic Sites Survey for California* 68-69 (1988).

<sup>21</sup> 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*, at 160-64; Davis, “How Eden Lost Its Garden,” *supra*, at 59-91.

<sup>22</sup> *Shelley v. Kramer*, 334 U.S. 1 (1948).

<sup>23</sup> *Barrows v. Jackson*, 346 U.S. 249 (1953).

<sup>24</sup> Josh Sides, *L.A. City Limits: African American Los Angeles from the Great Depression to the Present* 101 (2003) [hereinafter “*L.A. City Limits*”].

<sup>25</sup> *Id.* at 108.

<sup>26</sup> *Id.* at 21

<sup>27</sup> *Id.*

<sup>28</sup> Leonard Pitt & Dale Pitt, *Los Angeles A to Z: An Encyclopedia of the City and County* [hereinafter “*Los Angeles A to Z*”] 313 (1997).

<sup>29</sup> *Id.* at 313-14.

<sup>30</sup> Malibu property restrictions recorded 1945 (on file with the Center for Law in the Public Interest).

<sup>31</sup> U.S. Census 2000 data available at [www.factfinder.census.gov](http://www.factfinder.census.gov) and compiled by Greeninfo Network.

<sup>32</sup> Forbes, *The 400 Richest People in America*, 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 until most of the his claims were dismissed and the case settled in April 2005. 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.

<sup>33</sup> Telephone conversation with Daniel Olivas, Attorney General Representing the California Coastal Commission in the Geffen lawsuit (March 11, 2005, and April 19, 2005).

<sup>34</sup> Email to Robert Garcia from Steve Hoye, Access for All (Jan. 25, 2005).

<sup>35</sup> Interview with California Coastal Commission official (Sept. 2002).

<sup>36</sup> Photo by Robert Garcia (2004).

<sup>37</sup> See *La Costa Beach Homeowners' Ass'n v. California Coastal Comm'n*, 101 Cal.App.4th 804 (2002).

<sup>38</sup> Field investigation by the Center for Law in the Public Interest (2002).

<sup>39</sup> Photo by Robert Garcia (2002).

<sup>40</sup> Photo by Robert Garcia (2003).

<sup>41</sup> Malibu Local Coastal Program Land Use Plan adopted by California Coastal Commission (Sept. 13, 2002).

<sup>42</sup> Seema Mehta, *Land-Use Plan OK'd for Malibu*, L.A. Times, Sept. 14, 2002.

<sup>43</sup> See Letter to California Coastal Commission from Robert Garcia, et al., regarding Equal Access to California's Beaches (Sept. 12, 2002). See also Garcia, *We Shall Be Moved*, *supra*; Robert Garcia, et al., Center for Law in the Public Interest, *Equal Access to California's Beaches* [hereinafter “Beach Access Policy Brief”].

<sup>44</sup> Kenneth R. Weiss, *A Malibu Civics Lesson: Beach Is Open*, L.A. Times, Aug. 25, 2003.

<sup>45</sup> The guide is available at <http://www.clipi.org/pdf/broadbeachaccess.pdf>.

<sup>46</sup> See generally Mike Davis, “The Case for Letting Malibu Burn,” in *Ecology of Fear*, *supra*, 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).

<sup>47</sup> See Pitt & Pitt, *Los Angeles A to Z*, *supra*, at 313; Robinson & Powell, *The Malibu*, *supra*, at 30-38.

<sup>48</sup> Image courtesy of the Los Angeles County Public Library.

<sup>49</sup> 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.

<sup>50</sup> *Bound for Freedom*, *supra*, at 414 n.38.

<sup>51</sup> *Id.* at 271-75.

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<sup>52</sup> *Id.* at 272, quoting Charles Matthews.

<sup>53</sup> *Id.* at 272-73.

