



***Second National People of Color Environmental  
Leadership Summit - Summit II***

**Resource Paper Series  
October 23, 2002**

**Equal Access to California's Beaches  
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Disclaimer: The Summit II Resource Paper Series was commissioned and assembled by the Environmental Justice Resource Center at Clark Atlanta University with funding support from the Ford Foundation, Turner Foundation, Public Welfare Foundation, Agency for Toxic Substances and Disease Registry, National Institute for Environmental Health Sciences, U.S. Department of Energy, and U.S. Environmental Protection Agency. The opinions expressed in this commissioned paper represent those of the author(s) and not those of the commissioning institutions or the funding agencies.

# Equal Access to California's Beaches

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## Abstract

The paper provides a detail account on how beaches in California do not belong to everyone. The City of Malibu has wealthy individuals who prefer to not share the beach with local residents because they want to create their own private Riveras. There are individuals who are trying to privatize the California coastline. The paper shows that this is an environmental justice issue because no individual should be denied access to public beaches because public space is part of public life and public having access to the beach and coastline is an integral part of democracy, equality, and freedom in the United States.

## Introduction

California's beaches belong to all the people. This is a basic principle under state law that can be traced back not only to the public trust doctrine in common law England but to Roman times and is accepted around the world. Eighty percent of the 34 million people of California live within an hour of the coast.<sup>2</sup> The City of Malibu, entertainment mogul David Geffen and other wealthy white enclaves up and down the California coast nevertheless are seeking to cut off the people's right to reach the beach in order to create their own private Riveras. The effort to privatize the California coast line has drawn international attention. Even Pulitzer-prize winning artist Gary Trudeau has taken on the coastal access issue in his *Doonesbury* comic strip.

A diverse alliance of civil rights, environmental, civic and political leaders is fighting to keep the beach free for all. Two recent changes should help. The California Coastal Commission recently required that Malibu maximize public access to the coast and promote the fair treatment of people of all races, cultures and incomes in that regard. SB 1962 by Senator Richard Polanco (D-Los Angeles) requires the state to start taking title to some of hundreds of possible right-of-way paths before they revert to landowners. The California Coastal Commission has approved a land-use plan for Malibu that will force open more pathways to the sea. The California beach is the latest front in the struggle for environmental justice for all.

Beaches are not a luxury. Beaches are a public space that provide a different set of rhythms to renew public life. Beaches provide a place for toddlers and their parents to wade in the surf. People swim and splash in the waves, surf, "people watch," while away the afternoon under an umbrella, jump between tide pools or gaze off into unparalleled sunsets. Public access to the beach is integral to democracy and equality. Beaches are a commons where the democratic vision can be expressed in everyday life.<sup>3</sup> Rio de Janeiro, like Los Angeles, is marked by some of the greatest disparities between rich and poor 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.

How is access to the beach a civil rights and environmental justice issue?

Wealthy white people disproportionately stand to benefit from the privatization of a public good, California's beaches. Communities of color and low income communities would disproportionately be

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<sup>2</sup> *Timothy Egan, Owners of Malibu Mansions Cry, "This Sand Is My Sand," N.Y. Times, Aug. 25, 2002, p. 1.*

<sup>3</sup> Indeed, the Connecticut Supreme Court recently held that a municipality may not constitutionally restrict access to a beach to its residents and their guests on the grounds that non-residents have a First Amendment right of access. *Brenden P. Leydon v. Town of Greenwich*, 257 Conn. 318, 777 A.2d 552 (Ct. 2001).

denied the benefit of coastal access. There are no black, Latino or Asian beach communities, rich or poor, seeking to cut off access to the beach to anyone in California.

### **The Discriminatory Pattern and History of Coastal Access**

California's disproportionately white and wealthy beachfront communities historically have taken many steps to prevent public access to the coast.

The City of Malibu and David Geffen -- Geffen is the "G" in Dreamworks SKG movie studios -- recently filed suit to cut off the public's right to reach the beach against the California Coastal Commission, the California Coastal Conservancy and Access for All, a non-profit organization that seeks to enforce public easements to reach the beach.

Malibu is an overwhelmingly white and wealthy enclave. The people of Malibu are 88.5% non-Hispanic white, 6% Hispanic, 2.6% Asian or Pacific Islander, 0.9% Black, 0.2% Native American and .2% other. Fully 25% of 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 3.5% of households have an annual income of \$200,000 or more.

