



STATE OF CALIFORNIA

GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH

STATE CLEARINGHOUSE AND PLANNING UNIT



ARNOLD SCHWARZENEGGER  
GOVERNOR

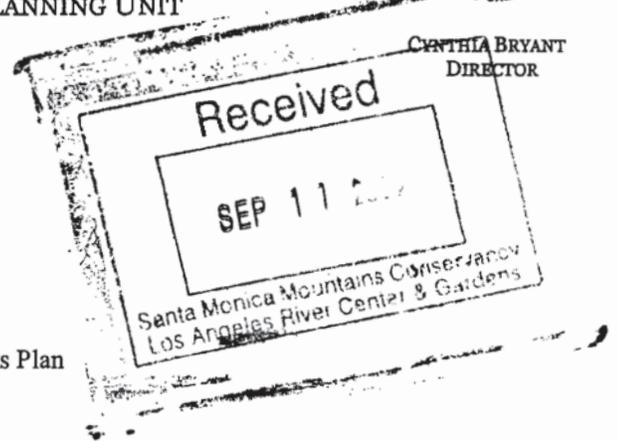
CYNTHIA BRYANT  
DIRECTOR

Notice of Preparation

September 8, 2009

To: Reviewing Agencies

Re: Malibu Parks Public Access Enhancement Plan - Public Works Plan  
SCH# 2009091018



Attached for your review and comment is the Notice of Preparation (NOP) for the Malibu Parks Public Access Enhancement Plan - Public Works Plan draft Environmental Impact Report (EIR).

Responsible agencies must transmit their comments on the scope and content of the NOP, focusing on specific information related to their own statutory responsibility, within 30 days of receipt of the NOP from the Lead Agency. This is a courtesy notice provided by the State Clearinghouse with a reminder for you to comment in a timely manner. We encourage other agencies to also respond to this notice and express their concerns early in the environmental review process.

Please direct your comments to:

Judi Tamasi  
Santa Monica Mountains Conservancy  
570 West Avenue 26, Suite 100  
Los Angeles, CA 90065

with a copy to the State Clearinghouse in the Office of Planning and Research. Please refer to the SCH number noted above in all correspondence concerning this project.

If you have any questions about the environmental document review process, please call the State Clearinghouse at (916) 445-0613.

Sincerely,

Scott Morgan  
Acting Director

Attachments  
cc: Lead Agency

**Document Details Report  
State Clearinghouse Data Base**

**SCH#** 2009091018  
**Project Title** Malibu Parks Public Access Enhancement Plan - Public Works Plan  
**Lead Agency** Santa Monica Mountains Conservancy

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**Type** NOP Notice of Preparation

**Description** The Malibu Parks Public Access Enhancement Plan - Public Works Plan (the Plan), includes a comprehensive set of policies and implementation measures, and identifies specific actions and park improvements, intended to enhance public access and recreation opportunities for specific park properties and recreation areas within the City of Malibu and Los Angeles County. The Plan would enhance public access and recreation opportunities by developing an interconnected system of trails, parks, open space, and habitats; by improving alternative methods of transportation between parklands; and by completing recreational facility and program improvements for the park properties, including new parking, camping, day-use and trailhead improvements, to support existing recreational demand and to facilitate an increased level of accessibility for visitors with special needs. The project also includes potential widening of, improvements to, and removal of encroachments impacting public safety along certain access roads within the project area, where necessary for ingress/egress and/or to meet standards of the appropriate fire agency(ies).

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**Lead Agency Contact**

**Name** Judi Tamasi  
**Agency** Santa Monica Mountains Conservancy  
**Phone** (310) 589-3200 **Fax**  
**email** judi.tamasi@mrca.ca.gov  
**Address** 570 West Avenue 26, Suite 100  
**City** Los Angeles **State** CA **Zip** 90065

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**Project Location**

**County** Los Angeles  
**City** Malibu  
**Region**  
**Cross Streets** Canyon Rd.,Winding Wy.,Pacific Coast Hwy.,Delaplane Rd.,Ramirez Canyon Rd  
**Lat / Long**  
**Parcel No.**  
**Township** **Range** **Section** **Base**

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**Proximity to:**

**Highways**  
**Airports**  
**Railways**  
**Waterways**  
**Schools**  
**Land Use**

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**Project Issues** Aesthetic/Visual; Agricultural Land; Biological Resources; Toxic/Hazardous; Public Services; Water Quality; Noise; Recreation/Parks; Air Quality; Geologic/Seismic; Landuse; Traffic/Circulation

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**Reviewing Agencies** California Coastal Commission; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; Department of Fish and Game, Region 5; Native American Heritage Commission; California Highway Patrol; Caltrans, District 7; Department of Toxic Substances Control; Regional Water Quality Control Board, Region 4; Resources Agency

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**Date Received** 09/08/2009 **Start of Review** 09/08/2009 **End of Review** 10/07/2009

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<input type="checkbox"/> <u>Resources Agency</u>	<input type="checkbox"/> Fish & Game Region 2 Jeff Drongesen	<input type="checkbox"/> Public Utilities Commission Leo Wong	<input type="checkbox"/> Caltrans, District 8 Dan Kopulsky	<input type="checkbox"/> Regional Water Quality Control Board (RWQCB)
<input checked="" type="checkbox"/> Resources Agency Nadell Gayou	<input type="checkbox"/> Fish & Game Region 3 Robert Floerke	<input type="checkbox"/> Santa Monica Bay Restoration Guangyu Wang	<input type="checkbox"/> Caltrans, District 9 Gayle Rosander	<input type="checkbox"/> RWQCB 1 Cathleen Hudson North Coast Region (1)
<input type="checkbox"/> Dept. of Boating & Waterways Mike Sotelo	<input type="checkbox"/> Fish & Game Region 4 Julie Vance	<input type="checkbox"/> State Lands Commission Marina Brand	<input type="checkbox"/> Caltrans, District 10 Tom Durmas	<input type="checkbox"/> RWQCB 2 Environmental Document Coordinator San Francisco Bay Region (2)
<input checked="" type="checkbox"/> California Coastal Commission Elizabeth A. Fuchs	<input checked="" type="checkbox"/> Fish & Game Region 5 Don Chadwick Habitat Conservation Program	<input type="checkbox"/> Tahoe Regional Planning Agency (TRPA) Cherry Jacques	<input type="checkbox"/> Caltrans, District 11 Jacob Armstrong	<input type="checkbox"/> RWQCB 3 Central Coast Region (3)
<input type="checkbox"/> Colorado River Board Gerald R. Zimmerman	<input type="checkbox"/> Fish & Game Region 6 Gabrina Gatchel Habitat Conservation Program	<u>Business, Trans &amp; Housing</u>	<input type="checkbox"/> Caltrans, District 12 Chris Herre	<input type="checkbox"/> RWQCB 4 Teresa Rodgers Los Angeles Region (4)
<input type="checkbox"/> Dept. of Conservation Rebecca Salazar	<input type="checkbox"/> Fish & Game Region 6 I/M Gabrina Gatchel Inyo/Mono, Habitat Conservation Program	<input type="checkbox"/> Caltrans - Division of Aeronautics Sandy Hesnard	<input type="checkbox"/> Air Resources Board	<input type="checkbox"/> RWQCB 5 Central Valley Region (5)
<input type="checkbox"/> California Energy Commission Dale Edwards	<input type="checkbox"/> Dept. of Fish & Game M George Isaac Marine Region	<input type="checkbox"/> Caltrans - Planning Terri Pencovic	<input type="checkbox"/> Airport Projects Jim Lerner	<input type="checkbox"/> RWQCB 5F Central Valley Region (5) Fresno Branch Office
<input type="checkbox"/> Cal Fire Allen Robertson	<u>Other Departments</u>	<input type="checkbox"/> California Highway Patrol Scott Loetscher Office of Special Projects	<input type="checkbox"/> Transportation Projects Douglas Ito	<input type="checkbox"/> RWQCB 5R Central Valley Region (5) Redding Branch Office
<input checked="" type="checkbox"/> Office of Historic Preservation Wayne Donaldson	<input type="checkbox"/> Food & Agriculture Steve Shaffer Dept. of Food and Agriculture	<input type="checkbox"/> Housing & Community Development CEQA Coordinator Housing Policy Division	<input type="checkbox"/> Industrial Projects Mike Tollstrup	<input type="checkbox"/> RWQCB 6 Lahontan Region (6)
<input checked="" type="checkbox"/> Dept of Parks & Recreation Environmental Stewardship Section	<input type="checkbox"/> Dept. of General Services Public School Construction	<u>Dept. of Transportation</u>	<input type="checkbox"/> California Integrated Waste Management Board Sue O'Leary	<input type="checkbox"/> RWQCB 6V Lahontan Region (6) Victorville Branch Office
<input type="checkbox"/> Central Valley Flood Protection Board Jon Yego	<input type="checkbox"/> Dept. of General Services Anna Garbeif Environmental Services Section	<input type="checkbox"/> Caltrans, District 1 Rex Jackman	<input type="checkbox"/> State Water Resources Control Board Regional Programs Unit Division of Financial Assistance	<input type="checkbox"/> RWQCB 7 Colorado River Basin Region (7)
<input type="checkbox"/> S.F. Bay Conservation & Dev't. Comm. Steve McAdam	<input type="checkbox"/> Dept. of Public Health Bridgette Binning Dept. of Health/Drinking Water	<input type="checkbox"/> Caltrans, District 2 Marcelino Gonzalez	<input type="checkbox"/> State Water Resources Control Board Student Intern, 401 Water Quality Certification Unit Division of Water Quality	<input type="checkbox"/> RWQCB 8 Santa Ana Region (8)
<input checked="" type="checkbox"/> Dept. of Water Resources Resources Agency Nadell Gayou	<u>Independent Commissions/Boards</u>	<input type="checkbox"/> Caltrans, District 3 Bruce de Terra	<input type="checkbox"/> State Water Resources Control Board Steven Herrera Division of Water Rights	<input type="checkbox"/> RWQCB 9 San Diego Region (9)
<input type="checkbox"/> Conservancy	<input type="checkbox"/> Delta Protection Commission Linda Flack	<input type="checkbox"/> Caltrans, District 4 Lisa Carboni	<input type="checkbox"/> Dept. of Toxic Substances Control CEQA Tracking Center	<input type="checkbox"/> Other
<u>Fish and Game</u>	<input type="checkbox"/> Office of Emergency Services Dennis Castrillo	<input type="checkbox"/> Caltrans, District 5 David Murray	<input type="checkbox"/> Department of Pesticide Regulation CEQA Coordinator	
<input type="checkbox"/> Dept. of Fish & Game Scott Flint Environmental Services Division	<input type="checkbox"/> Governor's Office of Planning & Research State Clearinghouse	<input type="checkbox"/> Caltrans, District 6 Michael Navarro		
<input type="checkbox"/> Fish & Game Region 1 Donald Koch	<input checked="" type="checkbox"/> Native American Heritage Comm. Debbie Treadway	<input type="checkbox"/> Caltrans, District 7 Elmer Alvarez		
<input type="checkbox"/> Fish & Game Region 1E Laurie Hamsberger				

**Comments Received on Notice of Preparation (NOP) for Malibu Parks Public Access Enhancement  
Plan-Public Works Plan**

<b>Date Received</b>	<b>Name</b>	<b>Organization</b>
9/4/2009	John Tommy Rosas	Tongva Ancestral Territorial Tribal Nation
9/15/2009	Armond Ghazarian	LA County DPW (Road Maintenance District 3)
9/18/2009	Fran Bibian	
9/18/2009	Ernie Paez	Office of State Fire Marshal
9/23/2009	Dave Singleton	Native American Heritage Commission
9/30/2009	Dixie Moore	
9/30/2009	Armond Ghazarian, Guita Sheik, Jeff Pletyak	LA County DPW (Traffic & Lighting Division)
10/5/2009	Julie Yom	LA County Dept. of Parks & Recreation
10/6/2009	Steven A. Amerikaner, Diane M. Matsinger	Ramirez Canyon Preservation Fund (via Brownstein/Hyatt/Farber/Schreck)
10/6/2009	Michael Strange	
10/8/2009	Chris Dellith	US Fish and Wildlife Service
10/7/2009	Robert Garcia, Seth Strongin	The City Project
10/7/2009	Patt Healy	Malibu Coalition for Slow Growth (MCSG)
10/8/2009	Gail Farber, Dennis Hunter, Carmen Angeles	LA County Dept. of Public Works
10/13/2009	Toan Duong	LA County Dept. of Public Works
10/27/2009	Elmer Alvarez	Caltrans - District 7
10/30/2009	Suzanne Goode	California Dept. of Parks and Recreation, Angeles District
12/28/2009	Frank Vidales	LA County Fire Dept. - Forestry Division

**Linda Oppen Giles**

**Subject:** FW: Malibu Parks Public Access Enhancement Plan comments from JOHNTOMMY

**From:** Johntommy Rosas [mailto:tattnlaw@gmail.com]  
**Sent:** Friday, September 04, 2009 1:47 PM  
**To:** Judi Tamasi; Dave Singleton; Carroll, Ed  
**Subject:** Re: Malibu Parks Public Access Enhancement Plan NOTICE

YOUR TIME FRAME IS ILLEGALLY SHORT-

CEQA ALLOWS 45 DAYS MINIMUM

SO WE DEMAND YOU REPAIR THAT AND THE OTHER ERRORS AND RE SUBMITT THE NOP TO US

JOHNTOMMY

On Fri, Sep 4, 2009 at 1:29 PM, Judi Tamasi <judi.tamasi@mrca.ca.gov> wrote:  
Please see attached. Thank you.

Judi Tamasi  
Mountains Recreation and Conservation Authority 5810 Ramirez Canyon Road  
Malibu, California 90265  
ph: 310-589-3230, ext. 121  
fax: 310-589-2408  
[judi.tamasi@mrca.ca.gov](mailto:judi.tamasi@mrca.ca.gov)

Mountains Recreation and Conservation Authority- a local agency exercising  
joint powers of the Santa Monica Mountains Conservancy and Conejo and Rancho  
Simi Recreation & Park Districts

--  
JOHN TOMMY ROSAS  
TRIBAL ADMINISTRATOR  
TRIBAL LITIGATOR  
TONGVA ANCESTRAL TERRITORIAL TRIBAL NATION  
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**Judi Tamasi**

**From:** Ghazarian, Armond [AGHAZAR@dpw.lacounty.gov]  
**Sent:** Tuesday, September 15, 2009 2:03 PM  
**To:** judi.tamasi@mrca.ca.gov  
**Subject:** Kanan Dume Road - MRCA Proposed Parking Sites, APN 4465-003-900  
**Attachments:** APN 4465-003-900.pdf

Good afternoon Judi,

Following-up to our telephone conversation yesterday, I wanted to confirm with this e-mail the items that you and I discussed:

- MRCA will secure the necessary funding for the construction and future maintenance of the parking sites. As such, County of Los Angeles Department of Public Works (LACoDPW) will not contribute any funds or resources towards the construction and future maintenance of these parking sites.
- Based on our research, the most southerly proposed parking site is within the City of Malibu and not within the County of Los Angeles. Please contact the City regarding their requirements for using this site for parking.
- The existing road right of way for Kanan Dume Road along the westerly boundary of APN 4465-003-900 is 50 feet (see attached copy of Assessor's map). The minimum road right of way for Kanan Dume Road along this reach appears to be 100 feet. Therefore, as part of the real estate transaction impacting APN 4465-003-900, road right of way for Kanan Dume Road would have to be reserved. Additional types of easement rights in connection with Kanan Dume Road might be necessary.
- During my field investigation, I noticed power poles along the dirt shoulder along the road and adjacent to the proposed parking sites. Please refer to your title reports, for APN 4465-003-900, to determine if these poles are within existing utility easement(s). If there are no utility easement(s), then during the real estate transaction:
  - o Utility easements will have to be reserved for the utility companies to operate and maintain their facilities, or
  - o The poles must fall within the road right of way to be reserved for Kanan Dume Road

Please do not hesitate to contact me if you have any questions or if I can be of further assistance regarding this matter.

Thanks

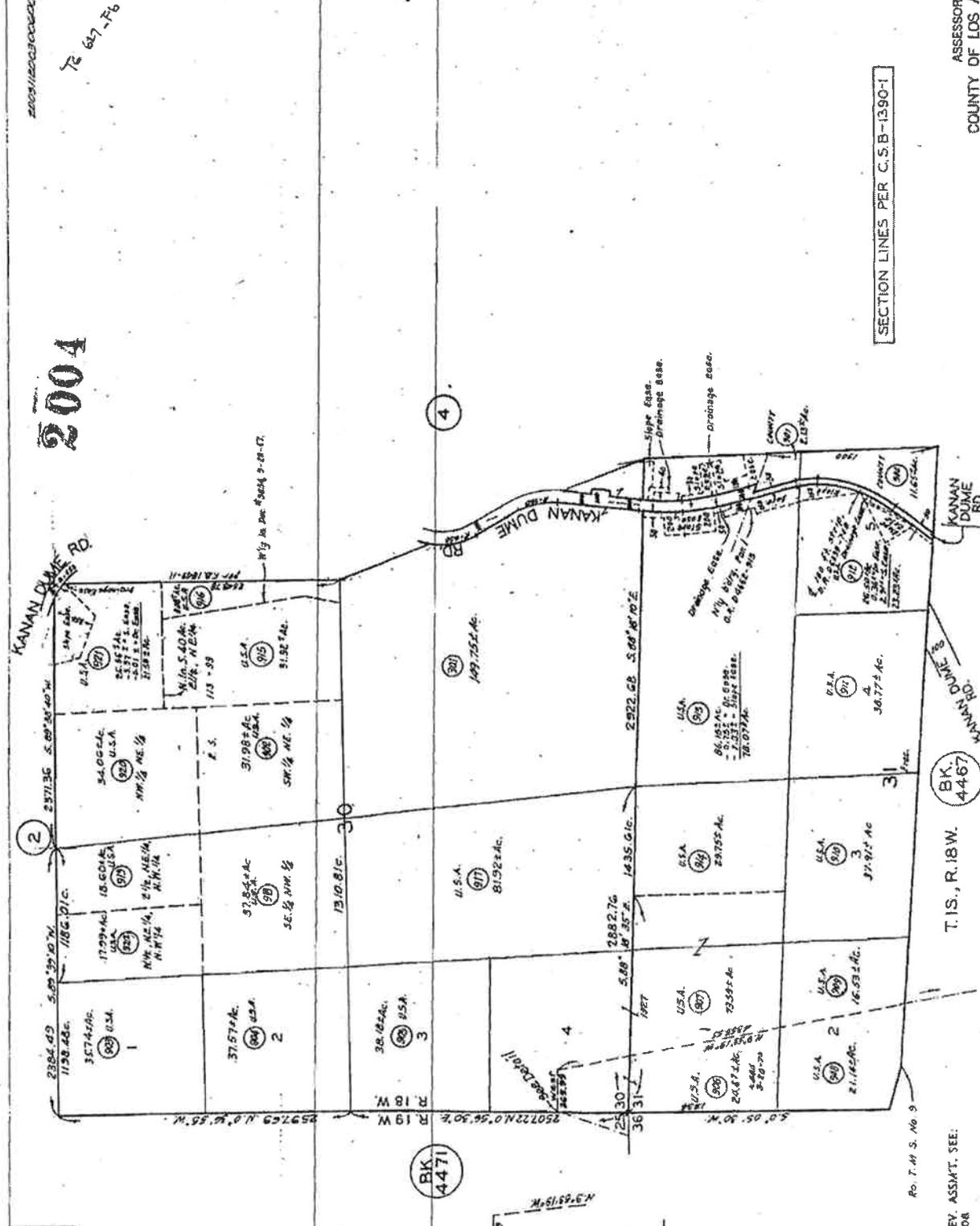
Armond Ghazarian  
Assistant District Engineer  
Road Maintenance District 3  
(310) 348-6448 ext. 227  
(310) 649-0402 (fax)

9/15/2009

4465 3  
SCALE 1" = 800'

2004

- 7-18-65 REVIS  
 671006/10  
 680506/20  
 690203  
 690204/02  
 700618/21A  
 700622/31G  
 700713  
 7201/11  
 7202/11  
 7203/0  
 7405/2301  
 7406/2302  
 7409/1780  
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 7601/0800



ASSESSOR'S MAP  
 COUNTY OF LOS ANGELES, CALIF.

SECTION LINES PER C.S.B-1390-1

CODE 8637

BK 4471

BK 4467

T.1S., R.18W.

DETAIL  
 NO SCALE

FOR PREY ASSM'T. SEE:  
 482-408

**Judi Tamasi**

**From:** fran bibian [franbibian@sbcglobal.net]  
**Sent:** Friday, September 18, 2009 6:29 PM  
**To:** judi.tamasi@mrca.ca.gov  
**Subject:** Malibu Parks public enhancement plan

Hello Judi:

I received the attached e-mail about planned hikes in various parks. It would be wonderful to be able to have these types of hikes arranged in Malibu area in the future as well.

My husband and I will be out of town during the meeting scheduled for October 1st. But we do support the program, and hope that extended recreational facilities can be developed for the public in the Malibu area. My husband and I also have enjoyed many blessings and joys of volunteering for various park agencies and it has been some of the most meaningful and rewarding experiences of our lives. We would like to encourage others to give it a try.

Our hope is that the enhancement of the parks in the Malibu will be accomplished in a manner that will be consistent and sensitive to the needs and desires of the residents in the area.