<sup>54</sup> *Id.* at 414 n.38. Prof. Flamming concludes that beach segregation “needs to be researched more thoroughly.” *Id.*

<sup>55</sup> Image from Carolyn Koza Cole & Kathy Kobayahshi, *Shades of LA: Pictures from Ethnic Family Albums* 92 (1996).

<sup>56</sup> Deposition testimony of former Metropolitan Transportation Authority (MTA) official in *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transportation Authority* (1996). RTD was the predecessor agency of MTA.

<sup>57</sup> *Id.*

<sup>58</sup> Photo by Nicolás García (2005).

<sup>59</sup> Stan Bellamy, *My Mountain, My People Vol. I: Arrowhead!* 188 (2000).

<sup>60</sup> John W. Robinson, *The San Bernardinos* 127, 127-32 (1989).

<sup>61</sup> *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 (9<sup>th</sup> 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.

<sup>62</sup> Letter from U.S. Dept. of the Interior to Congress submitting final Gaviota Coast Feasibility Study [*hereinafter* DOI Letter to Congress], at <http://www.nps.gov/pwro/gaviota/transmittal-Pombo.pdf>

<sup>63</sup> Gaviota Coast Conservancy website, at <http://www.gaviotacoastconservancy.org/coast.html>.

<sup>64</sup> The Hollister Ranch web site at [www.hollister-ranch.com](http://www.hollister-ranch.com) 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, 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.

<sup>65</sup> Kenneth R. Weiss, *Status as National Seashore Rejected for Gaviota Coast*, L.A. Times, March 10, 2004 at B1.

<sup>66</sup> Image courtesy of the National Park Service, at <http://www.nps.gov/pwro/gaviota/>.

<sup>67</sup> DOI Letter to Congress, *supra*, at 1.

<sup>68</sup> June Casagrande, *supra*.

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.

<sup>69</sup> Steve Lopez, *Councilman Visits Archie Bunker Dimension to Justify Comments*, L.A. Times, June 20, 2003.

<sup>70</sup> City Council Minutes, City of Newport Beach, Regular Meeting, July 8, 2003, at [www.city.newport-beach.ca.us/CouncilAgendas/2003/Mn07-08.htm](http://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, July 8, 2003, at [www.city.newport-beach.ca.us/CouncilAgendas/2003/i07-0815.htm](http://www.city.newport-beach.ca.us/CouncilAgendas/2003/i07-0815.htm) (City Council approved the resolution with amendment).

<sup>71</sup> June Casagrande, *supra*. Image courtesy of the City of Newport Beach, at <http://www.city.newport-beach.ca.us/CdMStateBeach/>.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> Hank Sims, *Town Is on Brink Over Trail at Sea's Edge*, L.A. Times, Oct. 27, 2003 at B5.

<sup>75</sup> *Id.*

<sup>76</sup> Claims against the Coastal Conservancy have been dropped, but the case against the Coastal Commission and the City of Trinidad is set for trial in August 2005. Telephone conversation with Chris Tiedemann, Attorney General representing the Coastal Commission, May 3, 2005.

<sup>77</sup> Hank Sims, *supra*.

<sup>78</sup> Photo by Robert García (2003).

<sup>79</sup> *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.