Although there should be an easement every 1,000 feet for the public to reach the beach, in one three-mile stretch of Malibu there is no access at all. The Mayor of Malibu has publicly proclaimed that he will not enforce the public's right of access to the beach. 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 is the only time the Commission has ever issued cease and desist orders against a city. Two wealthy beachfront neighbors in Malibu have offered to subsidize a program to bus children to other beaches rather than provide access between their properties. Three other prominent Malibu beachfront homeowners offered to donate a million dollar parcel of beachfront property a mile down the coast to the public to offset additions to their homes that blocked the public's view of the ocean. This caused other homeowners closer to that parcel to bring suit to block that public beach. The California Court of Appeal recently upheld the decision of the Coastal Commission to accept the parcel as a public beach.<sup>4</sup> Phony "private beach" signs deter innocent beach goers from "trespassing" on public land. Private security guards intimidate those who dare to walk the coast. Malibu residents discretely pass keys around to each other to open locked gates on secluded paths that block access to strips of "private" beaches.

Malibu today seeks to deprive the public at large from the benefit of its beaches while Malibu at the same time benefits from the tax subsidies of the public at large. Malibu would not exist today but for the state enforcing the public right of access over local opposition. The state built the Pacific Coast Highway through the power of eminent domain in the 1930's, creating the easement that today's residents use to reach their beachside homes. Local, state and federal governments subsidize Malibu residents with fire and flood protection and come to their aid during Malibu's periodic conflagrations, floods and mudslides.<sup>5</sup> Malibu seeks to prevent the state from enforcing, and the public from using, easements to the beach, citing concerns about traffic congestion, parking, and the security of beachfront residents. But just about every Los Angeles resident today is concerned about congestion, parking and personal security.

Newport Beach and Mendocino are other disproportionately affluent white hot spots of opposition to coastal access for all. The 2000 census identified 89% of Newport Beach as non-Hispanic white, compared to just 51% of surrounding Orange County. Over 17% of the households in Newport Beach gross more than \$200,000 each year (25.8% over \$150,000), compared to 4.8% in Orange County as a whole (9.6% over \$150,000).

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<sup>4</sup> See *La Costa Beach Homeowners' Ass'n v. California Coastal Comm'n* (slip opinion Ca. 2d App. D. Aug. 29, 2002).

<sup>5</sup> See generally Leonard Pitt & Dale Pitt, *Los Angeles A to Z: An Encyclopedia of the City and County*; Mike Davis, *The Case for Letting Malibu Burn*, chapter in Allen J. Scott & Edward W. Soja, *The City* (1996).

Mendocino's population is 93% non-Hispanic white, compared to 75% for the surrounding county and 47% state wide. A Mendocino household is 2.4 times as likely to gross more than \$200,000 annually than is a household in Mendocino County as a whole.

The message today resonates with the historical pattern of discrimination by white wealthy beach communities against communities of color and low income communities: we don't want those people using our beaches.

Manhattan Beach in Los Angeles County, for example, drove out the black community and closed down Bruces' Beach, a black resort for black Angelenos, in the 1930's. Bruces' Beach offered ocean breezes, bathhouses, outdoor sports, dining and dancing to African Americans who craved a taste of Southern California's good life. The resort's black founders, Charles and Willa Bruce, built it when there were no resorts on the coast in Los Angeles that allowed blacks. Beaches, parks, restaurants and hotels barred blacks. Indeed, most of Los Angeles was off limits to blacks throughout most of the twentieth century through restrictive "whites only" deed restrictions, housing covenants and discriminatory mortgage policies subsidized by the federal government.<sup>6</sup> When Manhattan Beach was incorporated in 1912, with 600 residents, a two-block area on the ocean was set aside for minority residents. This is where the Bruces bought and built their black beach resort. As coastal land became more valuable and Los Angeles' black population increased--bringing more African Americans to Bruces' Beach--so did whites opposition to the black beach.