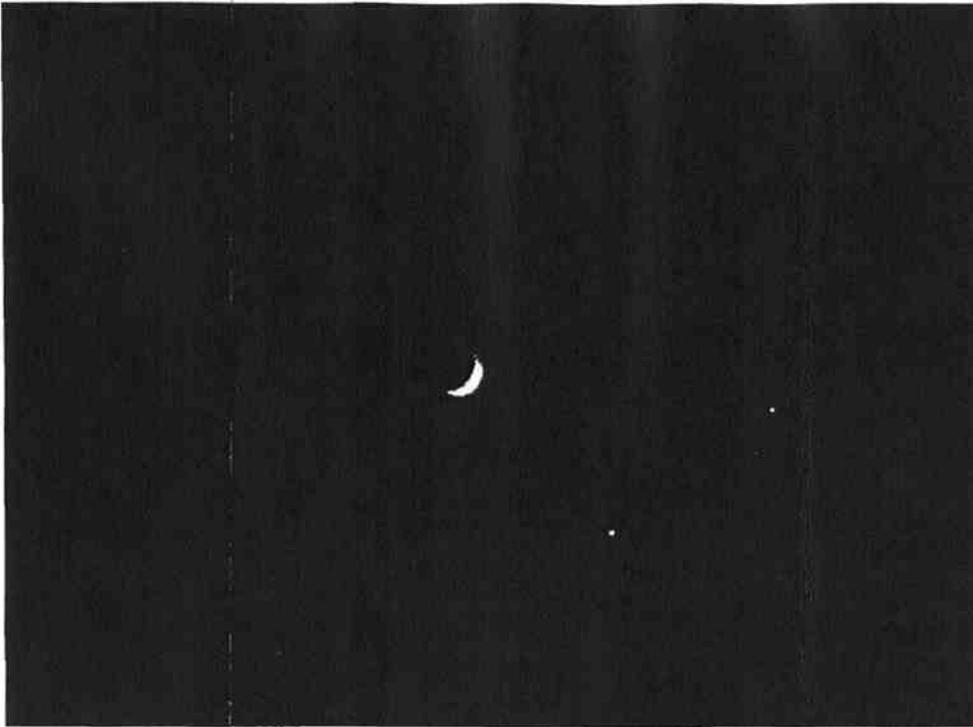
We appreciate all your efforts and wish you the best.

Best Regards,  
Fran Bibian and Claude Overstreet

----- Forwarded Message -----

**From:** Mountains Recreation & Conservation Authority <robin.smith@mrca.ca.gov>  
**To:** franbibian@sbcglobal.net  
**Sent:** Monday, September 14, 2009 9:05:48 AM  
**Subject:** Autumn Equinox Hikes - at 3 Parks on Sept. 19!

Three Autumn  
Equinox Hikes  
Saturday  
September 19  
7:30 pm



Take a break from your busy life and join us for an evening of equilibrium. The equinox marks a twice annual event that is wrapped with stories, traditions, and celestial events. 2 hours, easy walk.

### King Gillette Ranch

26800 Mulholland Hwy, Calabasas, CA 91302

Parking \$7

Meet at the parking lot to the left of the bridge.

[CLICK HERE for King Gillette Ranch web page with directions](#)

### Temescal Gateway Park

15601 Sunset Blvd., Pacific Palisades, CA 90272

Parking \$7

Meet at the front parking lot.

[CLICK HERE for Temescal Gateway Park web page with directions](#)

### Vista Hermosa Natural Park

100 N. Toluca Street

Los Angeles, CA. 90026

Free parking

[CLICK HERE for Vista Hermosa Natural Park web page with directions](#)

Sponsored by the  
SANTA MONICA MOUNTAINS CONSERVANCY  
and presented by the

## MOUNTAINS RECREATION & CONSERVATION AUTHORITY

The MRCA hike and activities email announcements are sent at your request. You may change your email address or unsubscribe by modifying your personal preferences at the bottom of this email. As an anti-spam measure, we do not share your email address with others.

Email Marketing by



**Linda Oppen Giles**

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**Subject:** FW: EIR Santa Monica Conservancy

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**From:** Paez, Ernie [mailto:Ernie.Paez@fire.ca.gov]  
**Sent:** Friday, September 18, 2009 10:37 AM  
**To:** judi.tamasi@mrca.ca.gov  
**Subject:** EIR Santa Monica Conservancy

We request the views of public agencies as to the scope and content of environmental information be germane to agency statutory responsibilities for the project.

*Health and Safety Code 13108(c), except as otherwise provided in this section, the State Fire Marshal shall enforce the regulations adopted by him or her and building standards relating to fire and panic safety published in the California Building Standards Code in all state-owned buildings, state-occupied buildings, and state institutions throughout the state.*

Based on the information above the State Fire Marshal's office would be responsible for plan review and inspection for any work, building or access within the facilities property lines.

Ernie Paez, Division Chief  
Fire & Life Safety - South

***CAL FIRE***

Office of State Fire Marshal  
602 E. Huntington dr. Suite A  
Monrovia CA., 91016  
(626) 305-1908  
ernie.paez@fire.ca.gov

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**NATIVE AMERICAN HERITAGE COMMISSION**

915 CAPITOL MALL, ROOM 364  
SACRAMENTO, CA 95814  
(916) 653-6251  
Fax (916) 657-5390  
Web Site [www.nahc.ca.gov](http://www.nahc.ca.gov)  
e-mail: [ds\\_nahc@pacbell.net](mailto:ds_nahc@pacbell.net)

September 23, 2009

Ms. Judi Tamasi

**SANTA MONICA MOUNTAINS CONSERVANCY**

570 West Avenue 26, Suite 100  
Los Angeles, CA 90065



Re: SCH#2009091018 CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR) for the Malibu Parks Public Access Enhancement Plan – Public Works Plan located in the Malibu Area; Los Angeles County, California

Dear Ms. Tamasi:

The Native American Heritage Commission (NAHC) is the state 'trustee agency' pursuant to Public Resources Code §21070 for the protection and preservation of California's Native American Cultural Resources. The California Environmental Quality Act (CEQA - CA Public Resources Code §21000-21177, amended in 2009) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the California Code of Regulations §15064.5(b)(c)(f) CEQA guidelines). Section 15382 of the CEQA Guidelines defines a significant impact on the environment as "a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE)', and if so, to mitigate that effect. To adequately assess the project-related impacts on historical resources, the Commission recommends the following.

The Native American Heritage Commission did perform a Sacred Lands File (SLF) search in the NAHC SLF Inventory, established by the Legislature pursuant to Public Resources Code §5097.94(a) and Native American Cultural resources were identified within one-half mile of the APEs... Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries once a project is underway. Enclosed are the names of the nearest tribes and interested Native American individuals that the NAHC recommends as 'consulting parties,' for this purpose, that may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We recommend that you contact persons on the attached list of Native American contacts. A Native American Tribe or Tribal Elder may be the only source of information about a cultural resource.. Also, the NAHC recommends that a Native American Monitor or person be employed whenever a professional archaeologist is employed during the 'Initial Study' and in other phases of the environmental study.. Furthermore we suggest that you contact the California Historic Resources Information System (CHRIS) at the Office of Historic Preservation (OHP) Coordinator's office (at (916) 653-7278, for referral to the nearest OHP Information Center of which there are 11..

Consultation with tribes and interested Native American tribes and individuals, as consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA (42 U.S.C. 4321-43351) and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 [f] *et se*), and NAGPRA (25 U.S.C. 3001-3013), as appropriate. .

Lead agencies should consider avoidance, as defined in Section 15370 of the California Environmental Quality Act (CEQA) when significant cultural resources could be affected by a

project. Also, Public Resources Code Section 5097.98 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'. Discussion of these should be included in your environmental documents, as appropriate.

The authority for the SLF record search of the NAHC Sacred Lands Inventory, established by the California Legislature, is California Public Resources Code §5097.94(a) and is exempt from the CA Public Records Act (c.f. California Government Code §6254.10). The results of the SLF search are confidential. However, Native Americans on the attached contact list are not prohibited under Section 304 of the NHPA or at the Secretary of the Interior' discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C, 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APE and possibly threatened by proposed project activity.

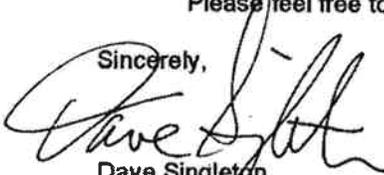
CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the initial Study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens.

Health and Safety Code §7050.5, Public Resources Code §5097.98 and Sec. §15064.5 (d) of the California Code of Regulations (CEQA Guidelines) mandate procedures to be followed, including that construction or excavation be stopped in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery until the county coroner or medical examiner can determine whether the remains are those of a Native American. . Note that §7052 of the Health & Safety Code states that disturbance of Native American cemeteries is a felony.

Again, Lead agencies should consider avoidance, as defined in §15370 of the California Code of Regulations (CEQA Guidelines), when significant cultural resources are discovered during the course of project planning and implementation

Please feel free to contact me at (916) 653-6251 if you have any questions.

Sincerely,



Dave Singleton  
Program Analyst

Attachment: List of Native American Contacts

Cc: State Clearinghouse

**Native American Contact**  
Los Angeles County  
September 23, 2009

Charles Cooke  
32835 Santiago Road  
Acton , CA 93510  
  
(661) 733-1812 - cell  
suscol@intox.net

Chumash  
Fernandeno  
Tataviam  
Kitanemuk

Owl Clan  
Qun-tan Shup  
48825 Sapaque Road  
Bradley , CA 93426  
  
(805) 472-9536  
(805) 835-2382 - CELL

Chumash

Beverly Salazar Folkes  
1931 Shadybrook Drive  
Thousand Oaks , CA 91362  
  
805 492-7255  
(805) 558-1154 - cell  
folkes9@msn.com

Chumash  
Tataviam  
Fernandeno

Randy Guzman - Folkes  
655 Los Angeles Avenue, Unit E  
Moorpark , CA 93021  
  
ndnRandy@gmail.com  
(805) 905-1675 - cell

Chumash  
Fernandeno  
Tataviam  
Shoshone Paiute  
Yaqui

Julie Lynn Tumamait  
365 North Poli Ave  
Ojai , CA 93023  
  
jtumamait@sbcglobal.net  
(805) 646-6214

Chumash

Carol A. Pulido  
165 Mountainview Street  
Oak View , CA 93022  
  
805-649-2743 (Home)

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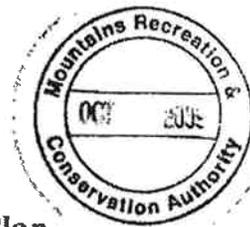
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This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.96 of the Public Resources Code, and federal NEPA (42 USC 4321-43351), NHPA Sections 106, 4(f) (16 USC 470(f) and NAGPRA (25 USC 3001-3013)

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009091018; CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR) for the Malibu Parka Public Access Enhancement Plan - Public Works Plan; located in the Malibu Area; Los Angeles County, California.



## Opposition to a portion of the Malibu Parks Public Access Enhancement Plan – Public Works Plan

September 30, 2009

I, Dixie Moore have been a long time resident of Malibu. I care deeply about our community. I always participate in the elections of our devoted politicians, and volunteer when I am asked to help. It is of the up most importance that the law is followed to the letter.

For 49 years, since 1960 I have live at 5902 and/or 5910 Latigo Canyon. I built my home at 5910 Latigo Canyon in 1966. I live atop of a knoll, which encompasses about 140 acre. In the last approximate 40 years there have only been two homes on this property. Therefore only two families were witnesses to the goings on of this private property.

In the nineteen-forties the road, which is now named in the "Enhancement Access Plan" as Roosevelt Highway was vacated by the State of California. My driveway, which is sometimes referred to as Wilmot lane, for the last 49 has been plainly posted "No trespassing and private property". I can report the public has followed the law and has stayed clear of this private property.

I am the ONLY longtime witness who can testify with any accuracy, that this property has been NOT been used in the past, for public trail purposes. Which would have been a crime and against the law.

Since I am now the only home on the 140 acre knoll, I will be in great danger if you are allowed to invite the public to my door.

For the reason described above this portion of the Enhances Trial must be stricken from the "Enhancement Access Plan" altogether.

Dixie Moore  
5910 Latigo Canyon.  
Malibu CA 90265

**Judi Tamasi**

**From:** Ghazarian, Armond [AGHAZAR@dpw.lacounty.gov]  
**Sent:** Wednesday, September 30, 2009 9:20 AM  
**To:** judi.tamasi@mrca.ca.gov  
**Cc:** Adkins, John  
**Subject:** FW: Kanan Dume Road- Mountains Recreation and Conservation Authority (MRCA) Proposed Parkings

Good morning Judi,

Our Traffic and Lighting Division has reviewed MRCA's proposed parking areas and preliminary design and provided below comments. Let me know if I can be of further assistance regarding this matter.

Thanks

Armond Ghazarian  
Assistant District Engineer  
Road Maintenance District 3  
(310) 348-6448 ext. 227  
(310) 649-0402 (fax)

**From:** Sheik, Guita  
**Sent:** Tuesday, September 29, 2009 2:10 PM  
**To:** Ghazarian, Armond  
**Cc:** Adkins, John; Pletyak, Jeff  
**Subject:** FW: Kanan Dume Road- Mountains Recreation and Conservation Authority (MRCA) Proposed Parkings

Here is our comments.

**From:** Pletyak, Jeff  
**Sent:** Monday, September 28, 2009 4:00 PM  
**To:** Sheik, Guita  
**Subject:** RE: Kanan Dume Road- Mountains Recreation and Conservation Authority (MRCA) Proposed Parkings

We have completed our review of the three proposed parking areas along Kanan Dume Rd. Based on the existing field conditions, we recommend the following signing and striping modifications to accommodate full ingress and egress access to the parking areas:

1. Relocate the southbound lane reduction transition from its current location south of the southern-most parking area to a point north of the northern-most parking area (lane reduction transition shall end prior to the northern-most parking area).
2. Provide one travel lane and one paved shoulder in each direction and a two-way left-turn lane from the end point of the southbound lane reduction transition to the southern-most parking area (similar to striping design south of Cavalleri Rd).
3. Provide northbound 50-foot right-turn lane with 90-foot taper approaching the three parking areas.

We also recommend the following design features for the parking areas:

1. Do not provide any physical barriers separating the parking areas from the travel lanes of Kanan Dume Rd.
2. Provide adequate setback distance from the parking stalls to the edge of pavement such that vehicles backing out of a stall do not impede the flow of traffic within the parking area.

9/30/2009



COUNTY OF LOS ANGELES  
DEPARTMENT OF PARKS AND RECREATION  
"Creating Community Through People, Parks and Programs"

Russ Guiney, Director

October 5, 2009

Sent via email: [judi.tamasi@mrca.ca.gov](mailto:judi.tamasi@mrca.ca.gov)

Judi Tamasi  
Santa Monica Mountains Conservancy  
Mountains Recreation & Conservation Authority  
570 West Avenue 26. Ste. 100  
Los Angeles, CA 90065

Dear Ms. Judi Tamasi:

**NOTICE OF EIR PREPARATION/  
NOTICE OF ENVIRONMENTAL SCOPING HEARING  
MALIBU PARKS PUBLIC ACCESS ENHANCEMENT PLAN  
PUBLIC WORKS PLAN**

The Department of Parks and Recreation has reviewed the above project for potential impact on the facilities under the jurisdiction of the Department. We have determined that the proposed improvements on any County of Los Angeles (County) lands shall be coordinated and consulted with the County pursuant to implementation.

According to the Initial Study, the *Kanan Dume Ramirez Canyon Connector Trail* would be developed on County parcels (APN: 4465-003-900 and 4465-003-901) and it is proposed that those parcels are to be acquired by the Mountains Recreation & Conservation Authority (MRCA) from the County. In doing so, as stated in *Attachment A: DRAFT Policies and Implementation Measures*, all plans for location, design and development of trail improvements located on, or potentially affecting, adjacent Federal parklands and/or County lands shall be submitted to the Outdoor Recreation Planner of the National Park Service and/ or the Los Angeles County Department of Parks and Recreation to ensure continued interagency coordination and successful planning efforts for providing and accessible, safe and enjoyable trail system throughout the Malibu Parks Public Access Enhancement Plan Area (pg. 2).

Please continue to coordinate with this Department throughout the project.

Thank you for including this Department in the environmental review process. If we may be of further assistance, please contact Andrew Lopez in Research & Trail Planning Section at (213) 639-6058 or [anlopez@parks.lacounty.gov](mailto:anlopez@parks.lacounty.gov).

Sincerely,

A handwritten signature in cursive script that reads "Julie Yom". The signature is written in black ink and is positioned below the word "Sincerely,".

Julie Yom  
Park Planner

JY: t/s: response to Malibu Parks Public Access Enhancement Plan

c: Parks and Recreation (N. E. Garcia, L. Hensley, J. Rupert, F. Moreno, A. Lopez)

October 6, 2009

**BY FEDERAL EXPRESS AND ELECTRONIC MAIL**

Santa Monica Mountains Conservancy  
Mountains Recreation and Conservation Authority  
Attn: Judi Tamasi  
570 West Avenue 26, Suite 100  
Los Angeles, CA 90065

**Steven A. Amerikaner**

805.882.1407 tel  
805.965.4333 fax  
SAmerikaner@bhfs.com

RE: Comments on Malibu Parks Public Access Enhancement Plan – Public Works Plan EIR  
Scope of Analysis

Dear Ms. Tamasi:

The Ramirez Canyon Preservation Fund ("Fund") respectfully submits the following comments in response to the Initial Study and Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Malibu Parks Public Access Enhancement Plan – Public Works Plan (PWP).

**A. Threshold Legal Objections**

1. The Initial Study states that it is for a project described as "the Malibu Parks Public Access Enhancement Plan - Public Works Plan project (the Plan)," citing "Malibu Local Coastal Program Section 3.4.2, Malibu Parks Public Access Enhancement Plan Overlay." The Plan has apparently been formulated under the purview of MAL-MAJ-1-08, an amendment to the Malibu Local Coastal Program which the Coastal Commission processed under the override procedures set forth in the Coastal Act (Pub. Res. Code sec. 30515, 14 Cal. Code Regs., sec. 13666, *et seq.*). The Commission's jurisdiction over MAL-MAJ-1-08 has been challenged by both the City of Malibu and by the Fund, and those challenges are now pending in consolidated Los Angeles Superior Court Case No. BS 121650, Department G, Southeast District, Norwalk, Hon. John A. Torribio ("the litigation"). Until the litigation is resolved, no further proceedings under MAL-MAJ-1-08 are proper.

2. In any event, the Coastal Act mandates that a Public Works Plan be consistent with the applicable local coastal program (Pub. Res. Code, sec. 30605). The Plan as proposed, and the project as described in the Initial Study, are not consistent with either the Malibu LCP, as certified by the Coastal Commission in 2002, or with "Section 3.4.2" (the "Overlay"), as purportedly certified by the Coastal Commission in June of 2009 at the request of the Conservancy. There are also numerous discrepancies between the Overlay and the project location, project description and Plan description in the Initial Study. These matters must be remedied so that the project location, project description and Plan description are consistent between (a) the Initial Study and the proposed PWP, and (b) the PWP and the LCP.

In addition to the foregoing objections, based on the information in the Notice of Intent to prepare an EIR, the Initial Study, the Draft Public Works Plan, and the notice for the public scoping meeting, we respectfully submit the following comments:

**B. Lead Agency**

The NOP states: "The Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority, as Lead Agencies, are preparing an Environmental Impact Report (EIR) to address potential environmental impacts associated with the proposed Plan." The Initial Study also states that SMMC and MRCA are the "Lead Agencies." However, the draft Public Works Plan includes the ambiguous and potentially conflicting statement that "the Commission is the lead agency responsible for reviewing LCPs and public works plans for CEQA compliance" (Draft PWP, Chap. 2, Sec. 2.6, pp. 2-23 through 2-24).

CEQA requires a clear and unambiguous identification of the lead agency, and there can be only one lead agency (CEQA Guidelines sec. 15050). Public Resources Code section 21067 provides "[l]ead agency' means the public agency which has the principal responsibility for *carrying out or approving* a project which may have a significant effect upon the environment" (Emphasis added). CEQA Guidelines, Section 15051 provides that "[w]here two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria: (a) If the project will be carried out by a public agency, that agency shall be the lead agency . . ."

**C. Responsible and Reviewing Agencies**

The Initial Study, page 10, lists the approvals required by other agencies. The list should include the State Fire Marshal, the Los Angeles County Fire Department, and the Regional Water Quality Control Board, all of which have discretionary approval authority over the proposed development (CEQA Guidelines sec. 15381).

Because these agencies were not identified as responsible agencies in the NOP, these agencies were not notified by the Office of Planning Research of the scoping period for this document. If the Conservancy/MRCA did not send a separate notice to these agencies, they should be provided an opportunity to submit scoping comments prior to preparation of the EIR.

**D. Project Location and Description**

The "Project Location" (Initial Study, page 2) includes the Malibu Bluffs Open Space as a development site. At the June 10, 2009 Coastal Commission Hearing on the Overlay, the Commission voted to require that the Malibu Bluffs property be considered as an alternative for the development proposed by the Conservancy, not as an additional development site.

The Initial Study refers the reader to Figures 1, 2, 6 and 8 for the "Project Location." However, the trails depicted in those Figures are not consistent with either the Malibu LCP as certified by the Coastal Commission in 2002, or with the Proposed Trail Resources Map which the Conservancy included in its LCPA Override, which the Commission purported to certify in 2009.