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- <sup>80</sup> Surfrider Foundation, *State of the Beach* (2002) on inside and outside cover pages.
- <sup>81</sup> Karin Martin, *Beach is Alive, Making Waves*, April 2004 (Editor's note), at [www.surfrider.org/makingwaves/makingwaves20-2/7.asp](http://www.surfrider.org/makingwaves/makingwaves20-2/7.asp).
- <sup>82</sup> See generally García, *Healthy Children, Healthy Communities*, *supra*.
- <sup>83</sup> Eloisa Gonzalez, MD, MPH, L.A. County Dept. of Public Health, testimony Jan. 21, 2004, LAUSD Citizens' School Bond Oversight Committee. Robert García is chair of that 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.
- <sup>84</sup> Cal Dep't of Education website, at [www.cde.ca.gov/ta/tg/pf/index.asp](http://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.
- <sup>85</sup> *Id.* at 18.
- <sup>86</sup> Gold Coast Collaborative, *A HEALTH CRISIS IN PARADISE 3* (Sept. 2003).
- <sup>87</sup> U.S. Dept. of Health and Human Services, *The Surgeon General's Call to Action To Prevent and Decrease Overweight and Obesity 9-10* (2001).
- <sup>88</sup> 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/presphysactrpt> (Fall 2001).
- <sup>89</sup> 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"].
- <sup>90</sup> B. Giles-Corti, et al. *The relative influence of individual, social and physical environment determinants of physical activity*, 54 *Social Science & Medicine* 1793 (2002).
- <sup>91</sup> *Id.* at 1794; Neville Owen, PhD et al., *Understanding Environmental Influences on Walking: Review and Research Agenda*, 27 (1) *American Journal of Preventative Medicine* 69 (2004).
- <sup>92</sup> 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 *Environment & Behavior*, 5-34 (2001); C. M. Tennesen et al., *Views to Nature: Effects on Attention*, 15 *Journal of Environmental Psychology* 77-85 (1995).
- <sup>93</sup> 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 at [www.sprawlwatch.org](http://www.sprawlwatch.org). Jackson; *Policy Link* at 15.
- <sup>94</sup> Jackson, *supra*, at 5.
- <sup>95</sup> Surgeon General, *supra*, at 7, 85-87, 90-91, 102-03, 110-12, 127-30, 135.
- <sup>96</sup> 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>.
- <sup>97</sup> A. Faber Taylor, et al., *Coping with ADD: The surprising connection to green play settings*, *Environment & Behavior* 33, 54-77 (2001); A. Faber Taylor, et al., *Views of Nature and Self-Discipline: Evidence from Inner City Children*, *Journal of Environmental Psychology* (2001); Surgeon General at 135-36, 141.
- <sup>98</sup> See Russell R. Pate et al., *Sports Participation and Health-Related Behaviors Among US Youth*, *Archives of Pediatrics and Adolescent Medicine* (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).
- <sup>99</sup> *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 Review* 1-6 (2002).
- <sup>100</sup> Ca. Dep't of Education, Press Release, Dec. 10, 2002.
- <sup>101</sup> William G. Bowen & Sarah A. Levin, et al., *Reclaiming the Game: College Sports and Educational Values* (2003).
- <sup>102</sup> Loukaitou-Sederis & Stieglitz, *supra*, at 1-6.
- <sup>103</sup> Katherine E. Stone, *Sand Rights: A Legal System to Protect the "Shores of the Sea,"* 29 *Stetson L. Rev.* 709, 711 (2000) (citing Philip G. King, *The Economic Valuations of Beaches and Coastal Resources: With Applications to California and the Marshall Islands 76-77* (June 3-5, 1998) [unpublished manuscript, on file with Stone]).
- <sup>104</sup> *Public Access Action Plan, supra*, at 2 (citing "The Economic Value of California's

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Beaches”).

<sup>105</sup> Surfrider Foundation, *The Economic Impact of Beaches, Coastal A-Z*, at [www.surfrider.org/a-z/economic\\_impact\\_beaches.asp](http://www.surfrider.org/a-z/economic_impact_beaches.asp).

<sup>106</sup> 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).

<sup>107</sup> García, *Urban Parks Movement*, *supra*; Robert García, et al., Center for Law in the Public Interest, *Dreams of Fields: Soccer, Community, and Equal Justice* 17 (2002).

<sup>108</sup> Surfrider Foundation, *Strategic Plan*, “Surfrider’s Unique Strengths and Assets” (ratified by the Board of Directors on Jan. 23, 1999).

<sup>109</sup> 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 on the National Forests of Southern California* [hereinafter “Central American Outdoor Recreation”] in *Culture, Conflict, and Communication in the Wildland-Urban Interface* 181, 184-94, 188 (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 *Journal of Planning and Education and Research* 89, 101-02 (1995).