Manhattan Beach officials condemned the black neighborhood in 1924. City officials pressured black property owners to sell at prices below fair market value and prevailed through condemnation proceedings in the 1930's. A phony "no trespassing" sign was posted on the "private beach" owned by the city, just as Malibu homeowners' associations today post phony "private beach" signs threatening sanctions under no trespassing statutes. Bruces' beach, the nearby Peck's Pier -- the only pier in Manhattan Beach that allowed blacks -- and the surrounding black neighborhood were destroyed. Black Angelenos were relegated to a blacks-only section of Santa Monica beach near Pico Boulevard called the Inkwell.<sup>7</sup>

In the 1980s, disproportionately white and affluent communities were successful in requesting that the Southern California Rapid Transit District (RTD) end direct bus service between South Central and other disproportionately minority communities on the one hand and beach-front communities to the west. For example, RTD service to Manhattan Beach was changed at the request of Manhattan Beach so that inner city residents could not travel directly to the beach without transferring. RTD granted the request of the Palos Verdes Peninsula cities that buses from the inner city not climb the Palos Verdes hill.<sup>8</sup>

### **A Better Way: Equal Access to Beaches for All**

The California Coastal Act contains a legislative declaration that one of the basic goals of the State for the coastal zone is to "[m]aximize public access to and along the coast and maximize public recreational opportunities."<sup>9</sup> The Act further provides that development shall not interfere with the public's right of access to the sea.<sup>10</sup> The California legislature recently reaffirmed these principles in enacting Senate Bill 1962 (Polanco), which provides a safety net for coastal access, as discussed below.

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<sup>6</sup> See, e.g., *Mike Davis, City of Quartz 160-64 (1990)*.

<sup>7</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>8</sup> *Deposition testimony of former MTA official in Labor/Community Strategy Center v. Los Angeles County Metropolitan Transportation Authority*.

<sup>9</sup> *Pub. Resources Code, § 30001.5 (c). Accord, La Costa Beach Homeowners' Ass'n v. California Coastal Comm'n (slip opinion Ca. 2d App. D. Aug. 29, 2002)*.

<sup>10</sup> *Pub. Resources Code, § 30211*.

In 1930, the sons of the great landscape architect Frederick Law Olmsted presented a plan for a wealth of beaches, parks and recreation that would have made Los Angeles one of the most beautiful and livable regions in the world. Their vision and plan included beaches as public parks along the coast. According to the Olmsted Report in words that remain true today:

Continued prosperity [in Los Angeles] 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>11</sup>

Civic leaders and private interests demonstrated a tragic lack of vision and judgment when they ignored the Olmsted Report. The privatization of California's beaches would compound that tragic error by removing the coast from the public ledger.

### **Communities of Color and Low Income Communities Overwhelmingly Support Beaches, Parks and Recreation But Disproportionately Lack Access**

Communities of color and low income communities are disproportionately impacted by the threatened loss of access to the beach. These communities were the biggest supporters of California's recent Proposition 40, the largest resource bond in United States history with \$2.6 billion for parks, clean water and clean air. Yet communities of color and low income communities are disproportionately denied the benefits of public goods including beaches.

Prop 40 demolished the myth that a healthy environment is a luxury that communities of color and low income communities cannot afford or do not care about. Prop 40 passed with the support of 77% of black, 74% of Latino voters, 60% of Asian 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>12</sup>

According to a recent survey on Californians and the environment, most California residents believe there are environmental inequities between more and less affluent communities in the state. Sixty-four percent of Californians also 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>13</sup>

Los Angeles illustrates the lack of access to beaches, parks and recreation. 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 an acre of park per thousand residents, compared to the ten acres that is the National Recreation and Park Association standard.

There are also vast disparities in access to parks and recreation. In the inner city where low income communities of color 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. These communities do not have beaches in their communities, and do not have fair access to beaches in disproportionately white and wealthy communities like Malibu.

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<sup>11</sup> *Olmsted Brothers & Bartholomew and Associates, Parks, Playgrounds and Beaches for the Los Angeles Region (1930) (the Olmsted Report).*

<sup>12</sup> *L.A. Times state wide exit poll, March 7, 2002.*

<sup>13</sup> Mark Baldasare, Public Policy Institute of California Statewide Survey: Special Survey on Californians and the Environment (June 2002) page vi.

## **SB 1962 and the California Coastal Commission's Mandate to Malibu**

The California legislature and Governor Gray Davis recently reaffirmed the longstanding principles of coastal access through the passage and signing of Senate Bill 1962 (Polanco), which will help guarantee public access to the beach. Hundreds of offers to dedicate (OTD) access to the beach along the California coast are at risk of expiring because they have not yet been enforced by the state. SB 1962 provides a safety net for all OTDs in imminent danger of expiration by requiring the Coastal Conservancy to accept all OTDs within three months of their expiration date and exempting that action from General Services and Public Works Board review. SB 1962 would require that a minimum of three OTDs be opened every year. SB 1962 would require the Conservancy to report to the Legislature annually on the Agency's progress on accepting and opening OTDs for public use. Governor Davis signed SB 1962 into law on September 12, 2002, proclaiming that "California's coast line belongs to the people."