The "Description of Project" on page 3 of the Initial Study refers the reader to "Figures 6-9, Exhibit A, Proposed Trail Map & Conceptual Project Plans." Figures 6, 7 (series) and 8 are not consistent with either the Malibu LCP as certified by the Coastal Commission in 2002, or with the Proposed Trail Resources Map which the Conservancy included in its LCPA Override, which the Commission purported to certify in 2009. No "Figure 9" is posted. The Conceptual Project Plans include development which is not consistent with either the Malibu LCP as certified by the Coastal Commission in 2002, or with the Proposed Trail Resources Map which the Conservancy included in its LCPA Override, which the Commission purported to certify in 2009.

The Plan Components (Initial Study, p. 5, *et seq.*) and the Policies and Implementation Measures (Attachment A to the Initial Study) are not consistent with either the Malibu LCP as certified by the Coastal Commission in 2002, or with the Proposed Trail Resources Map which the Conservancy included in its LCPA Override, which the Commission purported to certify in 2009.

The "Project Location" includes as "park access roads" Ramirez Canyon Road and Via Acero, and the Plan proposes improvements to and the removal of alleged encroachments from those roads. The record of proceedings before the Coastal Commission established that both roads are privately owned. In addition, that record reflects that (a) neither the Conservancy nor MRCA has the legal right to use Ramirez Canyon Road for the uses proposed by the Plan and (b) neither the Conservancy nor MRCA has any lawful right to use Via Acero. Neither the Conservancy nor MRCA has taken the appropriate action(s) to acquire those access rights, to lawfully improve either road, or to remove any alleged encroachments. Therefore, the EIR's analysis of the environmental impacts of the proposed project should consider two scenarios: first, assuming the Conservancy and MRCA can acquire the necessary rights and second, assuming the Conservancy and MRCA cannot acquire those rights.

The EIR should consider the areas of Inconsistency noted above, and provide the analysis required to resolve them.

#### **E. Environmental Setting**

The Environmentally Sensitive Habitat Areas (ESHA) designated in the County of Los Angeles are not depicted accurately on the City of Malibu/County of Los Angeles ESHA Map (Figure 5). Additional areas designated ESHA according to the County's GIS data, as provided on the County's website: <http://planning.lacounty.gov/gis>, are not depicted on Figure 5. The analysis in the EIR should be based on a current and complete map of ESHA in the city and county.

#### **F. Impact Analysis**

The terms "where feasible," "where appropriate," and "if possible" are used throughout the Plan. In each case, what measures will be implemented to evaluate and determine what is feasible, appropriate, or possible for proposed developments? How will this process be documented? How will the results of the process be documented?

The Initial Study outlines a variety of potential impacts to be analyzed in the EIR. The following are additional potential impacts and issue areas which should be fully examined in the EIR.

##### **1. Trails**

- Specify and assess impacts of different trail uses (e.g., hiking, equestrian, mountain bike), including estimated level of use by each at different times of day and year.
- Will motorized vehicles, such as dirt bikes, be allowed on any of the trails? If so, noise, dust, trail degradation, conflicts with other users, and increased trail maintenance should be addressed.
- The proposal is for five (5) foot wide trails. Quantitatively assess construction impacts by trail segment in terms of vegetation, by plant community, to be permanently removed or disturbed. For temporary impacts, evaluate the impacts associated with differences in trail construction (e.g., curve radius on switchbacks, erosion control features, and soil stabilization) to

accommodate each type of use. For temporary and permanent impacts, how will erosion control features and maintenance affect areas adjacent to trails?

- How is "significant native plant species" in Trails Implementation Measure 8 defined? Are not all native plants important and significant in the ecosystem?
- How will cut surfaces be revegetated where topsoil is removed? Where will cut material be disposed?
- Assess impacts of trail maintenance activities and their frequency on vegetation and nesting birds protected by the Migratory Bird Treaty Act. Will herbicides be used to control plants such as poison oak? Will nesting bird surveys be conducted prior to maintenance work from March through September? How will long-term trail inspection and maintenance be funded? How frequently will trails be inspected for erosion -- every spring after the rainy season ends?
- Discuss timing/phasing of trail construction considering that easements or other rights have not been obtained for segments of the proposed trails.
- Assess the effects of dogs and noise from increased human use of trails on wildlife in the adjacent habitat and particularly in Environmentally Sensitive Habitat Areas (ESHAs).
- Thoroughly assess the feasibility of constructing a trail from Kanan Dume Road to the Conservancy's Ramirez Canyon property both at the proposed location on Via Acero and at an alternative location on the Lauber property (which is currently listed for sale). There is an existing dirt road on the Lauber property which has been overgrown by native shrubs for most of its length and could be cleared with little or no grading, as compared to construction of a trail at the proposed Via Acero location on steep terrain that will require grading and slope stabilization.
- Assess the visual effects of trail construction and the continuing visual impact of the trails, particularly on steep hillsides such as from Kanan Dume Road to the Conservancy's Ramirez Canyon property and then to Murphy Way (trails 2A1, 2A2, 2A3). Why was the existing trail (as seen on air photos) from the Conservancy's Ramirez Canyon property to Murphy Way not used for this connection? What are the cumulative effects of the proposed new and existing trails?
- How will regulations, such as "no smoking," be enforced on the proposed trails?
- How will cleanup of pet and human waste be handled and enforced on the proposed trails?
- Will use of trails be restricted/prohibited on red flag days? If so, how will this be enforced?
- Describe measures to prevent human, horse, and dog access to creeks from trails that could cause degradation of bank structure and riparian vegetation.
- Describe measures to ensure that the qualified biologist is an integral part of trail planning and implementation.
- The western portion of proposed trail 1A is located in an asphalt V-ditch that apparently carries runoff from Kanan Dume Road to a culvert inlet. How will drainage be handled to prevent erosion of the trail?

- Will trash receptacles with secure lids be provided at trailheads or at other locations along trails? Will these be regularly emptied? How will trash removal be provided for along trails with no vehicular access?
- Assess the impacts on vegetation and wildlife of constructing parking at each proposed new parking location. Quantify the amount and type of vegetation to be removed for fill placement, erosion control, and revegetation of the fill slope.

## 2. Trail Camps

- The EIR should provide a thorough analysis of the demand, need and actual anticipated use of the camp sites, so that the environmental impacts can be properly analyzed. Is there a demand for camping at the sites proposed? If the demand is not equal to the number of sites proposed or if demand varies throughout the year, how will the camp sites be maintained to control weeds that will establish on the disturbed soils while the camp sites are vacant for long periods of time?
- Quantitatively assess the impacts of vegetation management around these camps. The only designated area of vegetation management is for the camp sites at the Conservancy's Ramirez Canyon property. Would vegetation management occur around the camp sites in Escondido Canyon Park, Corral Canyon Park, Latigo Canyon, and at Malibu Bluffs? An annual fuel modification plan for site vegetation management is required for each park in Hazards Implementation Measure 4. How does this apply to trail camps?
- Quantify the amount of vegetation by plant community that would be permanently removed and temporarily disturbed for construction of the camp sites by park location. This includes the area of cut and fill as well as any staging areas used. How would cut and fill slopes be revegetated once topsoil is removed, and what species would be used?
- Page 25 of the Initial Study states that minimal grading would occur for camp sites. However, Sheet 10 of 23 shows grading/filling equaling approximately 50 percent of the campsite area for each of the four western sites of the third group along the Escondido Canyon Trail. These sites are closest to the creek. How much grading/filling would be necessary at each site and what measures will be taken to rapidly stabilize soils, maintain that stabilization, and capture any sediment runoff before it enters the creek?
- What species will be planted as "shade" trees? Will these be locally native species? How will they be maintained until they become established?
- The Initial Study states that no permanent outdoor lighting is proposed (p. 40). Does this mean that parking facilities and restrooms, such as at Corral Canyon Park and Latigo Trailhead, would have NO lights?
- Assess the impacts of dogs, lights, and noise from increased human use of camps on wildlife in the adjacent habitat and particularly in ESHA. This includes the attraction of non-native species and the displacement of native species.
- Address how regulations such as no fires, no smoking, reservations, no littering, and payment of camping fees will be implemented and enforced at camp sites. What is the environmental impact of those enforcement efforts? Will rangers/camp hosts patrol trail camps on foot, bicycle, or motorized vehicle (Hazards Implementation Measure 4)? What measures will be used to ensure that patrols are made? If motorized vehicles are to be used on trails, describe

the type of vehicle and analyze potential environmental impacts, including biological, air quality and noise impacts.

- According to the plans, restrooms are to be provided for the camp sites. How often will restrooms be cleaned and maintained? What is the environmental impact of that cleaning and maintenance? What, if any, chemicals will be used? How will water used for cleaning be supplied and disposed? How will trail camp restrooms be accessed by staff for maintenance?
- The eastern eleven camps in Corral Canyon Park only have one restroom shown, and it is located near the two accessible camp sites. The farthest camp sites are approximately 640 feet away by trail. One site that is more than 500 feet away by trail is also more than 300 feet away across undeveloped land. The restroom for the East Bluff at Malibu Bluffs serves 15 camp sites with one approximately 800 feet from the closest restroom by trail. Other sites are 450 to 475 feet away by trail but only 240 by direct line (shortcut across bluff). The EIR should address the environmental impacts of shortcut trails developed by people using the camps on vegetation and erosion and identify measures to prevent shortcut trails from being developed. If campers do not use the restrooms, how will cleanup of human waste be handled?
- How will cleanup of pet waste be handled and enforced?
- What are the expected fees for use of the different camp sites and the total estimated annual revenue? Will user fees fully fund maintenance of these sites and associated facilities? Will user fees also fully fund rangers/camp hosts and the fire training required by Plan? If not, identify the funding source(s) that will be used for monitoring, maintenance and vegetation management of the trail camps.
- Describe measures to ensure that the qualified biologist is an integral part of trail camp planning and implementation.
- What distance is "in proximity" to maintenance and/or administration access in Overnight Camp Implementation Measure 7? Does this apply to trail camps?
- What is the "reviewing body" for Overnight Camp Implementation Measure 5 (and in Visual Resources Implementation Measure 1)? What are the qualifications of that body to evaluate these issues?
- Assess impacts of water tank and fire water line construction on vegetation, erosion (long term), and wildlife.
- How will emergency vehicle access (Hazards Policy 3) to trail camps be provided and what is the impact of constructing and maintaining such access?
- Overnight Camp Implementation Measure 2 incorrectly states that all of the proposed locations for campsites are zoned Public Open Space. The Latigo trailhead property is designated and zoned Rural Residential, which does not allow campsites. Evaluate the policy consistency and neighborhood compatibility issues associated with this component of the Plan in the EIR.

### 3. Hazards

- As stated above, the State Fire Marshal and Los Angeles County Fire Department are both responsible for reviewing and approving various components of the proposed project, including but not limited to the Fire Protection and Emergency Evacuation Plan described in Hazards Implementation Measure 4.

- Almost all of the Plan area is designated Very High Fire Hazard Severity Zone and fires are reasonably foreseeable – caused by smoking, unlawful campfires, and equipment. The EIR should thoroughly assess the risk of fire from (a) construction, maintenance and use of trails, (b) construction, maintenance and use of trail camps, and (c) increased activities/visitation at each of the properties, particularly special events and group tours in Ramirez Canyon. The analysis should be quantitative as well as qualitative, and should include an estimate of the increased frequency of fires per unit (location and time). The analysis should include the environmental impact of fires themselves, as well as the environmental impact of fire suppression.
- What are the effects of more frequent fires on plant communities? What is the increased risk to human structures and human safety taking into account the existing uses surrounding the areas of proposed development?
- What impact will fuel modification and brush clearance requirements have on ESHA?
- What native plants will be used for screening that will grow fairly rapidly and not increase fire risk?
- Analyze the effectiveness of fuel management and brush clearance for fire prevention. Assess whether other protection measures will be necessary. Analyze the impact of all such measures.
- How many portable fire suppression devices will be provided in each drive-in camp area? Will these also be provided for the trail camps? How often will these devices be checked/maintained? Will campers be instructed in their location and use, or only ranger/camp hosts? What is the impact of the operation and maintenance of these devices? What is the impact of the improper activation of these devices?
- Do the copa del oro vines covering the Barn building at the Ramirez Canyon property comply with Los Angeles County Fire Department fuel clearance regulations?
- Where will trimmings from trail maintenance, camp maintenance, and fuel management areas be disposed?
- What is the fire response time for each of the parks, including for the proposed trail camp areas?
- In addition to suspending camping during red flag days, camping should also be suspended in the late summer and fall when Santa Ana winds are prevalent (August – November). What provisions will be implemented to make sure that all campers leave the property on red flag days?
- What policies or procedures will be put in place to ensure that firefighters are on duty or at least on call when campers are present in any of the parks?
- Do adequate fire protection facilities and equipment currently exist to serve the proposed uses at each of the parks? If not, analyze the potential environmental impacts of constructing new fire protection facilities. Identify a funding source for such facilities and equipment.
- Traffic Hazards: The EIR should evaluate all potential traffic hazards resulting from proposed new trails along or crossing roadways. The analysis should include, but not be limited to, the potential impacts of trail construction and operation and maintenance within road right-of-ways.

The EIR should examine whether there is adequate room within the existing right-of-ways of each of the roadways proposed for new trails to install wood bollards as required by Trails Implementation Measure 9.

#### 4. Water Quality/Wastewater

- The Plan requires that new restroom facilities be located 200 feet from the top of stream banks where feasible and not less than 100 feet from top of bank or the outer edge of riparian vegetation (Water Quality Implementation Measure 5). However, at the Conservancy's Ramirez Canyon property, at the Latigo trailhead parking area, and at the Escondido Canyon Park picnic area, the Plan would allow restroom facilities as close as 25 feet from the top of the bank. A detailed analysis of the potential impact of these restroom facilities should be included, as well as an analysis of the alternatives and mitigation measures that could reduce any identified impacts.
- Will the wastewater treatment facility in Ramirez Canyon be designed to treat waste from more than 200 people in one day? The Plan states that capacity of the facility is 200 people. However, the Plan proposes 200 guests at some of the events. Will the facility accommodate 200 event guests as well as event support personnel, office personnel and guests at other programs that might occur within approximately 14 hours? Both fire and flood are foreseeable. If there is a fire or flood, and it is not possible to evacuate the Ramirez property, what would be the impact(s) from a failure of the wastewater treatment facility?
- Will the wastewater treatment facility in Ramirez Canyon be located outside the 100-year floodplain? If not, what measures will be taken to protect it from flood damage or release of untreated wastes into flood waters?
- Will the emergency power generator and fuel be stored outside the 100-year floodplain? If not, how will these elements be protected from floods?
- A thorough analysis of sediment runoff from disturbed soils during and after trail and camp construction should be included. Specific Best Management Practices (BMPs) are required to minimize such runoff. How frequently will BMPs and trail conditions be monitored? What is the funding mechanism and guarantee for this monitoring and for the implementation of any necessary repairs?
- How will human, pet (primarily dog), and horse waste be removed from trails and camps to prevent pollution of streams? How will runoff or deposit of human/pet/horse wastes into streams affect bacterial levels in local streams and the ocean?
- Assess how higher park visitation is likely to contribute to higher trash and debris loadings to the creeks, as well as to the coastal waters that receive the creek drainage.
- How do the proposed activities impact the issues presently under study by the County of Los Angeles in the North Santa Monica Bay Bacteriological Study?
- How will runoff of fire retardants used to fight fires originating from trail, trail camp, or accessible camp use affect water quality in streams and ultimately in the ocean and along the beaches where the streams empty?
- Water Quality Implementation Measure 8 requires water quality sampling for fecal coliform bacteria once per quarter for one year in Ramirez Creek, beginning in June 2009. Will one year of sampling be representative of usual conditions? Why are only fecal coliform bacteria

being measured (includes six species) and not other bacteria such as *Enterococcus*? Water quality sampling should be required during construction activities in Ramirez Canyon and in creeks adjacent to construction activities at the other properties. Such sampling should occur prior to and immediately after storm events of more than 0.5 inch of precipitation and include pH, turbidity, total suspended solids, and petroleum hydrocarbons.

#### 5. Air Quality

- Global Comment: Identify the number and type of vehicles proposed to transport large numbers of persons to the Plan area from other areas in locations in Los Angeles County and evaluate the air quality and other impacts.
- Identify the type of vans and shuttles proposed to transport persons from Malibu parking locations to the Conservancy's Ramirez Canyon property and evaluate the air quality and other impacts of that transport as well as from passenger cars.
- Will vehicles transporting passengers on Ramirez Canyon Road be permitted to idle while waiting either at the top or bottom of Ramirez Canyon Road? If so, evaluate the air quality impacts of the idling vehicles. If not, how will this requirement be monitored and enforced?
- Conduct the air quality analyses according to the applicable methods presented in the South Coast Air Quality Management District (SCAQMD) *Air Quality Analysis Guidance Handbook* website at <http://www.aqmd.gov/ceqa/hdbk.html>.
- For construction activities, calculate emissions due to proposed off-road construction equipment, on-road material delivery trucks, volatile gases from asphalt paving, and fugitive dust.
- For operational activities, calculate emissions due to proposed maintenance equipment, on-road material delivery trucks, visitor and staff on-road commuting vehicles, off-road vehicles used by staff, and stationary sources.
- Calculate emissions for a peak day of construction and operational activity for use in comparison to the SCAQMD construction and operational daily emission significance thresholds.
- Determine whether sources of project odorous emissions, such as diesel combustive emissions from construction equipment, volatile gases from asphalt paving, or operation of chemical toilets would affect a substantial number of people.
- Will a traffic signal and crosswalk be installed on Kanan Dume at the point where the Plan proposes that trail users cross or at any other locations where trails cross roadways (Trails Implementation Measure 9)? If so, the air quality and other impacts of these traffic signals should be evaluated.

#### 6. Global Warming

- The Global Warming Solutions Act of 2006 (Assembly Bill 32; California Health & Safety Code Sections 38500-38599) commits California to reduced greenhouse gas emissions back to 1990 levels. The statute contains legislative findings regarding the risks and potential impacts of global warming on the environment (Health and Saf. Code, sec. 38501). Senate Bill 97 requires that guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions be adopted on or before January 1, 2010 (Pub. Res. Code, sec.

21083.05). The Resources Agency is conducting formal rulemaking for the proposed changes to the CEQA Guidelines regarding quantification of greenhouse gas emissions and analysis of significant effects (Proposed Guideline Section 15064.4). The proposed amendments include the following threshold analysis to be included in Appendix G of the CEQA Guidelines:

*Would the proposed project: a) generate GHG emissions, either directly or indirectly, that may have a cumulatively significant impact on the environment?; and b) conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of GHGs?*

- The Plan proposes activities which may begin prior to January 1, 2010, but which will certainly continue after January 1, 2010. Therefore, the EIR should quantify the proposed project's direct and indirect GHG emissions from both construction and operational activities and analyze the potential impacts on climate change, from traffic, hazards, and any other foreseeable events. Although the project may not have an individually significant impact on GHG emissions, such impacts could be significant on a cumulative level. The EIR should therefore evaluate potential GHG emissions and feasible measures by which these emissions can be reduced, including the adoption of alternatives and mitigation measures, the incorporation of design elements and physical improvements to the proposed development.

#### **7. Native Tree Protection**

- Are cottonwoods and willows not to be protected under ESHA Implementation Measure 16? Do mitigation requirements in Measure 8 apply to these trees? Willows are present in Ramirez Canyon and some of the trunks may be large enough to qualify for protection.

#### **8. ESHA**

- Address the issue of weed invasion along trails and at camp sites from soil disturbance and spread of seeds by hikers and their equipment and dogs. Also discuss methods to identify, monitor, and control such invasions.
- Where will impacts to ESHA be mitigated? Specific locations should be identified in the EIR. ESHA Implementation Measure 8 states that permanent impacts shall be mitigated at a ratio of 3:1 for coastal sage scrub/chaparral, riparian vegetation, and native grassland, and at a 10:1 ratio for native trees (oak, walnut, sycamore, alder, or toyon). Why are willows not included as native trees?

#### **9. Archaeology**

- Who will consult with the State Office of Historic Preservation for proposed developments to determine if adverse effects are possible (Archaeological Resources Policy 2)? What is the definition of "reasonable" mitigation and who makes that determination?
- How will surveys required in Archaeological Resources Implementation Measures 1 and 2 be conducted in areas of dense vegetative cover? Will extended Phase 1 or Phase 2 testing include evaluation of testing impacts to vegetation and wildlife?

#### **10. Specialized Programs, Existing Unpermitted and Proposed Development at the Conservancy's Ramirez Canyon Property**

a. **Traffic and Traffic Safety.** Most of the following issues apply primarily to the Conservancy's Ramirez Canyon property. However, some may apply to the other properties as well.