<sup>110</sup> García, *Dreams of Fields*, *supra*, 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, 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](http://www.CoeJLSC.org).

<sup>111</sup> Patrick E. Tyler, *Kenyan Environmentalist Wins Nobel Prize for Peace*, N.Y. Times, Oct. 8, 2004.

<sup>112</sup> Professor Lakoff identifies six types of progressives with shared values: (1) socio-economic: all 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).

<sup>113</sup> See *City of Berkeley v. Superior Court*, 26 Cal. 3d 515 (1980). Spanish law 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.*

<sup>114</sup> See *City of Berkeley*, *supra*, at 521.

<sup>115</sup> *Illinois Central R.R. Co. v. Illinois*, 146 U.S. 387, 452 (1892).

<sup>116</sup> *Id.* at 453.

<sup>117</sup> *Id.*

<sup>118</sup> Stone, *supra*, at 711, 717.

<sup>119</sup> California acquired title as trustee to waterways upon its admission to the union. *National Audubon Society*, *supra*, at 434 (citing *City of Berkeley*, *supra*, at 521).

<sup>120</sup> *Lechuza Villas v. California Coastal Comm’n*, 60 Cal. App. 4th 218 (1997); Cal. Civ. Code §§ 670 & 830.

<sup>121</sup> *Marks v. Whitney*, 23 Cal.3d 251, 259 (1971).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 259.

<sup>124</sup> *National Audubon Society*, *supra*.

<sup>125</sup> *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

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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 and 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. . . . the continued supply of sand to the beaches of California confers a significant public benefit.” Stone, *supra*, at 711-12, 720-21.

<sup>126</sup> 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”).

<sup>127</sup> Elizabeth G. Hill, Legislative Analyst’s Office, *Improving Coastal Access and Development Mitigation 3* (January 2005).

<sup>128</sup> *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. Resources Code § 30804.

<sup>129</sup> California Civil Code section 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.

<sup>130</sup> Cal. Gov. Code § 54090.

<sup>131</sup> Cal. Gov. Code § 53035.

<sup>132</sup> 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.*

<sup>133</sup> Cal. Gov. Code § 39933.

<sup>134</sup> Cal. Pub. Res. Code § 30001.5, §30001.5(c), § 30006, § 30220, and § 30221, and § 30251.

<sup>135</sup> See Cal. Pub. Res. Code § 30330. See also *Marine Forests Society et al. v. California Coastal Comm’n*, 104 Cal.App.4<sup>th</sup> 1232, 1235 (2002). The California Coastal Commission has come under attack by property rights advocates who resent the Commission’s role in regulating development along the coast. *Marine Forests Society*, *supra* at 1236; Kenneth R. Weiss and Gregg Jones, *Davis Signs Coastal Commission Bill*, L.A. Times, Feb. 21, 2003. The Center for Law in the Public Interest joined the Law Office of J. William Yeates and the California Environmental Law Project in filing a “friend of the court” brief in the *Marine Forests Society* case, which is now before the California Supreme Court. The brief was filed on behalf of 28 diverse organizations, including the Surfrider Foundation, to support the constitutionality of the California Coastal Commission.

<sup>136</sup> Hill, *supra* 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 for development 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.

<sup>137</sup> *Id.* In *Nolan v. California Coastal Comm’n*, 483 U.S. 825 (1987), the United State Supreme Court held the requirement to mitigate development as a permit condition is an unconstitutional “taking” of private property unless 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 State Supreme Court ruled that the nature and extent of the development permit conditions must be roughly proportional to the adverse impact of the development.

<sup>138</sup> Hill, *supra* 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. Hill, *supra* at 10.

<sup>139</sup> *Public Access Action Plan*, *supra* at 13-14.

<sup>140</sup> *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.”)

<sup>141</sup> Recommendations by the Legislative Analyst’s Office are summarized and incorporated into Part VIII of this

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Policy Report.