The California Coastal Commission adopted a plan to maximize public access and recreational opportunities to the coast while ensuring the fair treatment of people of all races, cultures and incomes with those legislative mandates in mind and in the face of Malibu's opposition to coastal access on September 13, 2002.<sup>14</sup> Commission Pedro Nava, who proposed the environmental justice measure, said he hopes it sets the precedent for other communities, ensuring that visitors are not excluded because of their income or race.<sup>15</sup> The Coastal Commission based the provision on the statutory definition of environmental justice under California law.<sup>16</sup>

The Coastal Commission adopted the measure in response to the community-based regional advocacy of the Center for Law in the Public Interest acting with the Advancement Project; Planning and Conservation League; William C. Velazquez Institute; Mothers of East L.A., Santa Isabel; Latino Urban Forum; Latino Issues Forum; Access for All; Mexican American Legal Defense & Education Fund, and Sierra Club.<sup>17</sup>

### **It's Our Coastline**

The series of court cases over California beaches is being closely watched across the United States and in Europe. If Malibu wins, federal and state agencies elsewhere may find it harder to create open access to public beaches. Fights are pending in Texas, Massachusetts, Hawaii and elsewhere.<sup>18</sup>

The litigation "could keep the public away from a lot of beaches," said Robert Ritchie, director of research at the Huntington Library in San Marino, who is writing a book on beach culture. "And because a very significant percentage of the United States population now lives in counties facing the ocean, the pressure for public access has become enormous. At the same time, you have these homeowners fighting to keep the hordes back."<sup>19</sup>

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<sup>14</sup> The Coastal Commission mandated that one of the overriding goals of the City of Malibu Local Coastal Program (LCP) shall be to "[m]aximize public access to and along the coast and maximize public recreational opportunities in the coastal zone" and that "[i]n addition, a goal of the LCP is to promote 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." *City of Malibu Local Coastal Program Land Use Plan adopted by the California Coastal Commission on September 13, 2002*. The Commission was responsible for drafting the plan after Malibu failed for years to create a local coastal plan acceptable to the state.

<sup>15</sup> *Seema Mehta, Land-Use Plan OK'd for Malibu, L.A. Times, Sept. 14, 2002*.

<sup>16</sup> *Gov't Code Section 65040.12*.

<sup>17</sup> The alliance also raised concerns under other federal and state civil rights laws which prohibit recipients of federal or state funds like Malibu from intentional discrimination and unjustified discriminatory impacts for which there are less discriminatory alternatives. The author testified before the Coastal Commission and submitted a letter on behalf of the alliance.

<sup>18</sup> *Daniel Wood, Can't Reach the Beach? Turf War on Malibu's Coast, Christian Science Monitor, Sept. 23, 2002, p. 1*.

<sup>19</sup> *Quoted in Timothy Egan, Owners of Malibu Mansions Cry, "This Sand Is My Sand," N.Y. Times, Aug.*

Three years ago, Congress ordered the National Park Service to study the creation of a national seashore on 200,000 acres north from UC Santa Barbara to Vandenberg Air Force Base. A national seashore would protect the 46 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 gated Hollister Ranch, a community of large estates in the coastal zone, have tried three times to scuttle this study in court. When litigation failed, homeowners hired a Washington lobbyist to oppose the study. Some owners reportedly patrol "their" eight miles of beachfront, driving surfers off at gunpoint. While the first draft of the study will not be ready until January, an Interior Department official in the Bush administration has already announced that "[l]and acquisition is not a priority of this administration."<sup>20</sup>

The alliance of civil rights, environmental, civic and political leaders will continue to organize support for equal access for all to the beaches of California. What is at stake is not just the beach. Public beaches are important in themselves, and to bring people together to define the kind of community where they want to live and raise children. The fundamental values at stake are equal justice, democracy through full and fair participation in the decision making process, and livability for all.

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25, 2002, p. 1.

<sup>20</sup> Editorial, *A Seashore for the Rich Few: A study that could lead to greater access deserves good-faith consideration*, *L.A. Times*, Sept. 23, 2002.

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