- Assess impacts of traffic by season, week day versus weekend, and time of day using several scenarios for likely and worst case traffic. Traffic related to office use of the Conservancy's Ramirez Canyon property would be concentrated in the morning and late afternoon when Canyon residents also travel to and from work while traffic for major events would be in the evening, and traffic for various programs and tours would be at intervals through the day. For example, if each of the participants (40 maximum) in a tour, a small gathering, or an outreach program drove separately, the number of trips per day would be 80, assuming that none were dropped off and picked up later (which would increase the trips). This would leave no trips for the office workers. If two of these events occurred in one day, shuttles or carpooling would be necessary to keep the number of trips below 80 per day. If the 80 trips were evenly spaced over a 10-hour period, this would result in one trip every 7.5 minutes. However, it is very unlikely that the trips would so spaced. The analysis should address the likely scenarios for trips over the day, how those trips combine with the existing local resident traffic trips in a day, and the impacts associated with each of the scenarios.
- Specify when and how shuttles are to be used to alleviate traffic issues. Will the shuttles run on set schedules for events? Will they be run only when full to minimize the number of trips?
- Clearly identify the type and size of "vans" and "shuttles" proposed to transport persons into the Ramirez Canyon property, and the noise and emissions from these vehicles. Address the impact of those vans and shuttles on the trees and plant life adjacent to Ramirez Canyon Road and on Ramirez Creek. Address the potential competition for space on the road between these vehicles and the local residential traffic.
- Clearly describe how the 80 trip per day limit on Ramirez Canyon Road will be monitored and enforced. Address the potential traffic and traffic safety impacts of increase vehicle trips on Ramirez Canyon Road and Ramirez Creek.
- What are the impacts of project-related traffic on road surface condition and road maintenance requirements? Will project-related traffic increase the necessary frequency or scope of road maintenance and repairs? Analyze the potential environmental impacts of road maintenance required as a result of the project, particularly the potential impacts at Arizona crossing locations.
- Evaluate the potential impact of increased traffic on Ramirez Canyon Road on the ability of fire and medical emergency response personnel to access and respond to emergencies at both the Conservancy's property as well as local residential properties.
- Section 2.1.1, of the Plan states that the Peach House and Barn facility shall be used for small group gatherings and tours for up to 40 participants each. However, Land Use Implementation Measure 8 lists 60 participants at these facilities (as does Section 3.5.1, page 3-59). Even with some carpooling, 60 participants for a single event could exceed the 80 trips per day limit. Which number, 40 or 60, is correct? If it is 60, how will traffic be limited so that the daily number of trips remains at or below 80?
- The impacts of widening and removing alleged encroachments from Delaplane and Ramirez Canyon Road should be thoroughly assessed, including the terms under which SMMC and/or MRCA might acquire the right to conduct that development.
- What would be the impact of widening Ramirez Canyon Road on the Ramirez Creek riparian ESHA, the many native oak trees along the creek and road, and the visual aesthetics of the private properties on which the road is located, including landscaping and natural rock walls?

- If SMMC and/or MRCA acquire the necessary access rights, will the gate on Delaplaine be replaced? Will the Arizona dip crossings be upgraded? Will the speed bumps be removed or more installed? How much slope stabilization will be required for steep slopes on either side of the road? How much grading will be required? What are the impacts of these improvements? Will the bridge on the upper portion of the Road near the Ramirez Canyon Property entrance be widened? If so, what will be the impacts on Ramirez Creek? If not, what will be the impact on Ramirez Creek at that location in the event of a hazard?
- The Plan states that secondary emergency access would be developed along Via Acero. Upgrading and use of this route should be evaluated in terms of property/easement acquisition, removal or impact to mature trees (especially native trees such as coast live oak) and other native vegetation, fences, landscaping, percent grade relative to requirements for emergency vehicles, amount of grading or other disturbances associated with road development, and visual effects of the road construction/improvements. According to the Plan, Sheet 7 of 23, the slope on Via Acero is 19-20% for almost half the length of the road with much of the remainder at 14.4%. Only short segments are less than 10%. Hazards Implementation Measure 7 states that emergency ingress/egress by Via Acero will be "explored." The impacts of potential access down this Road should be thoroughly evaluated.
- The alternative of providing a new primary access to the Conservancy's Ramirez Canyon property from Kanan Dume Road should be addressed, with use of Ramirez Canyon Road as a secondary emergency access only. One feasible alternative is development of an access road over the Lauber property, which is currently listed for sale. Several options for road development exist on this property, including clearing and upgrading the existing, overgrown road described above. According to Figure 5 of the Plan, the property has no designated ESHA. The EIR should analyze the impacts of constructing a new roadway on this property.

**b. Noise.** Effects of noise on wildlife from use of trails and trail camps have been discussed above. The following comments are for noise from activities/events at the Conservancy's Ramirez Canyon property:

- The Plan requires no audible noise from amplified music at the property boundary near residents. Have tests been conducted to determine if this is a feasible requirement? Ramirez Canyon is a box canyon, through which noise travels easily. Even if the "property boundary" requirement could be met, what would be the impact of amplified music throughout the Canyon? How will the noise from amplified music events be monitored, recorded, and reported? Will it be reported in the event monitoring report?
- The EIR should analyze the noise impacts throughout the Canyon from operations and events at the property even without amplified music. The proposed 32 events per year (March through October) and no more than one per week could result in events all but two weekends over that 8-month period.
- Effects of noise on wildlife from use of the riparian trail and camp sites and from the proposed events should be assessed, particularly to the restored habitat.
- Effects of noise from increased vehicle traffic, including proposed transport "vans" and "shuttles," to and from the Ramirez Canyon property on local residents should be assessed.
- All feasible alternative locations for office use and special events should be thoroughly evaluated (see discussion below).

**c. Riparian Restoration at the Conservancy's Ramirez Canyon Property and Permits**

- How will native vegetation areas be maintained (e.g., weed control without herbicides, pruning, etc.)? Will native understory vegetation be planted and/or be allowed to grow, such as wild blackberries and poison oak, or will this area be a "manicured" riparian corridor?
- Will permits/certifications be procured from the U.S. Army Corps of Engineers (Section 404 of Clean Water Act), Regional Water Quality Control Board (Section 401 of the Clean Water Act), and California Department of Fish and Game (Streambed Alteration Agreement) for all trail development in drainages? Will permits from these agencies be procured for the work proposed in Ramirez Creek?
- What Best Management Practices (BMPs) will be implemented for construction at and near creeks to prevent runoff of sediments and pollutants to the stream?

**d. Existing Unpermitted Improvements in Ramirez Canyon**

- The residential structures at the Conservancy's Ramirez Canyon property have never been permitted in compliance with State building and fire code regulations for public assembly, office and/or commercial uses. The EIR should describe existing unpermitted improvements to structures, if any, and evaluate whether the structures meet building and fire code requirements for all proposed uses.

**e. Special Events in Ramirez Canyon**

- Evaluate the potential visual impacts of lighting from special events in Ramirez Canyon on neighboring properties and from public viewing areas such as Pacific Coast Highway and the Pacific Ocean/beach areas.
- How do special events in Ramirez Canyon meet the Mission Statement for the Conservancy as stated in Section 1.1 and the objectives described in Section 3.0 of the Plan? Such events do not preserve, protect, restore, or enhance treasured pieces of Southern California and have the potential to degrade the environment through noise, lighting, and air quality effects.

**G. Alternatives Analysis**

This Plan enters the CEQA process already tainted by the failure of the Conservancy and the Coastal Commission to consider alternative sites, alternative projects, and alternative access routes during the proceedings on the LCPA "Override." Therefore, under the circumstances, even though an Initial Study is not required to identify alternatives, the goals of CEQA would have been much better met had the Initial Study identified those alternatives. CEQA ensures the public's right to a thorough and objective analysis of all feasible alternatives, untainted by any commitment by SMMC, MRCA and the Commission to a definite course of action.

As required by CEQA Guidelines, Section 15126.6, the EIR should include an analysis of a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would also avoid or substantially lessen any of the significant effects of the project. At the very least, the following should be thoroughly analyzed as alternatives to components of the Plan:

All feasible alternative vehicular and trail access routes to the Conservancy's Ramirez Canyon property, including the Lauber property described above, should be analyzed.

All feasible alternatives for all development proposed by the Plan should be analyzed, including but not limited to:

King Gillette Ranch. King Gillette Ranch is a reasonable and feasible alternative location for camping, specialized programs, small and large events, and Conservancy/MRCA offices proposed for the Conservancy's Ramirez Canyon property. It is in close proximity to Malibu parks as well as to the Los Angeles urban area and is accessed by major public thoroughfares, which could reduce, *inter alia*, the air quality, traffic, and global warming impacts of the Plan. It is developed with facilities that could accommodate some or all of the proposed programs in the PWP, and has adequate access for fire and emergency response and evacuation, thereby meeting the objectives of the PWP.

Malibu Bluffs Park. Malibu Bluffs Park has been incorporated as a component of the proposed PWP. However, this is inconsistent with the Overlay purportedly certified by the Coastal Commission on June 10, 2009. At the June 10 hearing, the Fund requested, Mr. Edmiston agreed, and the Commission voted that Malibu Bluffs Park be analyzed as an alternative to be considered in the PWP. Therefore, Malibu Bluffs Park should be analyzed as an alternative in the EIR, not added to the project description for the PWP. The addition of development at that site presents cumulative environmental impacts which the Coastal Commission did not address in its findings on MAL-MAJ-1-08.

#### H. Funding

The Plan itself states that it "will include use of public funds for plan implementation" (Draft PWP, Chap. 2, sec. 2.5.1). However, there is no estimate of the cost and there is no identification of the source of those public funds. In light of California's current budget constraints, and the freeze of all monies from bond measures, it is reasonably foreseeable that there will not be sufficient funding to complete the development of the Plan and/or to provide ongoing maintenance and supervision for the Plan elements. Therefore, the EIR should analyze the potential environmental impacts of potential cuts in funding. This should include, without limitation: If trails and camps are graded and developed but not maintained, what would be the environmental impacts of the degradation of those trails and sites? If there are no funds for continued fuel modification and/or brush clearance, what would be the potential environmental impacts? If there are no funds for supervision of the camps, what would be the impact in terms of increased fire danger?

Thank you for considering these comments.

Sincerely,



Steven A. Amerikaner



Diane M. Matsinger

cc: Richard Mullen, President, Ramirez Canyon Preservation Fund  
Christi Hogin, Malibu City Attorney

**Michael & Katherine Strange  
5767 Latigo Canyon Road  
Malibu, CA 90265**

**Santa Monica Mountains Conservancy  
Mountains Recreation & Conservation Authority ("SMMC")  
570 West Avenue 26, Ste. 100  
Los Angeles, CA 90065**

**October 6, 2009**

**Re: Malibu Parks Public Access Enhancement Plan-Public Works  
Plan**

**To Whom It May Concern:**

**We are the owners of the property located at 5767 Latigo Canyon Road in Malibu (the "Home") and have been since 1996.**

**As of today's date we still have not received in the mail any notification of the EIR Preparation that was held on October 1, 2009 at Temescal Gateway Park, (the "Hearing").**

**I was made aware of this hearing several days before hand by a neighbor.**

**I did attend the Hearing and spoke to those present. I made it clear that I had not received notice of this meeting. Apparently I was not the only one who had no notification of this meeting based upon the comments of several others who were in attendance.**

**Because I was not provided with sufficient notice of the Hearing I object to any deadline of October 7<sup>th</sup>, 2009 for providing a complete response to what is being proposed.**

**I have many questions about what is being proposed, specifically at 5837 Latigo Canyon Road, (the "Trailhead").**

- 1. What is the purpose of the proposed 10,000 Gallon Water tank.**
- 2. What is a "Camp Host". What are their responsibilities, training, their responsibilities / mandate regarding the Trailhead and hours on duty.**
- 3. What is a "Hike In" site.**
- 4. Does the SMMC have an initial budget for the construction of what is proposed on the plans for the Trailhead.**
- 5. Does the SMMC have any studies to demonstrate the demand for camping at the Trailhead and other sites.**
- 6. Were alternative uses for the Trailhead considered and subsequently rejected.**
- 7. Does the SMMC have a geological report for the Trailhead site.**
- 8. Has there been any traffic studies completed with respect to the effect the proposals at the Trailhead will have on Latigo Canyon Road.**
- 9. Has an ESHA study been completed for what is being proposed for the Trailhead.**

**Additionally I would like to know if a computer "searchable" version of the document(s) is available for me to review.**

**The notice of the Hearing dated September 2, 2009 made the following claim.**

**"Impacts associated with Mineral Resources and Population / Housing were determined to be less than significant in the project Initial Study and will not be further evaluated within the EIR..." I am requesting a copy of this Initial Study that reached this conclusion.**

**I also request a copy of the minutes from the Hearing.**

**At the meeting I made it clear that if we had been aware of what is being proposed at the Trailhead we would not have necessarily incurred the costs I have to rebuild our home after it was destroyed by the Corral Canyon fire in 2007.**

**In addition to my safety concerns as they relate to our Home I see serious safety issues related to those that will utilize the proposed camping.**

**For the record I have many unanswered questions and concerns about what I have seen and heard at the Hearing. Because of the lack of any notification we have had insufficient time to review the materials and ask questions of what is being proposed and consequently reserve all of our rights.**

**Sincerely,**

**Michael Strange**



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Ventura Fish and Wildlife Office  
2493 Portola Road, Suite B  
Ventura, California 93003



IN REPLY REFER TO:  
81440-2009-FA-0143

October 6, 2009

Judi Tamasi  
Santa Monica Mountains Conservancy  
Mountains Recreation and Conservation Authority  
570 West Avenue 26, Suite 100  
Los Angeles, California 90065



**Subject:** Notice of Preparation of an Environmental Impact Report Regarding Malibu Parks Public Access Enhancement Plan-Public Works Plan, City of Malibu, Los Angeles County, California

Dear Ms. Tamasi:

This letter is in response to the Notice of Preparation of an Environmental Impact Report, dated September 2, 2009, and received in our office on September 4, 2009, requesting our comments regarding the scope and content of the proposed environmental impact report (EIR). The Santa Monica Mountains Conservancy and Mountains Recreation and Conservancy Authority, as lead agencies, are preparing an EIR that would enhance public access and recreation opportunities by developing an interconnected system of trails, parks, open space, and habitats; by improving alternative methods of transportation between parklands; and by completing recreational facility and program improvements for the park and to facilitate an increased level of accessibility for visitors with special needs. The project also includes potential widening of, improvements to, and removal of encroachments impacting public safety along certain access roads within the project area, where necessary for ingress/egress and/or to meet standards of the appropriate fire agency(ies). The proposed project is within the historical or current ranges of or adjacent to areas that are known to support habitat and populations of the federally endangered federally endangered *Arenaria paludicola* (marsh sandwort), *Astragalus brauntonii* (Braunton's milkvetch), *Nasturtium gambelii* [*Rorippa gambellii*] (Gambel's watercress), and *Pentachaeta lyonii* (Lyon's pentachaeta), and the federally threatened California gnatcatcher (*Poliophtila californica californica*), California red-legged frog (*Rana aurora draytonii*), *Dudleya cymosa* subsp. *marcescens* (marcescent dudleya), and *Dudleya cymosa* subsp. *ovatifolia* (Santa Monica Mountains live-forever) [inclusive of *Dudleya cymosa* subsp. *agourensis* (Agoura Hills dudleya)].

The U.S. Fish and Wildlife Service's (Service) responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act and its implementing regulations prohibit the taking of any endangered or threatened species. Section 3(18) of the Act defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service

regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species.

Exemptions to the prohibitions against take in the Act may be obtained through coordination with the Service in two ways. If a project is to be funded, authorized, or carried out by a Federal agency and may affect a listed species, the Federal agency must consult with the Service, pursuant to section 7(a)(2) of the Act. If the proposed project does not involve a Federal agency, but may result in the take of a listed animal species, the project proponent should apply to the Service for an incidental take permit, pursuant to section 10(a)(1)(B) of the Act. To qualify for the permit, you would need to submit an application to the Service together with a habitat conservation plan (HCP) that describes, among other things, how the impacts of the proposed taking of federally listed species would be minimized and mitigated and how the plan would be funded. A complete description of the requirements for an HCP can be found at 50 CFR 17.32.

The Service concurs with the Santa Monica Mountains Conservancy that the proposed project appears to have the potential for significant environmental impacts to biological resources. The primary responsibility of the Service is the conservation of public fish and wildlife resources and their habitats. In order for the Service to determine if the proposed project would impact these species or their habitat, we recommend that you conduct surveys within the project area for the purposes of this EIR scoping to help analyze the potential direct and indirect effects that this project might have on them. We recommend that you follow surveys according to Service protocol for those species that have the potential to occur within the project area. These protocols can be found on the internet at the following link:  
[http://www.fws.gov/ventura/speciesinfo/protocols\\_guidelines/](http://www.fws.gov/ventura/speciesinfo/protocols_guidelines/)

Additionally, the possibility exists that other listed species could potentially occur within the project area. If it is determined that additional species may occupy the project area, then additional surveys would be recommended. While only listed species receive protection under the Act, other sensitive species should be considered in the planning process in the event they become listed or proposed for listing prior to project completion. We recommend that you review information in the California Department of Fish and Game's (CDFG) Natural Diversity Data Base or that you contact a local representative of the CDFG for information regarding other sensitive species that that may occur in this area.

Additionally, we offer the following information and recommendations that the Service believes should be thoroughly addressed in the EIR:

1. A complete discussion of the purpose and need for the project.

2. A description of the proposed project, including all feasible alternatives and the no action alternative. This alternatives analysis is important to the Service's evaluation of the project, as feasible alternatives often reduce effects to biological resources.
3. Specific acreage and detailed descriptions of the amount and types of habitat that may be affected by the proposed project or project alternatives. Of particular concern will be the acreage of wetland and riparian habitats to be affected. This number should be verified by the Army Corps of Engineers or Environmental Protection Agency. Maps and tables should be included to assist in the evaluation of project-related effects.
4. Quantitative and qualitative information concerning plant and animal species associated with each habitat type.
5. A list of sensitive species that are found at or near the project site including candidate, proposed, and federally listed species, State listed species, and locally declining or sensitive species. A detailed discussion of these species, focusing on their site-related distribution and abundance and the anticipated effects of the project on these species, should be included.
6. An assessment of the effects on biological resources, including those that are direct, indirect, and cumulative. All aspects of the project should be included in this assessment.
7. An analysis of the effects of the project on the hydrology of associated drainages and any other riparian or wetland communities within the sphere of influence of the project. The effects of alteration of natural flows within the affected creeks and rivers should be thoroughly examined.
8. Specific mitigation plans to offset project-related effects, including cumulative habitat loss, degradation, and modification resulting from the direct, indirect, and cumulative consequences of the action. The objective of the mitigation plan should be to offset qualitative and quantitative project-induced loss of habitat values. Avoidance of the effects through project modification is considered mitigation. In particular, the Service recommends that impacts to wetlands, riparian corridors, and grasslands, which provide an important habitat to many species of wildlife, be avoided.
9. Identification of construction methods to be employed to prevent soil erosion, along with specific erosion and sedimentation control plans to be carried out throughout the life of the project.
10. An analysis of the effects as they relate to migratory birds under the Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et seq.). The proposed project may have effects on migratory birds in the area. We recommend that you analyze measures to avoid and minimize land clearing or other surface disturbance associated with proposed actions within the project area so that they are timed to avoid potential destruction of bird nests or young, or birds that breed in the area. Such destruction may be in violation of the MBTA. Under the MBTA, nests (nests with eggs or young) of migratory birds may not be harmed, nor may migratory birds

be killed. Potential avoidance measures include land clearing being conducted outside the avian breeding season; and having a qualified biologist survey the area prior to land clearing, and if nests are located, or if other evidence of nesting (i.e., mated pairs, territorial defense, carrying nesting material, transporting food) is observed, a protective buffer (the size depending on the habitat requirements of the species) should be delineated and the entire area avoided to prevent destruction or disturbance to nests until they are no longer active.

Thank you for the opportunity to participate in the scoping process for the EIR. We look forward to providing you with further technical assistance regarding the conservation and protection of listed species in the Santa Monica Mountains. If you have any questions concerning this letter or the enclosed list, please contact Mark A. Elvin of our staff at (805) 644-1766, extension 258.

Sincerely,



Chris Dellith  
Senior Biologist

cc:

Mary Meyer, California Department of Fish and Game  
Martin Potter, California Department of Fish and Game



October 7, 2009

Ms. Judi Tamasi  
Santa Monica Mountains Conservancy  
Mountains Recreation & Conservation Authority  
570 West Avenue 26, Suite 100  
Los Angeles, CA 90065

Dear Ms. Tamasi:

The City Project is pleased to submit our comments on the proposed Environmental Impact Report (EIR) scope of analysis for the Malibu Parks Public Access Enhancement Plan – Public Works Plan (the Plan). We applaud the Santa Monica Mountains Conservancy (SMMC) and Mountains Recreation and Conservation Authority (MRCA) for this important work to improve public access to parks, beaches, trails, and campgrounds in the coastal zone for all. We are particularly pleased to see planned programs and policies to proactively engage, educate and empower disadvantaged youth, to improve accessibility to the area via public transportation, and to improve signage to ensure that all members of the public are aware of their rights to make use of these parks, beaches, trails, and campgrounds.

The City Project presents the following recommendations that we believe should be explicitly incorporated into the scope of analysis of the EIR. We first list the recommendations, and then provide a more detailed explanation for each. More thorough analyses are included in the policy reports cited below.