<sup>142</sup> Hill, *supra* at 8.

<sup>143</sup> *Public Access Action Plan, supra* at 14.

<sup>144</sup> *Id.*

<sup>145</sup> Hill, *supra* at 10.

<sup>146</sup> Hill, *supra* at 15.

<sup>147</sup> *Id.* at 12.

<sup>148</sup> See Cal. Pub. Res. Code § 30600.

<sup>149</sup> Cal. Pub. Res. Code § 30106.

<sup>150</sup> See Cal. Pub. Res. Code § 30600.

<sup>151</sup> 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.”)

<sup>152</sup> Cal. Pub. Res. Code § 6301. See also Cal. Pub. Res. Code §§ 6201, 6357.

<sup>153</sup> Kenneth R. Weiss, *Reflections on 2001: Beach Access*, L.A. Times, Dec. 30, 2001, at B1.

<sup>154</sup> 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).

<sup>155</sup> Cal. Pub. Res. Code § 30212.

<sup>156</sup> Cal Pub. Res. Code § 30210.

<sup>157</sup> 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.

<sup>158</sup> 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).

<sup>159</sup> Photo by Robert García 2004.

<sup>160</sup> 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.

<sup>161</sup> 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.).

<sup>162</sup> See Cal Gov. Code § 11135 *et seq.*; 22 CCR § 9810.

<sup>163</sup> Cal. Gov. Code § 65040.12. The Governor’s Office of Planning and Research is to implement this code section.

<sup>164</sup> California State Lands Commission, Environmental Justice Policy (October 1, 2002), *at*

[http://www.slc.ca.gov/Policy%20Statements/Policy\\_Statements\\_Home.htm](http://www.slc.ca.gov/Policy%20Statements/Policy_Statements_Home.htm).

<sup>165</sup> *Guardians Ass’n v. Civil Service Comm’n*, 463 U.S. 582, 629 (1983) (Justice Marshall, concurring in part and dissenting in part).

<sup>166</sup> Cf. Executive Order 12,898 on Environmental Justice (Feb. 11, 1994).

<sup>167</sup> *Mayor and 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 and City Council of Baltimore City*, 220 F.2d 386 (1955)).

<sup>168</sup> 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).

<sup>169</sup> *Id.*

<sup>170</sup> *Larry P. v. Riles*, 793 F.2d 969, 983 (9th Cir. 1984).

<sup>171</sup> See Setha Low, *Behind the Gates: Life, Security, and the Pursuit of Happiness in Fortress America* 111-31 (2003).

<sup>172</sup> See *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265 (1977); U.S.

Department of Justice, Civil Rights Division, *Title VI Legal Manual* (Sept. 1998) at 49-53 and authorities cited.

<sup>173</sup> Editorial, *Interagency Spats Muddy the Waters*, L.A. Times, Dec. 1, 2002.

<sup>174</sup> See City of Malibu website *at* <http://www.ci.malibu.ca.us/index.cfm?fuseaction=nav&navid=204>.

<sup>175</sup> Editorial, *Interagency Spats Muddy the Waters, supra*. 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>.

<sup>176</sup> García, *We Shall Be Moved, supra*; García, *Beach Access Policy Brief, supra*; Letter to California Coastal Commission from Robert García, et al., 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

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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).

<sup>177</sup> See, e.g., *Alexander v. Sandoval*, 532 U.S. 275 (2001); *Gonzaga University v. Doe*, 536 U.S. 273 (2002).

<sup>178</sup> Malibu Local Coastal Program Land Use Plan, *supra*.

<sup>179</sup> *Leydon v. Town of Greenwich*, *supra*, at 567 n. 22. 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.

<sup>180</sup> *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.

<sup>181</sup> *Id.* at 343, quoting *Arkansas Educational Television Comm’n v. Forbes*, 523 U.S. 666, 677 (1998).

<sup>182</sup> *Leydon* at 346.

<sup>183</sup> See *U.S. v. Allen*, *supra*.

<sup>184</sup> *Id.* at 873-75.

<sup>185</sup> Census 2000 data available at [www.factfinder.census.gov](http://www.factfinder.census.gov).

<sup>186</sup> 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.*

<sup>187</sup> 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).

<sup>188</sup> *Id.*

<sup>189</sup> *Coastal Demographic: Los Angeles Pilot Project* at 5. 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.

<sup>190</sup> 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 tracks within one “community” as defined by the study.

<sup>191</sup> See Loukaitou-Sideris, *Urban Form and Social Context*, *supra*, at 100-01.

<sup>192</sup> The analysis is on file with the Center for Law in the Public Interest.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> Loukaitou-Sideris, *Urban Form and Social Context*, *supra*, at 94-95.

<sup>196</sup> *Id.* at 95.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* at 95-96.

<sup>199</sup> *Id.* at 92, 95.

<sup>200</sup> See generally Carr & Chavez, *Central American Outdoor Recreation*, *supra*; Chavez, *Mexican-American Outdoor Recreation*, *supra*.

<sup>201</sup> Carr & Chavez, *Central American Outdoor Recreation*, *supra*, at 184-94, 188.

<sup>202</sup> *Id.* at 188-98.

<sup>203</sup> *Id.* at 190.

<sup>204</sup> Chavez, *Mexican-American Outdoor Recreation*, *supra*, at 5.

<sup>205</sup> Deborah J. Chavez, *Adaptive Management in Outdoor Recreation: Serving Hispanics in Southern California*, 17 (3) *Western Journal of Applied Forestry* 132 (July 2002).

<sup>206</sup> *Id.*

<sup>207</sup> *Mexican-American Outdoor Recreation*, *supra*, at 2.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> Austin, *supra*, at 694.

<sup>211</sup> *Id.*

<sup>212</sup> U.S. Census 2000 data available at [www.datafinder.census.gov](http://www.datafinder.census.gov) and compiled by Greeninfo Network.

**Californians Living Below Poverty**

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

<sup>213</sup> U.S. Census 2000 data available at [www.datafinder.census.gov](http://www.datafinder.census.gov) and compiled by Greeninfo Network; Robert García and Thomas A. Rubin, *Crossroad Blues*, *supra*.

**Californians Who Lack Access to a Vehicle**

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

<sup>214</sup> 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).

<sup>215</sup> 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.*

<sup>216</sup> *Id.* at 3.

<sup>217</sup> *Id.* at 1-2.

<sup>218</sup> *Id.* at 3.

<sup>219</sup> *Id.* at 4.

<sup>220</sup> *Id.* at 2.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* at 2-3.

<sup>223</sup> *Id.* at 6-9.

<sup>224</sup> 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).

<sup>225</sup> MTA Project Brief, Beach Routes (Mar. 29, 2004).

<sup>226</sup> Los Angeles Metropolitan Transportation Authority website at [www.mta.net](http://www.mta.net).

<sup>227</sup> Image courtesy of the Los Angeles Metropolitan Transportation Authority website at [www.mta.net](http://www.mta.net).

<sup>228</sup> MTA Project Brief, *supra*. 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.

<sup>229</sup> Matthew Lopas, *A Rail Trip Like a Day at the Beach*, L.A. Times, June 25, 2004, at B4.

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<sup>230</sup> *Id.*

<sup>231</sup> 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>.

<sup>232</sup> *Id.*

<sup>233</sup> Photo by Robert García (2004).

<sup>234</sup> Photo by Robert García (2004).

<sup>235</sup> Photo by Robert García (2004).

<sup>236</sup> 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*.

<sup>237</sup> Cal. Pub. Res. Code § 31402.2.

<sup>238</sup> Penda D. Hair, *Louder than Words: Lawyers, Communities and the Struggle for Justice*, a Report to the Rockefeller Foundation (2001) at 6.

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