- 1) Maximize public access to parks, beaches, trails, and campgrounds as an integral part of the Plan
- 2) Develop and implement measurable standards to evaluate equity and progress in providing public access to parks, beaches, trails, and campgrounds
- 3) Engage in respectful government-to-government consultations with Native Americans
- 4) Affirmatively comply with federal and state equal justice laws and principles ensuring equal access to public resources
- 5) Expand and institutionalize Transit to Trails
- 6) Implement a multi-agency plan for maximizing public access to parks, beaches, trails, and campgrounds
- 7) Law enforcement officers should protect the right to public access these resources, and educate the public as to their rights
- 8) Parks, beaches, and trails should be well marked and readily accessible
- 9) Public education campaigns should inform the public that the parks, beaches, trails, and campgrounds belong to all the people
- 10) Strategic media campaigns should help inform the public about park, beach, trail, and campground access and encourage public discussion of this topic
- 11) Diverse coalitions to support equal access to the coastal zone should be created, fostered, and funded

- 12) Ensure that resource bonds provide for equal access to parks, beaches, trails, and campgrounds in the coastal zone
- 13) Provide the information necessary to support informed decision-making

*1. Maximize public access to parks, beaches, trails, and campgrounds as an integral part of the Plan.* SMMC and MRCA are uniquely situated to maximize public access through the Plan as good policy and good law. This is consistent with the missions and practices of these organizations over the years. As state agencies or joint powers authorities headed by the most respected park and recreation leader in the state, SMMC and MRCA have the clout and resources that others do not have. SMMC and MRCA have the opportunity, resources, and stature to ensure compliance with the policies and programs included in the Plan.

*2. Develop and implement measurable standards to evaluate equity and progress in providing public access to parks, beaches, trails, and campgrounds.* SMMC and MRCA should develop and articulate standards to measure equity and progress and to hold public officials accountable in maximizing public access to the coastal zone.

*3. Engage in respectful government-to-government consultations with Native Americans.* In accordance with SB 18, the Plan must allow for respectful government-to-government consultations between California Native American tribal governments and the government authorities with jurisdiction over the project site in regard to protecting Native American sacred sites and cultural, historic, and archaeological resources. Tribal governments should be included in the process of formulating and implementing the Plan as early as possible so that traditional tribal cultural places can be identified and considered. Consultations should focus on how the Plan might impact cultural places located within the project site or otherwise impact Native American rights and interests.

*4. Affirmatively comply with federal and state equal justice laws.* Federal and state laws and policies guarantee equal access to public resources including parks, beaches, trails and campgrounds. Title VI of the Civil Rights of 1964 and its implementing regulations, for example, guard against both (1) unjustified discriminatory impacts for which there are less discriminatory alternatives, and (2) intentional discrimination based on race, color, or national origin by recipients of federal funds. California has parallel laws. Compliance with civil rights laws should be combined with environmental, educational, and other laws. The Office of Management and Budget has circulated guidance specifying that recipients of federal stimulus and other funds comply with Title VI of the Civil Rights Act of 1964, as well as other equal opportunity laws and principles. The guidance, for example, emphasizes the need to support small and disadvantaged business enterprises, engage in sound labor practices, promote local hiring, and engage with community-based organizations. The United States Department of Justice recently emphasized the need for recipients of federal funds to affirmatively comply with equal justice laws and principles on the 40th anniversary of Title VI. See July 10, 2009, memo from Loretta King, Acting Assistant Attorney General to Federal Agency Civil Rights Directors and General Counsels. See the President's Order on Environmental Justice, the California statutory definition of environmental justice, and the CEQA guidelines on social and economic impacts.

*5. Expand and institutionalize Transit to Trails.* Transit to Trails serves all the people of the region, but is particularly useful to the working poor with limited or no access to cars who are disproportionately people of color and low income people, including women, children, the elderly, and the disabled. As a collaborative partner on this program to increase access for inner city youth and families to nature, MRCA is uniquely positioned to understand that every Transit to Trails outing is a victory for public access.

*6. Implement a multi-agency plan for maximizing public access.* SMMC and MRCA should take a leadership role in implementing a multi-agency effort to increase access for all to parks, beaches, trails, and campgrounds in the coastal zone and elsewhere, as called for in the SCAG Environmental Justice Plan. SMMC and MRCA should bring the National Park Service, the California Coastal Commission, California Coastal Conservancy, California Department of Parks and Recreation, county parks and recreation departments, city recreation and parks departments, and the National Forest Service together with community advocates to ensure the development and implementation of an effective multi-agency plan.

*7. Law enforcement must protect the right to public access to these parks, beaches, trails, and campgrounds and educate the public as to their rights to use these resources.* SMMC and MRCA's park rangers should continue to zealously enforce the public's right to parks, beaches, trails, and campgrounds in the coastal zone.

*8. Parks, beaches, and trails should be well marked and readily accessible.* SMMC and MRCA should ensure that paths in parks and beaches are clear and well marked with user-friendly signs. Bilingual signs in English, Spanish and other languages should be provided where appropriate. There should be pedestrian cross walks to and from access paths to get across traffic safely. There should be ample parking near access paths in the coastal zone. Parks and beaches should have well-maintained toilets and trash cans.

*9. Public education campaigns should inform the public that the park, beaches, trails, and campgrounds belong to all the people.* Signs should explain that the California coast belongs to all the people, with maps showing public access. 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 to Parks, Beaches, Hiking, and Camping in the Coastal Zone," and artwork, photographic and artistic histories of coastal access. Pamphlets, public displays, signs, broadcast e-mails, and websites can publicize these matters. Educational programs should educate young people about their rights, about stewardship of parks, beaches, trails, and campgrounds along the coast, and about the history of the struggle for equal access to parks, beaches, trails, and campgrounds.

*10. Strategic media campaigns should help inform the public about park, beach, trail, and campground access and encourage public discussion of this topic.* SMMC and MRCA should address equal access rights through radio and television shows, newspaper articles and editorials, blogs, websites, and other media. The message should address not only mainstream environmental issues, but also human health, physical activity, and healthy eating; disparities in coastal access; and the legal, policy, and historical justifications for coastal access.

*11. Diverse coalitions aimed at supporting access to the coastal zone should be created, fostered, and funded.* SMMC and MRCA should include clauses in all contracts and grants requiring compliance with federal and state civil rights laws. Grants and contracts should be conditioned on compliance with equal access laws. Specific examples of how organizations, including mainstream environmental organizations, can address equal access in their efforts related to the coastal zone should be provided. SMMC and MRCA should take a leadership role in organizing diverse coalitions in strategic campaigns focusing on the different values at stake. The goal of these coalitions should be to bring people together to support broader access to the coast.

*12. Ensure that resource bonds provide for equal access to parks, beaches, trails, and campgrounds in the coastal zone.* SMMC and MRCA should ensure that all ballot measures and campaigns that the organization supports address significantly and directly the maximization of public access to parks, beaches, trails, and campgrounds in the coastal zone. Any resource bonds to benefit or protect the coast should require that public access is maximized as a condition of any expenditures or grants. Specific funding for public access should also be provided.

*13. Provide the information necessary to support informed decision-making.* SMMC and MRCA should gather, analyze and publish information about public access in the coastal zone. Mapping the entire coastline in Malibu, including existing accessways, using Geographic Information Systems (GIS) and Census 2000 demographic data on race, ethnicity, income, access to cars, and other salient factors will help other agencies, the legislature, and the public address public access concerns. Access guides should be available on the Internet.

For more thorough analyses of these matters, please see Robert García et al., *Economic Stimulus, Green Space, and Equal Justice* (The City Project Policy Report 2009), available on the web at <http://www.cityprojectca.org/blog/archives/1450>, and Robert García and Erica Flores Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast*, 2 *Stanford Journal of Civil Rights and Civil Liberties* 143 (2005).

We look forward to working with you to implement these recommendations.

Sincerely,

Robert García

Executive Director /Counsel

The City Project

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Research Associate

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Tongva Ancestral Territorial Tribal Nation



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

2 Stanford Journal of Civil Rights and Civil Liberties 143 (2005)

Robert García, Erica Flores Baltodano



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ARTICLE

FREE THE BEACH!

PUBLIC ACCESS, EQUAL JUSTICE, AND  
THE CALIFORNIA COAST

Robert García & Erica Flores Baltodano \*

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\* 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. We are grateful to Amanda Kochanek at GreenInfo Network for her inspired mapping and demographic analyses. This Article was made possible in part by the generous support of the Ford and Resources Legacy Fund Foundations. 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 and Washington State. California’s beaches belong to all the people. In this Article, we examine the social, policy, legal, and environmental facets of the struggle to ensure public access, coastal protection, and equal justice for all along the California Coast.

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

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

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, while away the afternoon under an umbrella, scamper between tide pools, or gaze off into the sunset. Public access to the beach is integral to democracy and equality. Rio de Janeiro, like Los Angeles, is marked by some of the greatest disparities between wealth and poverty in the world. Yet Rio’s famous beaches are open to all, rich and poor, black and white. The beach in Rio is the great equalizer. In Florida, however, 60% of the “public” beaches are now “private.”<sup>4</sup> California’s world famous beaches must remain public for all, not the exclusive province of the rich and famous.

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

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

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

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

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

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

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

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

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

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

## II. A COLLECTIVE VISION

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

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

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

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

#### A. The Olmsted Vision

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

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

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

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

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

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

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

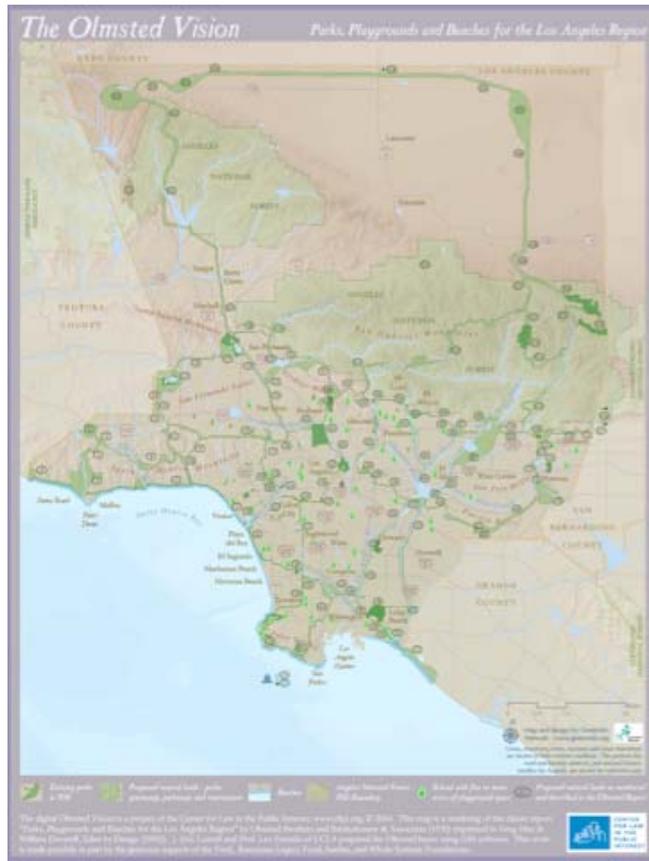
11. *Id.* at 17, 89, 138.

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

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

1930 dollars, taken 40 to 50 years to complete, and required the creation of a regional park authority to levy fees to pay for parks and open space.<sup>14</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 it. Politics, bureaucracy, and greed overwhelmed the Report in a triumph of private power over public space and social democracy.<sup>15</sup>



The Olmsted Vision for Parks, Playgrounds, and Beaches

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

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



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

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

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>18</sup>

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

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

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

## B. The California Coastal Trail

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

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

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

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

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

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

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

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

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

24. *Id.*

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

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

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

### C. Diversifying Support for Beaches, Parks, and Recreation

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

Proposition 40 demolished the myth that a healthy environment is a luxury that communities of color and low-income communities cannot afford or are not willing to pay for. The diverse support for Proposition 40 was no accident. The Yes on Prop 40 steering committee engaged in strategic outreach to diverse communities. The campaign targeted 500,000 voters with direct mail pieces in English and Spanish, the Proposition 40 website included materials in both languages, and a get-out-the-vote drive targeted diverse communities. African-American ministers called on their congregations to support Proposition 40 from the pulpit the Sunday before the election, and Cardinal Roger Mahony endorsed Proposition 40.<sup>33</sup>

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

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

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

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

29. *Id.* at 14.

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

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

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

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

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

### III. THE STRUGGLE TO FREE THE BEACH

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

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

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

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

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

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

Much of the Los Angeles region was off limits to blacks and other people of color throughout the better part of the twentieth century. Despite the prominent role of blacks in early Los Angeles,<sup>37</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>38</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>39</sup> As a result, blacks increasingly became concentrated in South Central Los Angeles.

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

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

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

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

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

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

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

covenants. Even after those decisions came down, however, the Los Angeles Urban League identified 26 different ploys that white homeowners used to exclude blacks, including payoffs by neighbors to discourage home sales to prospective black buyers, vandalism, cross burnings, bombings, and death threats.<sup>42</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>43</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>44</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. There were some places of refuge, however. Lincoln Park in East Los Angeles was a popular destination for black youth from South Central and Latino youth from East Los Angeles, who could take the Pacific Electric railroad to reach one of the few parks where they were not feared and despised.<sup>45</sup>

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

## B. Malibu

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

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

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

43. *Id.* at 108.

44. *Id.* at 21.

45. *Id.*

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

canyons, owned by Frederick H. Rindge and later by his widow May.<sup>47</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>48</sup> Parcels like those owned by entertainment mogul David Geffen today carried racially restrictive covenants that were intended to run with the land in perpetuity for the benefit of all beachfront homeowners. Covenants prevented people who were not white from using or occupying beach premises except as domestic servants, and even domestics who were not white were prohibited from using the public beach for bathing, fishing, or recreational purposes. A typical covenant reads:

[S]aid land or any part thereof shall not be used or occupied or permitted to be used or occupied by any person not of the white or Caucasian race, except such persons not of the white or Caucasian race as are engaged on said property in the bona fide domestic employment of the owner of said land or those holding under said owner and said employee shall not be permitted upon the beach part of said lands for bathing, fishing or recreational purposes.<sup>49</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 0.2% other. Nearly 25% of Malibu households have an annual income over \$200,000. The median household annual income is \$102,031, according to 2000 census data. In contrast, Los Angeles County is only 31% non-Hispanic white. The median household income is \$42,189. Only 4% of households have an annual income of \$200,000 or more.<sup>50</sup>

The City of Malibu, joined by entertainment mogul David Geffen—Geffen is the “G” in Dreamworks SKG movie studios, with a 2002 net worth of \$3.8 billion, the 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, despite Geffen's original offer to dedicate a nine-foot public path to reach the beach from the highway.<sup>51</sup> Geffen dropped his suit in 2005, after the court had dismissed his complaint six times. The City of Malibu dropped out of the case earlier.<sup>52</sup>

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

48. *Id.* at 313-14.

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

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

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

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

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



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

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

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

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

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

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

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

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

The California Attorney General filed suit on behalf of the Coastal Commission and State Lands Commission against the Trancas Property Owners Association, which represents property owners along Broad Beach, for violation of the Coastal Act, interference with legal public access to the beach, and conversion of beach minerals as a result of the bulldozing in July 2005.<sup>59</sup> The matter is in litigation over whether the homeowners are liable for fines up to \$15,000 a day for their actions, as of November 2005.<sup>60</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 use the beach. Commissioner Wan arranged the visit to Broad Beach after receiving multiple complaints from beach visitors who were harassed while visiting the beach.<sup>61</sup> During Commissioner Wan's beach visit, a private security guard on an all-terrain vehicle ordered her to leave. When she refused, five armed sheriff's deputies arrived to remove her from the beach. Commissioner Wan, armed with maps of public paths to and along the beach, showed the deputies that the beach was public and she was standing where she had a right to be. "What do I know? I'm just a dumb sheriff's deputy," one officer was quoted as saying.<sup>62</sup>

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

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

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

58. *Id.* at 8.

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

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

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

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

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

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

than a year the Commission had been negotiating with the Trancas Property Owners Association to end the use of illegal signs, fencing, and all-terrain vehicles. Ultimately, the Commission unanimously voted to issue a cease and desist order against the Trancas Property Owners Association in August 2005.<sup>65</sup>

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

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

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

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

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

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

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

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

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

cans that discourage beach users.<sup>70</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 the so-called “Malibu Riviera.” as illustrated in the following image of the “Prison Beach” in Malibu.<sup>71</sup>



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

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

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

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

72. Photo by Robert García (2002).

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

80. Photo by Robert García (2003).

access. The County of Los Angeles has failed to open public paths at La Costa and Carbon Beaches along the Malibu coast. According to deed restrictions developed years ago by the Coastal Commission and filed by the respective owners of the properties, the paths are supposed to provide public access to the beaches, but only the County of Los Angeles can open them. The County's decision to keep the gates locked contributes to the inaccessibility of California's most beautiful beaches.<sup>81</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>82</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. 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>83</sup> The Commission adopted the provision in response to the advocacy of the Center for Law in the Public Interest on behalf of a diverse alliance.<sup>84</sup>

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

### C. Manhattan Beach and Bruces' Beach

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

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

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

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

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



Hayride at Bruces' Beach circa 1920s.<sup>85</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, which was the only pier that allowed blacks, and the surrounding black neighborhood were destroyed.<sup>86</sup> Several black homes in the area were burned down.<sup>87</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>88</sup>

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

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

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

88. *Id.* at 271-75.

To cross racial lines at any beach was to court conflict, arrest, and violent assault. “They made it miserable for you. Sand would get kicked over on your place and all the rest of it.”<sup>89</sup> Santa Monica banned dance halls and blocked a proposed black resort near the Inkwell in the early 1920s.<sup>90</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>91</sup>



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

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

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

90. *Id.* at 272-73.

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

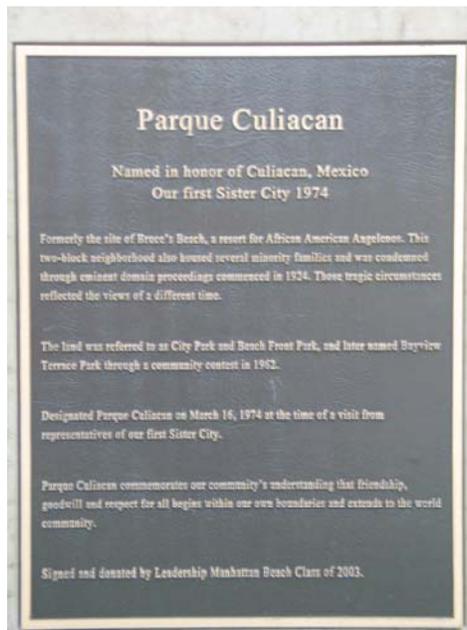
92. Image from CAROLYN KOZA COLE & KATHY KOBAYAHSHI, *SHADES OF LA: PICTURES FROM ETHNIC FAMILY ALBUMS* 92 (1996).

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

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

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



Plaque where the African-American resort Bruces' Beach was located.<sup>95</sup>

#### D. From Sea to Summit

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

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

94. *Id.*

95. Photo by Nicolás García (2005).

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

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

#### E. Santa Barbara

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

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

More tragic is the unfortunate story of the Gaviota Coast beyond urban Santa Barbara. In November 1999, Congress directed the National Park Service to do a feasibility study of the Gaviota Coast in order to determine if the area meets the criteria for designation as a unit of the National Park System and to evaluate the most effective way to protect it. The 76-mile segment of the coast stretches from U.C. Santa Barbara to Vandenberg Air Force Base.<sup>99</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>100</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.<sup>101</sup> When Congress ordered the National Park Service study,

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

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

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

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

101. The Hollister Ranch web site proudly proclaims:

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

Hollister Ranch property owners tried three times to scuttle the study in court. When litigation failed, homeowners mounted a major lobbying campaign to oppose the study.<sup>102</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>103</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>104</sup> In other words, wealthy homeowners bullied the federal government into abandoning a public beach.

#### F. Newport Beach and Orange County

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

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privacy and solitude. Three beach cabanas and 8 1/2 miles of private beach frontage are used exclusively by the owners of the 133 parcels within California's most unique community.

<http://www.hollister-ranch.com>.

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

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

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

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

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

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



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

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

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

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

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

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

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

#### G. Trinidad: Beach Access in Northern California

The tiny town of Trinidad in Northern California has faced potential bankruptcy as a result of legal fees spent fighting a beachfront homeowner who wants to close a public trail to the beach that passes down his driveway and behind the two houses he owns.<sup>112</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>113</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

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

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

111. Lin, *supra* note 60.

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

113. *Id.*

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



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

#### H. A Glimpse of a Possible Future

According to recent reports, almost every acre of the Southern California coastline from San Clemente to Seal Beach that has not been formally set aside for open space is or will soon be developed. In Orange County, virtually all of the coast is spoken for and plans are underway to develop the remaining parcels of privately-owned land at the edges of the county. As with most coastal communities, home prices near the beach “even by the standards of today’s frenzied market have reached exceptional heights.”<sup>117</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

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114. Hank Sims, *supra* note 112.

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

116. Photo by Robert García (2003).

117. *Id.*

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

#### IV. WHY BEACHES MATTER: THE VALUES AT STAKE

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

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

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

Outdoor recreation through beach access has major public health implications. If current trends in obesity and inactivity continue, today's youth will be the first generation in this nation's history to face a shorter life expectancy than their parents.<sup>123</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, 73% of fifth, seventh, and ninth graders did not achieve minimum physical fitness standards in 2004. In the Los Angeles Unified

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118. *Id.*

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

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

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

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

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

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

Overweight and unfit children face a greater risk of developing lung disease, diabetes, asthma, and cancer.<sup>125</sup> Type 2 diabetes, formerly known as adult-onset diabetes, now affects millions of overweight and inactive children at younger and younger ages.<sup>126</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>127</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>128</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>129</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>130</sup> Living within close proximity to the coast is positively associated with recommended levels of exercise.<sup>131</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>132</sup>

124. Cal Dep't. of Ed. 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.

125. *Id.* at 18.

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

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

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

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

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

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

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

The health costs of urban sprawl should inform land use and planning decisions to create and preserve beaches, green space, walkable neighborhoods with mixed land uses, and limited road construction balanced by transit alternatives.<sup>133</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>134</sup>

Regular physical activity is associated with enhanced health and reduced risk for all-cause mortality, heart disease, diabetes, hypertension, and cancer.<sup>135</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>136</sup> Natural spaces are also linked to improved mental health. Physical activity relieves depression and anxiety.<sup>137</sup>

Physical activity at beaches can promote positive choices and help reduce youth violence, crime, drug abuse, and teen pregnancy.<sup>138</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 also build character, pride, self esteem, teamwork, leadership, concentration, dedication, fair play, mutual respect, social skills, and healthier bodies; help keep children in school; help develop academic skills; and increase access to higher education.<sup>139</sup> Physically fit students perform better academically.<sup>140</sup> Male athletes are four times more likely to be admitted to Ivy League colleges than other males; for female athletes, the

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ENV’T. PSYCH. 77-85 (1995).

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

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

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

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

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

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

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

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

advantage is even greater.<sup>141</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>142</sup>

Beaches can promote economic vitality for all. California has the largest ocean economy in the nation and a large portion of that economy revolves around the state's beaches. Ocean-related activities in California produced a gross state product (GSP) of \$42.9 billion and provided almost 700,000 jobs and more than \$11.4 billion in wages and salaries in 2000.<sup>143</sup> Tourism and recreation accounted for the largest proportion of employment (76.8%) and GSP (58%).<sup>144</sup> The total economic impact of the tourism and recreation sector of the ocean economy in California in 2000 was over \$22 billion.<sup>145</sup> Coastal tourism makes California competitive in international tourism because studies show beaches are the leading international tourist destination.<sup>146</sup> A full 63% of all Californians make at least one visit to a California beach each year, 2.5 times the national average, and most (85%) of all beach visits in California are made in Los Angeles, Orange, and San Diego Counties.<sup>147</sup> According to the National Ocean Economic Program, beachgoers place a high value on beach visits, above and beyond what they actually spend. Estimates of the total value of beach-going, including market and non-market values, exceed \$5 billion annually.<sup>148</sup> Improvements to beaches, including improved beach access, would lead to more beach visitors, which in turn would have a positive impact on the economy.<sup>149</sup>

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

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

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

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

144. *Id.* at 26.

145. *Id.* at 123.

146. *Id.* at 105.

147. *Id.* at 109-11.

148. *Id.* at 109, 112.

149. *See id.* at 106.

access to the good life are good for everyone.<sup>150</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>151</sup> The Surfrider Foundation speaks about its own “unique constituency and culture” centered around the beach.<sup>152</sup> As a matter of simple justice, all people are entitled to the good life on the beach.<sup>153</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>154</sup> Nobel Peace Prize Laureate Rigoberta Menchú has praised the work of the Center for Law in the Public Interest to promote equal access to parks and recreation as a way of saying no to war, no to violence, and giving children hope.<sup>155</sup>

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

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

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

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

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

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

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

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

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



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

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

#### V. LEGAL AND POLICY JUSTIFICATIONS FOR BEACH ACCESS

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

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TIMES, Oct. 8, 2004.

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

security guards to harass the public on public beaches.

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

#### A. State Conservation Laws Protect Equal Access to the Beach

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

##### 1. The Public Trust Doctrine

Public access to the beach is protected under the public trust doctrine. The right to public access can be traced back to English common law and Roman law.<sup>158</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>159</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>160</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>161</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>162</sup>

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

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

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

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

161. *Id.* at 453.

162. *Id.*

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

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

tide line is public.<sup>165</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, and boat, as well as the use of the bottom of navigable waters for anchoring, standing, or other purposes.<sup>166</sup> Furthermore, the doctrine protects the public right to tidelands.<sup>167</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>168</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>169</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

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521).

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

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

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

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

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

prohibits any person or entity with a claim to or possession of tidal lands or a harbor, bay, inlet, estuary, or other navigable water, to exclude the right of way to such water when required for any “public purpose.” The California Supreme Court includes recreational purposes among “public purposes” for this provision.<sup>170</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 a strong public policy in favor of public and equal access to the coast. The California Coastal Act of 1976 is the main body of law governing California’s coastal zone, which extends seaward three miles and extends inland anywhere from 1,000 yards to several miles.<sup>171</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>172</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>173</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

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

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

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

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

local agency.<sup>174</sup>

California protects public access to beaches and coastal lands.<sup>175</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>176</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>177</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>178</sup>

#### 5. The California Coastal Commission and Offers to Dedicate

The California Coastal Commission is charged with implementing the California Coastal Act.<sup>179</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>180</sup>

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

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174. Cal. Gov. Code § 54090.

175. Cal. Gov. Code § 53035.

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

177. Cal. Gov. Code § 39933.

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

179. *See* Cal. Pub. Res. Code § 30330.

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

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

A common form of mitigation takes place in the form of “offers to dedicate” (“OTD”) public access to the beach from the highway, or along the beach. A property owner who wishes to develop coastal property can offer to dedicate a portion of the property to public use in exchange for, and as a condition of, receiving a coastal development permit.<sup>182</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>183</sup> While OTDs are recorded legal documents that run with the land—typically for twenty-one years from the date of recording—OTDs are only *offers of easements*.<sup>184</sup> Until the offer is accepted by a government agency or a non-profit organization, the interest belongs to the property owner.<sup>185</sup>

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

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

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

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

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

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

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

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

After an agency or non-profit organization accepts an OTD, the accepting agency is responsible for providing safe public access while protecting private property rights.<sup>188</sup> Once an OTD is accepted, the easement remains in the public domain.<sup>189</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>190</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>191</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>192</sup>

## 6. Stopping False Beachfront Signs

Phony signs on Broad Beach in Malibu limit public access to the beach based on false claims of where the mean high tide is and what constitutes a public or private beach. These signs constitute illegal coastal developments without a permit.<sup>193</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>194</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>195</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>196</sup>

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

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

189. *Id.*

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

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

192. *Id.* at 12.

193. See Cal. Pub. Res. Code § 30600.

194. Cal. Pub. Res. Code § 30106.

195. See Cal. Pub. Res. Code § 30600.

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

line.<sup>197</sup> There has not been an official survey of the mean high tide line since the 1920s.<sup>198</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 ordered an end to such phony “no trespassing” and “private beach” signs in Malibu in August 2005.<sup>199</sup>



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

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

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

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

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

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

maximize public access to and along the coast, the Coastal Act requires paths from public roads to the ocean,<sup>201</sup> and paths must be conspicuously posted.<sup>202</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>203</sup>

### 7. Stopping All-Terrain Vehicles on Public Beaches

The Coastal Commission has ordered an end to the use of all-terrain vehicles (ATVs) by security guards who harass the public on public beaches.<sup>204</sup> 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>205</sup>



Patrolling Broad Beach on an all-terrain vehicle.<sup>206</sup>

### B. Federal and State Civil Rights Laws

Federal and state laws prohibit both intentional discrimination and

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201. Cal. Pub. Res. Code § 30212.

202. Cal. Pub. Res. Code § 30210.

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

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

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

206. Photo by Robert García 2004.

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

### 1. Intentional and Disparate Impact Discrimination

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

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



"Wade in" at a segregated beach in St. Augustine, Florida, on June 25, 1964.<sup>209</sup>

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

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

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

209. *Id.*

including beach front municipalities such as Malibu. Title VI provides: “No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>210</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>211</sup>

California law also prohibits intentional discrimination and unjustified discriminatory impacts under Government Code section 11135, which is closely analogous to Title VI.<sup>212</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>213</sup> According to the California State Lands Commission, which has jurisdiction over the State’s beaches, this definition of environmental justice “is consistent with the Public Trust Doctrine principle that the management of trust lands is for the benefit of all of the people.”<sup>214</sup>

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

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

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

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

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

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

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

accurate compliance information.<sup>216</sup>

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

#### a. Discriminatory Impacts

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

Applying the discriminatory impact standard to Malibu:

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

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

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

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

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

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

### b. Intentional Discrimination

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

Applying the intention discrimination standard to Malibu:

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

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

(3) and (4): There are procedural and substantive irregularities in Malibu's limiting access to the beach. The California Coastal Commission has issued cease and desist orders to force Malibu to remove boulders used to block public parking at the beach. Malibu refused to develop a local coastal plan, and then refused to implement the plan developed by the Coastal Commission.<sup>220</sup> Instead, the City of Malibu sought a local referendum on whether to accept or reject the coastal plan<sup>221</sup> and filed suit against the Coastal Commission to block implementation of the plan.<sup>222</sup>

(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>223</sup>

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

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

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

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

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

### c. Enforcing Civil Rights Protections

Despite cutbacks in enforcement of civil rights protections in federal courts, it is important to keep in mind that both intentional discrimination and unjustified discriminatory impacts remain unlawful under federal and state law as a matter of simple justice: it is unfair to use public tax dollars to subsidize discriminatory intent and discriminatory impacts.<sup>224</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>225</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.

### d. Responding to Stated Concerns

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

229. *Id.* at 148.

230. *Id.* at 152.

231. *Id.* at 17.

232. *See supra* note 119.

233. U.S. Census 2000 data, [www.factfinder.census.gov](http://www.factfinder.census.gov). Compiled by Greeninfo Network.

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

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

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

## 2. First Amendment Access to the Beach

In *Leydon v. Town of Greenwich*, the Connecticut Supreme Court held that a Greenwich municipal code limiting a town park and beach to town residents and their guests violated the First Amendment rights of freedom of association and expression.<sup>234</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>235</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>236</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

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

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

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

serve compelling state interests.<sup>237</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. To the contrary, the public interest lies in providing public access to public beaches.

### 3. Equal Access to Public Accommodations

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

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

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

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

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

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

## IV. DIVERSIFYING BEACH ACCESS

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

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

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

239. *Id.* at 873-75.

A. The Demographics of Beach Communities

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

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

Table 1: Demographics of Malibu, Santa Barbara, and Newport Beach<sup>240</sup>

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

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

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

Long Beach is the only exception to the rule. There, the percentage of non-Hispanic whites is less than in the state and county, and the median household income is lower. This may be because Long Beach, unlike other coastal communities in Los Angeles, extends far inland and a good portion of the coastline is dedicated to the Port of Long Beach. Moreover, as is true for many port towns, Long Beach has historically been a working class neighborhood.<sup>242</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.<sup>243</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:

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

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

243. *Id.*

Table 2: Demographics of Coastal Communities in Los Angeles County<sup>244</sup>

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

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

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

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

## B. Diversity and Beach Use

People from different racial and ethnic groups use parks differently, constructing meanings for natural space based on their own values, cultures, histories, and traditions, according to a study of cultural differences in the use of urban parks.<sup>246</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 Visitation Study

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

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

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

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

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

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

248. *Id.*

color at those beaches is unknown.<sup>249</sup>

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

## 2. Diversity and Natural Spaces

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

According to one study, for example, parks are primarily social gathering places for Hispanics.<sup>250</sup> African Americans, more than any other racial group, tend to engage in sports in parks.<sup>251</sup> Non-Hispanic whites tend to value a park solely for its passive qualities—its greenness, landscaping, and natural elements. They tend, as a result, to engage in solitary, self-oriented uses.<sup>252</sup> Asian-American (specifically, Chinese) families were rare in parks studied. This may reflect the failure of the parks to meet the needs of the Asian-American community.<sup>253</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>254</sup>

Two different studies on Central Americans and Mexican-Americans, respectively, reached similar conclusions about how these groups use forests.<sup>255</sup> In the study of forest users of Central American descent, for example, creeks were the central focus of activity and attention.<sup>256</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

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249. *Id.*

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

251. *Id.* at 95.

252. *Id.*

253. *Id.* at 95-96.

254. *Id.* at 92, 95.

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

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

the creek, using plastic cups, spoons, and empty soda containers as toys instead.<sup>257</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>258</sup> Similarly, nuclear and extended members of Mexican-American families are included in leisure activities, leading to large group sizes.<sup>259</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>260</sup> Families avoided large, open, grassy areas and favored shaded sites near the creek.<sup>261</sup>

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

### 3. Explaining Differences

Research suggests two potential explanations for differences in ethnic and racial recreation patterns.<sup>262</sup>

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

The *marginality hypothesis* suggests that under-participation of ethnic and racial groups results primarily from limited economic resources and historical and ongoing patterns of discrimination.<sup>264</sup> Social norms of inclusion and exclusion operate in public spaces, including places of recreation.<sup>265</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>266</sup>

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

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257. *Id.* at 188-98.

258. *Id.* at 190.

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

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

261. *Id.*

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

263. *Id.*

264. *Id.*

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

266. *Id.*

beach, which impacts access and use.

## VII. TRANSIT TO TRAILS AND BEACHES

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

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

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

268. U.S. Census 2000 data, [www.datafinder.census.gov](http://www.datafinder.census.gov). Compiled by Greeninfo Network.

### Californians Living Below Poverty

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

269. U.S. Census 2000 data available at [www.datafinder.census.gov](http://www.datafinder.census.gov) and compiled by Greeninfo Network; García & Rubin, *supra* note 18.

### Californians Who Lack Access to a Vehicle

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

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

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

Bus stops up to half a mile from a public path to the beach create a significant burden for those walking with children, beach blankets, beach towels, food, and other recreational gear.<sup>271</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>272</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>273</sup> Several beautiful Malibu beaches located beyond Trancas Canyon are simply not accessible by public transportation.<sup>274</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>275</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>276</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>277</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

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

271. *Id.* at 3.

272. *Id.* at 1-2.

273. *Id.* at 3.

274. *Id.* at 4.

275. *Id.* at 2.

276. *Id.*

277. *Id.* at 2-3.

inner-city communities ranges from \$1 to \$2.60, depending on distance.<sup>278</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>279</sup> and to increase awareness of and ridership on MTA beach routes.<sup>280</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>281</sup>



MTA began a campaign to help people reach the “sun, surf, and sand” by bus.<sup>282</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>283</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>284</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

278. *Id.* at 6-9.

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

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

281. Los Angeles Metropolitan Transportation Authority website at [www.mta.net](http://www.mta.net).

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

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

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

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



Riverside and Orange Counties provide beach train programs.<sup>286</sup>

The Beach Train is one way to travel to the beach, but the cost may be prohibitive to many.<sup>287</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.

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

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

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

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

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285. *Id.*

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

287. *Id.*



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

*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>289</sup>

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288. Photo by Robert García (2004).

289. Photo by Robert García (2004).

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



Public beaches can easily provide garbage cans, recycling bins, and toilets.<sup>290</sup>

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

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290. Photo by Robert García (2004).

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

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

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

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

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

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

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

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

*Legislation must support public access to the beach.* The California legislature and former Governor Davis reaffirmed principles of coastal access through Senate Bill 1962, which provides a safety net for beach access. SB 1962 requires the Coastal Conservancy to accept easements for access to the beach that are within three months of their expiration date.<sup>292</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.<sup>293</sup>

- \* Support legislation requiring the State Coastal Conservancy to accept responsibility for maintenance of and liability for public accessways until a long-term third-party is identified so that the Coastal Commission can require the permittee to develop the accessway upon completion of the permitted development.

- \* Require the permittee to fund future mitigation development when an offer to dedicate is a permit condition (this shifts the costs of opening and maintaining an offer to dedicate).

- \* Increase existing development permit fees to fund ongoing operation costs associated with easements.

- \* Support legislation requiring that accessway construction be started within one year of acceptance of an offer to dedicate, and completed within three years.<sup>294</sup>

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

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

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292. Cal. Pub. Res. Code § 31402.2.

293. See HILL, *supra* note 171.

294. *Id.*

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

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

#### IX. CONCLUSION

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

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

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

Free the beach!

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

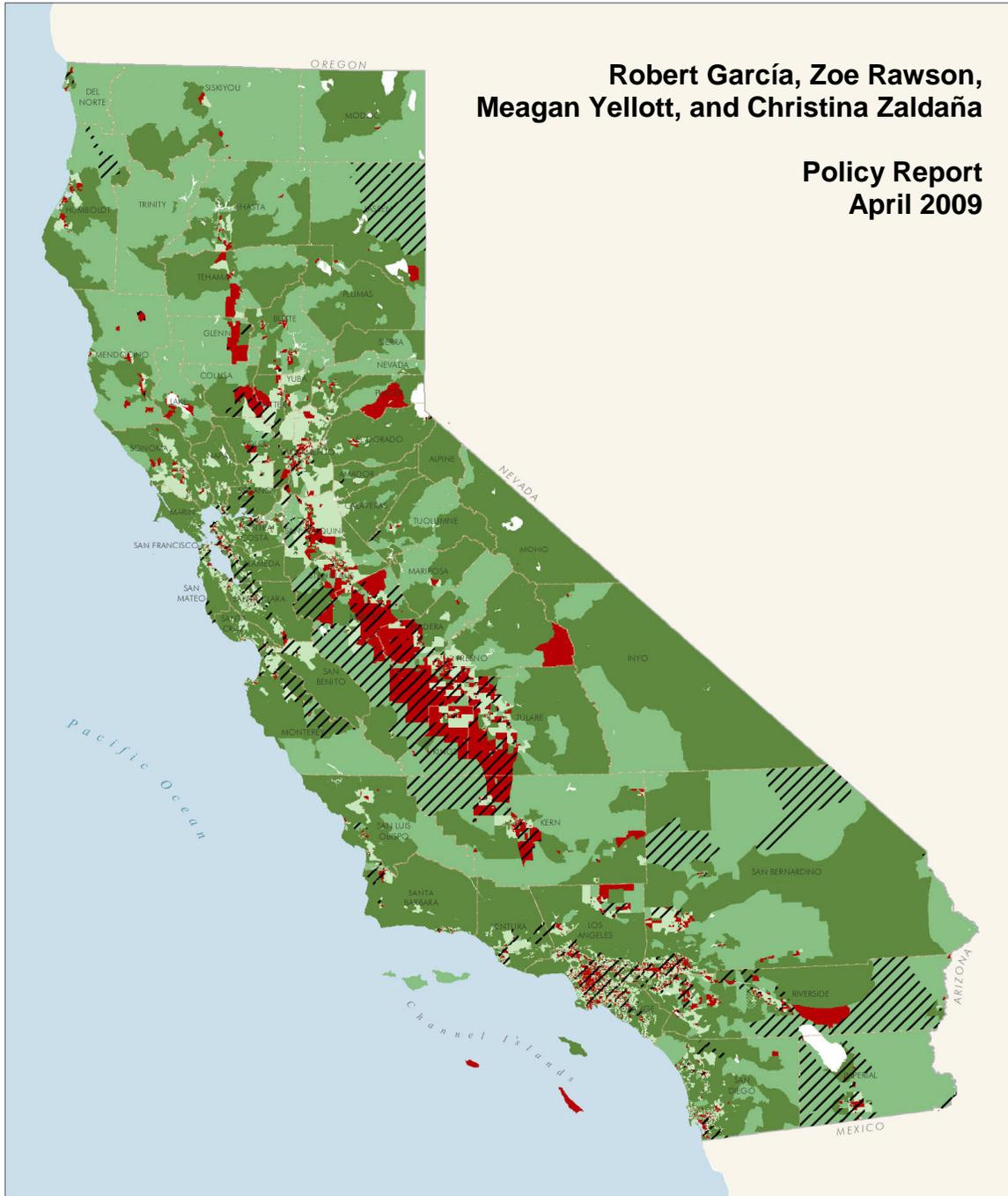
297. *Id.*

298. *Id.*

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## Economic Stimulus, Green Space, and Equal Justice



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# Economic Stimulus, Green Space and Equal Justice

Robert García, Zoe Rawson, Meagan Yellott, Christina Zaldaña<sup>1</sup>

## A. Introduction

Even in the midst of the worst economic crisis since the Great Depression, people across the United States voted to tax themselves to provide billions of dollars to create green space in November 2008, when they also elected Barack Obama as the first black President of the United States in a wave of hope and change.<sup>2</sup> In the first hundred days, the Obama administration has launched a \$787 billion economic stimulus package to get the nation back to work, and additional megafunds have become available for green space from other federal, state and local sources.<sup>3</sup>

The massive amounts of funding available for public infrastructure projects including green space offers an exceptional opportunity to promote economic vitality, environmental quality and equal justice for all, including low income communities and communities of color. These communities disproportionately suffer from disparities in access to green space, including parks and school fields, and related human health problems that stem in part from the lack of places for physical activity and recreation. People of color and low income communities must receive their fair share of public investments in infrastructure projects including green space. Solutions to many social problems – unemployment, environmental degradation, no place to play, little hope for disadvantaged youth, obesity, rebuilding the nation's infrastructure for generations to come – must be tied to a vision for a new America that includes stimulus projects to improve the lives of all residents.

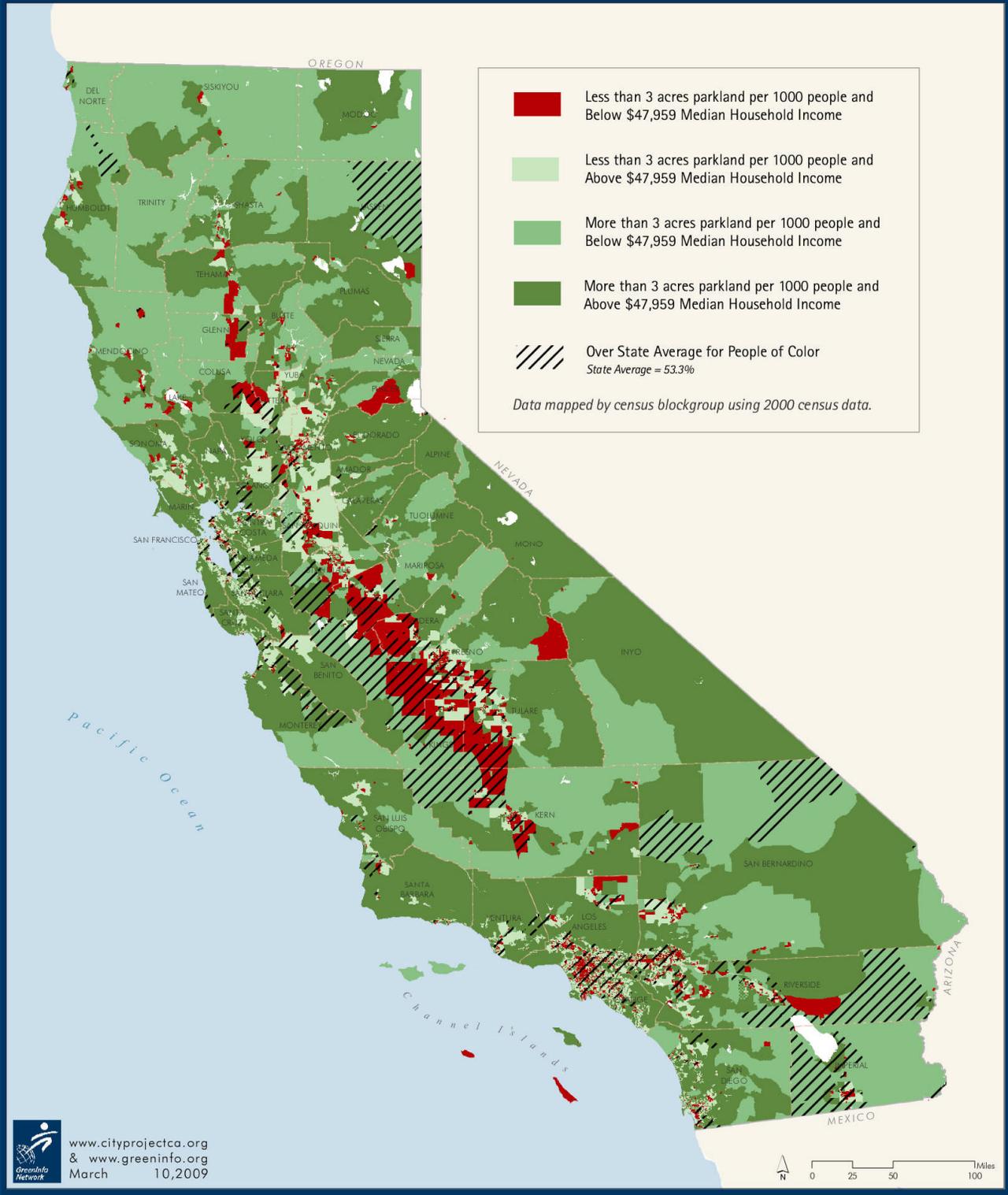
Economic stimulus and green infrastructure projects including green space in parks and schools can help get the nation back to work building healthy, livable communities for all. Green space is an economic stimulus. A recent study by New York State, for example, shows that state parks give back more than five times the state investment, with billions of dollars in annual economic impacts in addition to 20,000 jobs.<sup>4</sup> Green space including parks and school fields are a form of infrastructure. Indeed, the New York Times recently cited the creation of parks, schools, and transit in Los Angeles along the Los Angeles River and Wilshire Boulevard as examples of what needs to be done to reinvent the nation's cities.<sup>5</sup> Drawing on New Deal lessons, green infrastructure projects can provide multiple benefits including places for physical activity in parks and school fields; local green jobs for youth and small and disadvantaged business enterprises; Conservation Corps type programs to open job and career paths and to permanently improve national, state and local parks; public art in public parks; and public transit to parks and trails.

The California experience offers valuable lessons for hope and change. In 2008, the California legislature enacted legislative criteria to invest park funds in communities that are park poor and income poor. Park poor is defined as three acres or less of parks per thousand residents. Income poor is defined as \$47,959 median household income or less. This legislation is a best practice example to establish standards to measure progress and equity, and to hold public officials accountable for infrastructure investments in multi-benefit green spaces, including federal, state, regional, county, and local park and school funds. These criteria apply specifically to \$400 million in park bond funds under a state-wide resource bond, Proposition 84, passed in 2006, but the lessons for equal access to public resources including green space go far beyond those specific funds.

The following map shows the communities throughout California that are park poor and income poor, as well as the communities that are disproportionately populated by people of color. The hatched red hot spots are the most underserved communities in the state. Investing in the park poor and income poor communities will provide economic stimulus and the multiple benefits of green space in underserved communities, and help achieve compliance with civil rights laws mandating equal access to public resources including green space, as discussed below.<sup>6</sup>



# Park Acreage, Median Household Income and People of Color



There is a convergence of tools and opportunities for promoting equal access to green space:

1. Megafunds are available for green space;
2. Green space in parks and schools provides multiple benefits;
3. New guidance by the United States Office of Budget and Management mandates that recipients of economic stimulus funds comply with equal protection laws.
4. The California legislation provides standards to measure progress and equity and hold public officials accountable, a best practice example to breathe substance into equal protection laws.
5. A diverse and growing alliance – including Anahuak Youth Sports Association, Dr. Robert Bullard of the Environmental Justice Resource Center at Clark Atlanta University, Robert Bracamontes of the Acjachemen Nation, Juaneño Tribe, California Center for Public Health Advocacy, Caminando con Fé/Walking with Faith, Policy Link, and Social and Public Art Resource Center (SPARC) – supports equal access to green space to achieve healthy livable communities for all, including social justice, health, youth, job, and environmental advocates.<sup>7</sup>

This Report details resources available for green space, the economic stimulus and other benefits provided by green space projects, and current disparities in access to green space and other safe places for physical activity for low income communities and communities of color. The Report describes the consequences of such disparities, the benefits that could be reaped if resources were allocated fairly, and laws and policies justifying change. Much of the Report is based specifically on the urban park movement in California, including information on best practices currently in place in the state, that can be applied across the country. The report ends with recommendations for equitable investments in green space throughout California and the country.

## **B. Economic Stimulus, Green Jobs, and Wealth Creation**

Funding for green space projects includes but most certainly is not limited to economic stimulus funds. Federal, state, and local funds are available in addition to economic stimulus funds.

Across the nation, voters approved 62 of 87 open space referendums providing billions of dollars for parks and green space in November 2008.<sup>8</sup> The people have spoken. Green space matters, even in the worst of economic times.

Congress in March 2009 approved the largest expansion of the wilderness system in 15 years, bestowing the highest level of federal protection on 2 million acres in nine states, and launching one of the most ambitious river restoration efforts in the West. For example, 700,000 acres will be protected in California, and Senator Barbara Boxer is working to protect an additional 1.4 million acres for the state.<sup>9</sup> President Obama's budget could provide from \$400 million up to \$900 million per year to fully fund the federal Land and Water Conservation Fund, providing a steady source of money for the acquisition of park land, the protection of significant landmarks and the expansion of outdoor recreational opportunities.<sup>10</sup> The Fund is the federal government's main vehicle for buying open space.

The American Recovery and Reinvestment Act (ARRA) provides \$787 billion in economic stimulus funds to get the nation back to work.<sup>11</sup> California, for example, will receive \$31 billion to address state budget shortfalls and supplement existing state spending, and could receive billions more through competitive grant programs. The Santa Monica Mountains National Recreation Area will receive over \$10 million. This is one of the largest allocations to a single national park and the largest single year

investment in capital projects since the national recreation area was established in 1978.<sup>12</sup> The economic stimulus package includes natural resource, environmental protection, and transportation provisions.<sup>13</sup> To coordinate California's response to the federal economic stimulus bill, the governor has created a Federal Economic Recovery Task Force and appointed the nation's first Inspector General specifically tasked to oversee implementation of the economic stimulus.<sup>14</sup> The oversight process should include compliance with the equal protection laws to ensure underserved communities receive their fair share of the benefits, as discussed below.

Green space is an economic stimulus. Parks and recreation help strengthen and stimulate the economy through sports and recreation-related sales of clothing, equipment, fees and services, the revenues generated from the tourism and hospitality industries, and increased property values.<sup>15</sup> According to the recent study by New York State, the economic benefits exceed the direct costs of the state park system by a benefit-to-cost ratio of more than five to one; the park system generates more than \$5 in benefits for every \$1 in costs. The annual economic impact of the park system is close to \$2 billion in output and sales for private businesses, in addition to 20,000 jobs.<sup>16</sup> A recent progress report provides a suggested methodology for measuring the economic value of a city park system based on seven factors that can be more or less quantified, including property value, tourism, direct use, health savings, the value of volunteer work, clean water, and clean air.<sup>17</sup> The Gates project by Christo in Central Park in New York City purportedly cost \$20 million and generated an estimated \$254 million in economic activity, according to the City of New York.<sup>18</sup>

Transportation infrastructure investments should provide transit alternatives to cars and highways. More than 80% of gas taxes go to highways and bridges, less than 20% to transit.<sup>19</sup> Transit can provide choices for people who have none, fight global warming, and reduce oil dependency. Transit to Trails is a pilot project to take inner city youth on mountain, beach, and river trips. Transit to Trails would reduce traffic congestion and parking problems, improve air quality, and reduce run-off of polluted water into rivers and the ocean. It would also reduce dependency on the automobile and fossil fuels.<sup>20</sup>

Green infrastructure projects should create green collar jobs for local workers and should benefit small and disadvantaged business enterprises, and youth. Targeted assistance should be provided to those who have been most affected by the economic crisis, including the unemployed, underemployed, dislocated workers, and low-income youth and adults, and populations often excluded from economic opportunities including women and people of color. Training investments, bridge programs, and apprenticeship programs should focus on creating career ladders that allow workers to access higher-skilled jobs and transition to more modern technologies.<sup>21</sup>

California has launched a program for 1,000 at risk youth with \$20 million from economic stimulus and other funds.<sup>22</sup> National park backers are calling for the creation of a service corps similar to the New Deal's Civilian Conservation Corps that left a lasting imprint on the nation through Yosemite and other parks.<sup>23</sup>

The economic stimulus package also provides \$50 million for the arts.<sup>24</sup>

New Deal projects offer valuable lessons for economic stimulus and infrastructure investments. New Deal projects included 8,000 parks and 40,000 schools. The Civilian Conservation Corps expanded open space.<sup>25</sup> Part-time jobs kept high school and college students in school and out of regular markets. The New Deal created work for artists, musicians, actors, and writers. Painters taught high school classes and painted murals on public buildings depicting ordinary life. 15,000 musicians gave 225,000 performances in symphony orchestras, jazz groups, and free concerts in parks. Classics and contemporary works staged for 30 million viewers included productions with mixed and black casts. Writers wrote popular guides to each state, major cities, and interstate routes.<sup>26</sup> Robert Moses was a mastermind in attracting New Deal

dollars and transformed the New York park, public housing, and transportation systems with New Deal and other federal funds.<sup>27</sup> The difference New Deal programs made in people's lives is incalculable.<sup>28</sup>

The New Deal was not a square deal for all, however. Prof. Ira Katznelson's book *When Affirmative Action Was White* documents how New Deal policies excluded blacks, and increased income and wealth disparities. A continuing legacy is that the average black family holds just 10% of the assets of the average white family.<sup>29</sup> The Federal Housing Authority sanctioned racially restrictive housing covenants, for example.<sup>30</sup> Robert Moses transformed New York with New Deal and other federal funds largely to the exclusion of African Americans. Blacks could not get many New Deal jobs.<sup>31</sup> Civil rights laws must guarantee equal access to the economic stimulus package today.

### **C. Diversifying Support for Parks and Recreation**

California offers important lessons for diversifying support for and access to green space. People of color and low income people have helped ensure the passage of park bonds over the past several years.<sup>32</sup> In 2002, diverse California voters passed Proposition 40, at that time the largest resource bond in United States history, which provided \$2.6 billion for parks, clean water and clean air. 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. 75% 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>33</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.

California voters in November 2006 approved \$40.2 billion in park and clean water, flood control, housing, education, and transportation infrastructure bonds, including \$400 million in park funds under Proposition 84.<sup>34</sup> People of color were crucial to the passage of Prop 84, a \$5.4 billion park and water bond. Only 45% of non-Hispanic whites favored Prop 84. Latinos supported Prop 84 by 84%. Latinos gave Prop 84 an 800,000 vote margin, accounting for Prop 84's margin of victory.<sup>35</sup>

To ensure that the \$400 million in park funds under Prop 84 reach underserved communities, the California legislature enacted AB 31. AB 31 legislatively defines the criteria of park poverty and income poverty to be used in the competitive grant process for distributing Prop 84 park funds.<sup>36</sup>

The California park bond experience provides valuable lessons. First, people of color and low income communities will support properly framed investments that include the values of green space in communities of color and low income communities. Second, people of color and low income people must receive their fair share of the benefits of green space. Third, support for and access to green space must continue to be diversified to help ensure the availability of future green infrastructure funds.

### **D. Inequitable Distribution of Environmental Benefits and Burdens**

Unfair inequities exist in the distribution of environmental benefits, including green space, and environmental burdens, including toxic sites, between less affluent and disadvantaged communities, and between communities of color and non-Hispanic whites. These trends have been documented in California and across the nation. The California legislature explicitly recognized the need to address disparities in green space when it enacted the criteria for investing park funds in park poor and income poor communities.<sup>37</sup>

Nationally, there are disparities in access to safe places to play based on race, ethnicity, income, and poverty. While 87% of non-Hispanic respondents reported that “there are safe places for children to play” in their neighborhood, only 68% of Hispanics, 71% of African Americans, and 81% of Asians

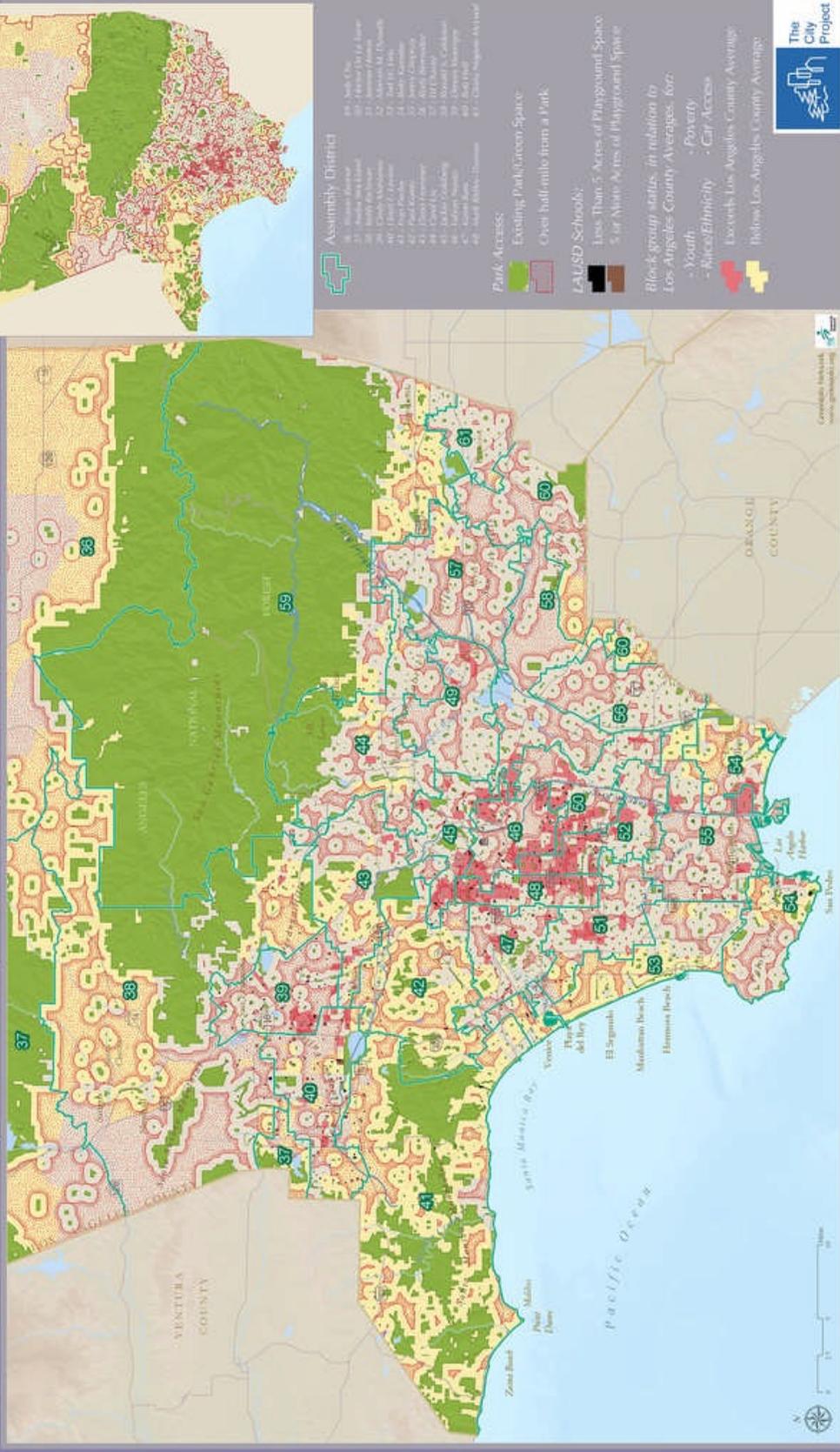
agreed, according to the Census Bureau survey “A Child’s Day.”<sup>38</sup> Almost half (48%) of Hispanic children under 18 in central cities were kept inside as much as possible because their neighborhoods were perceived as dangerous. The same was true for more than 39% of black children, 25% of non-Hispanic white children, and 24% of Asian children.<sup>39</sup> Non-Hispanic White children and youth were most likely to participate in after school sports, with Hispanic children and children in poverty least likely.<sup>40</sup> Children involved in sports and extracurricular activities tend to score higher on standardized tests and are less likely to engage in antisocial behavior.<sup>41</sup>

These national trends are borne out at the state, regional, and local level. A survey by the Public Policy Institute of California reported that 64% of Californians believe 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%) also agree that compared to wealthier neighborhoods, lower-income and minority neighborhoods have more than their fair share of toxic waste and polluting facilities.<sup>42</sup>

As an example of the regional level, communities with the lowest 20% income levels have virtually no parks in Southern California, according to GIS mapping and analyses by the Southern California Association of Governments (SCAG). Additionally, there is virtually no public transportation to federal or state parks. SCAG calls for a multiagency effort to improve park access for all income levels.<sup>43</sup>

Locally, for example, Los Angeles county illustrates disparities in access to park, school, and health resources. Los Angeles is park poor, and there are unfair disparities in access to parks and school fields. Children of color living in poverty with no access to a car have the worst access to parks, and to school fields with five acres or more of playing fields, and suffer from the highest levels of child obesity. The following map illustrates the demographics of access to parks and school fields. The lack of green space in communities of color and low income communities is not an accident of unplanned growth, but a continuing legacy of a history and pattern of discriminatory land use, housing, transportation, and economic policies dating back to the New Deal and beyond.<sup>44</sup>

*Park Access and Schools for Children in Poverty with No Access to a Car*



The Los Angeles County health department has documented the link between the lack of space for physical activity and high rates of obesity for 128 cities and communities in Los Angeles County. The Health Department found a higher prevalence of obesity in cities or communities where the Economic Hardship Index (which uses metrics including crowded housing, poverty, unemployment, lower educational attainment, more dependents, and lower median income) was greater compared to cities and communities with lower economic hardships. Cities with less parks, recreation areas or wilderness area were more likely to have a higher prevalence of children who are obese.<sup>45</sup>

Parks are not the only places for physical activity. Schools can provide safe places to play, but many school districts do not enforce state physical education requirements. Thirty-seven out of 71 school districts failed to enforce California physical education laws that require elementary schools to provide 200 minutes of physical education every ten days, according to a study based on public records from the California Department of Education.<sup>46</sup> Children often have no place to play even in physical education classes in such schools.

Agencies should make optimal use of scarce land and public resources through the shared use of parks, schools, and pools, but often do not.<sup>47</sup> For example, the Los Angeles Unified School District, the second largest in the nation, had only 30 joint use agreements out of 600 schools as of 2006.<sup>48</sup>

The economic stimulus package includes \$106 billion for the nation's schools.<sup>49</sup> The federal government should prioritize projects that include the shared use of parks, schools and pools, and require shared use for agencies to receive economic stimulus and other federal funds. The federal No Child Left Behind law should also require that quality physical education be taught in every public school, and that state physical education laws be enforced.<sup>50</sup>

The lack of environmental benefits including green space in communities of color and low income communities is aggravated by the disproportionate placement of toxic sites in those communities. These communities have toxic sites instead of parks. Brownfields can be converted to green fields to transform environmental degradation into environmental benefits. A national study, *Toxic Wastes and Race at Twenty 1987-2007*, documents that although about one-third of United States residents are nonwhite, more than half of the people living near hazardous waste facilities are Latino, African American or Asian American.<sup>51</sup> California has the nation's highest concentration of people of color living near such facilities -- 81% state wide.<sup>52</sup> Greater Los Angeles is the worst in the nation, with 1.2 million people living less than two miles from 17 hazardous waste facilities. 91%, or 1.1 million, of those people are of color.<sup>53</sup> The study examined census data for neighborhoods adjacent to 413 facilities nationwide that process or store hazardous chemical waste produced by refineries, metal plating shops, drycleaners, and battery recyclers, among others.

### **E. Beyond Economic Vitality for All**

Parks, school fields, beaches, rivers, mountains, forests, and other green spaces offer multiple benefits beyond dollars and cents to those who can access them. These benefits include the simple joys of playing in the park or school field; social cohesion, or bringing people together; improved physical, psychic, and social health; youth development and academic performance; conservation values of clean air, water, and land, and habitat protection, and climate justice; art, culture and historic preservation; spiritual values in protecting the earth and its people; and sustainable regional planning. Fundamental principles of equal justice and democracy justify equal access to these benefits.

#### *Fun*

Fun is not frivolous. Children have the right to the simple joys of playing in parks, school fields, and

other safe public places. The United Nations recognizes the right to play as a fundamental human right.<sup>54</sup> The United States was founded in part for the pursuit of happiness.<sup>55</sup>

### *Human Health*

Human health includes more than reducing obesity and diabetes and includes the contributions of the built environment and physical activity to the full development of the person and community through youth development and gang and crime prevention.

### *Physical Activity*

This is the first generation in the history of the country in which children could have a lower life expectancy than their parents if obesity is not reversed.<sup>56</sup> The Centers for Disease Control and the President's Council on Fitness and Sports have targeted increasing the proportion of adolescents who engage in moderate physical activity for at least 30 minutes on five or more of the previous seven days by 2010.<sup>57</sup> The Robert Wood Johnson Foundation has committed \$500 million to stop and reverse child obesity by 2015.<sup>58</sup>

Parks and school fields should be accessible by foot, bicycle, transit, and other means. Parks and school fields should provide diverse programs to encourage use and bring people into the park. Programs should include physical activity to address health, obesity and diabetes for all age groups, from children and youth to seniors. Grass roots groups and other non-profits should be involved in community outreach and engagement and in helping to provide the programs, such as soccer and other sports.<sup>59</sup>

Access to safe parks or other places for physical activity, along with other characteristics of the neighborhoods where adolescents live, have an important effect on whether teens meet recommendations for physical activity, and whether they get any activity at all. In California, the percent of teens engaging in regular physical activity is higher when teens have access to a safe park than when they have no access. In addition, the percentage of teens who get *no* physical activity at all is higher among those with no access to a safe park than among those who do. Regular physical activity, along with a healthful diet, is key to preventing obesity and many chronic health conditions associated with obesity. Insufficient physical activity contributes to obesity and to risk of complications and death from chronic conditions, such as Type 2 diabetes, heart disease, hypertension, and some cancers. It is also associated with greatly increased costs for medical care and lost productivity, estimated to cost California approximately \$13 billion a year.<sup>60</sup>

### *Youth Development*

Publicly funded youth programs – including green job corps programs like those discussed above -- can keep students in school and out of the regular job market while developing permanent career opportunities. Active recreation and team sports can promote positive choices and help reduce youth violence, crime, drug abuse, and teen pregnancy. Sports and recreation can provide life-long lessons in teamwork, build character and improve academics.<sup>61</sup>

### *Stress, Depression, and Mental Functioning*

In the environments of modern cities, parks and open spaces provide needed reprieve from the everyday stressors that lead to mental fatigue, improving the health of adults and children by reducing stress and depression and improving the ability to focus, pay attention, be productive, and recover from illness.<sup>62</sup> Evidence shows that spending time in parks can reduce irritability and impulsivity and promote intellectual and physical development in children and teenagers by providing a safe and engaging

environment to interact and develop social skills, language and reasoning abilities, as well as muscle strength and coordination. Researchers have found associations between contact with the natural environment and improvements in the functioning of children with Attention Deficit and Hyperactivity Disorder (ADHD).<sup>63</sup> Contact with natural environments, such as trees, has also been found to be associated with increases in the psychological resources of individuals living in public housing to make changes that will improve their lives, and decreases in “mental fatigue” and finding problems insurmountable.<sup>64</sup>

### *Recovery from Illness*

Parks and green space also have direct healing effects. A classic study demonstrated that views of trees enhances the recovery of surgical patients and shortens the duration of hospitalizations.<sup>65</sup> Research demonstrates living in greener environments reduces the number of health complaints.<sup>66</sup>

### *Social Cohesion—Bringing People Together*

Parks and recreation programs should serve the diverse needs of diverse users. Numerous studies document how people attach different values to green space and use green space differently, both in urban and non-urban contexts.<sup>67</sup>

Green parks satisfy needs for interaction by enticing residents into public spaces with trees, lush lawns and playgrounds. Neighborhood workdays for park and/or garden maintenance and improvement efforts foster common purpose and sense of ownership among residents. Perhaps most importantly, parks become a source of community building, pride and inspiration for further community improvements and revitalization. Social interaction and neighborhood spaces have been identified as key facets of healthy communities supporting social networks, social support, and social integration that have been linked to improvements in both physical and mental health. Sociability may contribute to a sense of belonging and community and alleviate some forms of mental illness.<sup>68</sup> In a study conducted at a large public housing development in Chicago, Illinois, vegetated areas were found to be used by significantly more people and those individuals were more likely to be engaged in social activities than similar areas without vegetation.<sup>69</sup>

### *Conservation and Climate Justice*

Parks and natural open spaces promote conservation values including clean air, water, and ground, habitat protection, and climate justice. Green spaces in parks, schools, sports fields, and other public places can help clean water through natural filtration. Flood control basins can provide green space for parks and playing fields. For example, California would benefit from investment state-wide in parks in underserved communities in the fight to stop global warming and achieve climate justice. Green spaces can help reduce the urban carbon footprint and global warming. Such land could otherwise be used for economic activities that generate heat and carbon. Parks make cities more liveable, and people in liveable cities might live more efficiently and thus reduce their impact on the environment.<sup>70</sup>

Global warming is fundamentally an issue of human rights and environmental justice that connects the local to the global. With rising temperatures, human lives—particularly in people of color, low-income, and indigenous communities—are affected by compromised health, financial burdens, and social and cultural disruptions. Moreover, those who are most affected are least responsible for the greenhouse gas emissions that cause the problem—both globally and within the United States. These communities are the least able to bear the burdens of correcting it absent appropriate conservation, economic, and equitable measures.<sup>71</sup>

### *Culture, Heritage, and Public Art*

Parks provide important places to celebrate diverse culture, heritage and art. Cultural, historical and artistic monuments should reflect the diversity of a place and its people. The California Department of Parks and Recreation recognized the need to serve the needs of diverse users in its seminal study *Five Views: An Ethnic Historic Site Survey for California (1988)*.<sup>72</sup> People of color and women have been vital to the creation of Los Angeles throughout the history of the City and the area. Yet with almost 900 official cultural and historical landmarks in the City of Los Angeles as of January 2008, only about 76 relate to people of color, women, and Native American tribes.<sup>73</sup> The Great Wall of Los Angeles by UCLA Prof. Judy Baca and SPARC (Social and Public Art Resource Center), one of the nation's greatest monuments to inter-racial harmony, is a best practice example of public art in a public park.<sup>74</sup> Prof. Baca and SPARC are working with The City Project to restore and extend the Great Wall and create interpretive pilot projects on the Heritage Parkscape along the Los Angeles River to celebrate diversity, democracy and freedom, using \$2.1 million in state and other grants.<sup>75</sup>

The struggle to stop a proposed toll road through the sacred Acjachemen site of Panhe and San Onofre State Beach illustrates the profound values of religious freedom, democracy, and equal justice for Native Americans that can be celebrated in parks.<sup>76</sup> Native American sites must be preserved.

### *Spiritual Values in Protecting the Earth and its People*

Social justice and stewardship of the earth motivate spiritual leaders to support parks, green space and equal justice. The United Church of Christ published the environmental justice studies on toxics in 1987 and 2007 discussed above.<sup>77</sup> Cardinal Roger Mahony and the Justice and Peace Commission of the Catholic Archdiocese of Los Angeles, have actively supported equal access to parks and natural space.<sup>78</sup> Nobel Peace Prize Laureate Rigoberta Menchú has praised the work of The City Project and Anahuak Youth Sports Association to promote equal access to parks and recreation as a way of giving children hope and saying no to violence.<sup>79</sup> In 2004, the Nobel Committee awarded the Peace Prize to the Kenyan woman Wangari Muta Maathai for planting trees and speaking out for women.<sup>80</sup> The award for Ms. Maathai is an explicit mainstream recognition that there is more at stake in caring for creation than mainstream environmental values.

### *Equal Justice and Democracy*

Fundamental principles of equal justice and democracy underlie each of the values above. As a matter of simple justice, parks, school fields, and other natural public places are a public resource, and the benefits and burdens should be distributed equally.<sup>81</sup>

## **F. Legal and Policy Justifications for Equal Access to Parks and Recreation**

Civil rights protections were under full-scale assault under the Bush administration. There is hope for change if the Obama administration enforces and strengthens civil rights protections to provide equal access to the economic stimulus funds and other public resources. The first bill that President Obama signed into law was the Lilly Ledbetter Fair Pay Restoration Act, which restored the right to seek access to justice in court for employment discrimination.<sup>82</sup> The Office of Management and Budget has circulated guidance for economic stimulus recipients specifying that grant making agencies ensure that recipients comply with Title VI of the Civil Rights Act of 1964, which is discussed below, as well as other equal opportunity laws and principles. The guidance, for example, emphasizes the need to support small and disadvantaged business enterprises, engaging in sound labor practices, promoting local hiring, and engaging with community-based organizations.<sup>83</sup>

Title VI of the Civil Rights of 1964 and its implementing regulations guard against both (1) unjustified discriminatory impacts for which there are less discriminatory alternatives, and (2) intentional discrimination based on race, color, or national origin by recipients of federal funds.<sup>84</sup> States including California have parallel laws. These laws guarantee equal access to public resources, including economic stimulus projects and green space. An important purpose of the statutory civil rights framework is to ensure that recipients of public funds do not maintain policies or practices that result in discrimination based on race or ethnicity.<sup>85</sup> The economic stimulus, funding, contracting, planning, and administrative processes are available proactively to achieve compliance with civil rights laws. Compliance with civil rights laws should be combined with environmental, educational, and other laws. The OMB economic stimulus guidelines recognize such opportunities.

California laws also guard against intentional discrimination and unjustified discriminatory impacts by recipients of state funds under Government Code section 11135 and its regulations.<sup>86</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>87</sup>

The Mountains Recreation and Conservation Authority, a joint powers authority, has adopted an environmental justice policy statement in line with civil rights laws.<sup>88</sup> The California Coastal Commission has adopted a land use plan for Malibu that incorporates California’s statutory definition of environmental justice.<sup>89</sup> These are best practices for other agencies.

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.<sup>90</sup>

The legislative criteria for park poverty and income poverty under California law is a best practice example to provide standards to measure progress and equity in access to green space including parks and school fields, and to hold public officials accountable, under the civil rights laws. Park poor and income poor communities overlap with communities of color, as illustrated in the first map above. Investing in park poor and income poor communities can help alleviate the disparities in access to park, school, and health resources discussed above.<sup>91</sup>

### **G. Recommendations for Equitable Access to Parkland**

Green spaces, including parks, school fields, rivers, beaches, forests, mountains, and trails, are a necessary part of any infrastructure for healthy, livable, just communities. The following recommendations for equitable development would help ensure that everyone—especially children and youth of color and others in low-income communities—benefits equally from infrastructure investments.

1. *Prioritize green space projects based on need in communities that are both park poor and income poor.* The California legislative criteria for investing park funds in park poor and income poor communities is a best practice example.
2. *Prioritize projects that address physical, psychological, and social health needs, including childhood obesity and diabetes levels.* Applying public health criteria to infrastructure investments could improve health and the quality of life in communities.<sup>92</sup> Green space in parks and schools can provide opportunities for physical activity to reduce obesity, improve academics, bring people together and provide positive alternatives to gangs, crime and violence. Parks and school fields should be accessible and should provide programs to encourage the use of the parks.

3. *Prioritize projects that involve the joint use of parks, schools and pools to make optimal use of scarce land, money, and public resources, and expand open space opportunities in densely developed communities.* The joint use of parks, schools, and pools and other multi-benefit green spaces can clean the air and water, provide flood control, promote climate justice, and convert toxic sites and brownfields to green fields. The federal No Child Left Behind law should also require that quality physical education be taught in every public school, and that state physical education laws should be enforced.
4. *Fund Conservation Corps and Youth Job Programs.* Conservation Corps and youth job programs should be strengthened and expanded to create green jobs and to keep young people in school, physically active and healthy, and out of gangs. Youth programs also lead to permanent jobs and careers as stewards of the environment.
5. *Prioritize cultural, historical, and public art projects that celebrate diversity, democracy and freedom parks and other public places. Native American sites must be preserved.*
6. *Fund Transit to Trails.* Transportation funding should support transit to trails as alternatives to single occupancy vehicles in order to provide access to parks, mountains, beaches and rivers.
7. *Infrastructure projects should create green collar jobs for local workers, small and disadvantaged business enterprises, and youth.*
8. *Funding agencies should ensure compliance with civil rights laws guaranteeing equal access to public resources including parks and recreation programs.* Compliance with civil rights laws should be combined with other laws including environmental and education laws, as discussed in the OMB economic stimulus guidelines.
9. *Projects should implement principles of equitable development: invest in people, invest in stronger communities, invest in the open, invest in justice.*<sup>93</sup>
10. *Implement strategic plans to improve parks and recreation in every neighborhood.* In conjunction with the specific recommendations above, public officials should develop a vision and strategic plan to alleviate inequities in access to parks and recreation.

## **H. Conclusion**

Before 1927, no comprehensive plan existed for preserving California's recreational, natural, and cultural treasures. The following year, the newly-established State Park Commission began gathering support for the first state park bond issue. In 1928, Californians voted nearly three to one in favor of a \$6 million park bond. Frederick Law Olmsted, Jr., completed a statewide survey of potential parklands that defined basic long-range goals and provided guidance for the acquisition and development of state parks. The plan became a model for other states.<sup>94</sup>

California currently has the opportunity to create a new plan to invest economic stimulus and other megafunds to get the state back to work, to build and restore the state's infrastructure for generations to come, and to become a new model for other states. Park poverty and income poverty criteria under California law are a best practice example for standards to measure progress and equity and to hold public officials accountable. The struggle to maximize public access to parks and recreation while ensuring the fair treatment of communities of all colors, cultures, and incomes can transform California into a more

livable, democratic, and just place to live. Applying the research-based evidence, principles, laws, and recommendations above to invest park and recreation funds generally, to implement the criteria to invest park funds in park poor and income poor communities, and to guide other infrastructure investments will help create healthy, livable, communities for all throughout California and beyond.

## References

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2. Editorial, *A Resounding Vote for Open Space*, N.Y. Times, Nov. 18, 2008.
3. On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (“Recovery Act” or “ARRA”).
4. James Heintz et al., *The NYS Park System: An Economic Asset to the Empire State*, Political Economy Research Institute, University of Massachusetts Amherst (March 2009), available at [www.ptny.org](http://www.ptny.org).
5. Nicolai Ouroussoff, *Reinventing America’s Cities: The Time Is Now*, N.Y. Times, March 29, 2009.
6. *Id.*
7. See generally California Green Stimulus Coalition, <http://californiagreenstimulus.org>.
8. Editorial, *A Resounding Vote for Open Space*, N.Y. Times, Nov. 18, 2008.
9. Richard Simon & Bettina Boxall, *Wilderness Protection Bill Gets Congress’ OK*, L.A. Times, March 26, 2009.
10. Editorial, *The Promised Land*, N.Y. Times, March 13, 2009, [www.nytimes.com/2009/03/14/opinion/14sat3.html](http://www.nytimes.com/2009/03/14/opinion/14sat3.html). See also Carl Hulse, *Budgets Approved, with No G.O.P Votes*, N.Y. Times, April 2, 2009, [www.nytimes.com/2009/04/03/us/politics/03budget.html](http://www.nytimes.com/2009/04/03/us/politics/03budget.html).
11. See generally Farhana Hussain et al., *The Stimulus Plan: How to Spend \$787 Billion*, N.Y. Times, available at [http://projects.nytimes.com/44th\\_president/stimulus](http://projects.nytimes.com/44th_president/stimulus).
12. Message from Woody Smeck, Superintendent, Santa Monica National Recreation Area, available at [www.cityprojectca.org/blog/archives/1439](http://www.cityprojectca.org/blog/archives/1439).
13. Mac Taylor, Legislative Analyst, *Federal Economic Stimulus Package: Fiscal Effects on California* (March 10, 2009), available at [www.lao.ca.gov/laoapp/PubDetails.aspx?id=1957](http://www.lao.ca.gov/laoapp/PubDetails.aspx?id=1957).
14. Press Release, *Governor Arnold Schwarzenegger Creates Federal Economic Recovery Task Force*, March 26, 2009, available at <http://gov.ca.gov/press-release/11814>; Press Release, *Gov. Schwarzenegger Creates First-in-the-Nation Recovery Act Inspector General*, April 3, 2009, <http://gov.ca.gov/press-release/11927>.
15. See Public Comments submitted by Ruth Coleman, Director, California Department of Parks and Recreation to California High Speed Rail Authority 11 (August 19, 2004).
16. James Heintz et al., *The NYS Park System: An Economic Asset to the Empire State*, Political Economy Research Institute, University of Massachusetts Amherst (March 2009), available at [www.ptny.org](http://www.ptny.org).
17. Peter Harnik, *Measuring the Economic Value of a City Park System* (2009), available at [www.tpl.org/tier3\\_cd.cfm?content\\_item\\_id=22879&folder\\_id=3208](http://www.tpl.org/tier3_cd.cfm?content_item_id=22879&folder_id=3208).

- 
18. Mike McIntire, *Enough about “Gates” as Art; Let’s Talk about that Price Tag*, N.Y. Times, March 5, 2005.
  19. Editorial, *A Pitch for Mass Transit*, N.Y. Times, Jan. 4, 2009.
  20. See more about Transit to Trails at [www.cityprojectca.org/blog/archives/345](http://www.cityprojectca.org/blog/archives/345).
  21. See generally California Green Stimulus Coalition Principles, available at <http://californiagreenstimulus.org/our-principles>.
  22. See Office of the Governor, Fact Sheet: California Green Corps, available at <http://gov.ca.gov/fact-sheet/11753>.
  23. Julie Cart, *Depression-era stimulus put millions to work in national park system*, L.A. Times, Feb. 1, 2009.
  24. Robin Pogrebin, *Saving Federal Arts Funds: Selling Culture as an Economic Force*, N.Y. Times, Feb. 15, 2009.
  25. Neil M. Maher, *Nature’s New Deal: The Civilian Conservation Corps and the Roots of the American Environmental Movement* (2008).
  26. David Kennedy, *Freedom from Fear: The American People in Depression and War, 1929-1945* 251-56 (1999).
  27. See, e.g., Robert Caro, *The Power Broker: Robert Moses and the Fall of New York* 364 (1974); Hilary Ballon, *Robert Moses and Urban Renewal*, chapter in Hilary Ballon & Kenneth T. Jackson, eds., *Robert Moses and the Modern City: The Transformation of New York* 94 (2007).
  28. Robert García et al., Letter to President Barack Obama re: *Economic Stimulus, Public Works, and Equal Justice* (The City Project Jan.14, 2009), available at [www.cityprojectca.org/blog/archives/1219](http://www.cityprojectca.org/blog/archives/1219).
  29. See generally Ira Katznelson *When Affirmative Action Was White* 52 (2005).
  30. See generally Beryl Satter, *Family Properties: Race, Real Estate, and the Exploitation of Black America* (2009); Douglas Flamming, *Bound for Freedom: Blacks in Los Angeles in Jim Crow America* 271-75, 303, 414 n.38 (2005); Mike Davis, *City of Quartz* 160-64 (1990); California Department of Parks and Recreation, *Five Views: An Ethnic Sites Survey For California* 68-69 (1988).
  31. See, e.g., Robert Caro, *The Power Broker: Robert Moses and the Fall of New York* 318-19, 509-12, 513-14 (1974); Martha Biondi, *Robert Moses, Race, and the Limits of an Activist State*, chapter in Hilary Ballon & Kenneth T. Jackson, eds., *Robert Moses and the Modern City: The Transformation of New York* 116-21 (2007).
  32. Exit poll and turnout study by the William C. Velazquez Institute, available at [www.wcvi.org/press\\_room/press\\_releases/2006/exitpoll\\_caProposition842006.htm](http://www.wcvi.org/press_room/press_releases/2006/exitpoll_caProposition842006.htm).
  33. L.A. Times, *How Propositions 40 and 45 Fared Among Voters*, Mar. 7, 2002 (statewide exit poll).
  34. Legislative Analyst’s Office, *Implementing the 2006 Bond Package: Increasing Effectiveness through Legislative Oversight* (Jan. 22, 2007), [www.lao.ca.gov/2007/2006\\_bonds/2006\\_bonds\\_012207.aspx](http://www.lao.ca.gov/2007/2006_bonds/2006_bonds_012207.aspx).
  35. Exit poll and turnout study by the William C. Velazquez Institute, [www.wcvi.org/press\\_room/press\\_releases/2006/exitpoll\\_caProp842006.htm](http://www.wcvi.org/press_room/press_releases/2006/exitpoll_caProp842006.htm).
  36. See generally Robert García et al., *Healthy Parks, Schools and Communities for All: Park Development and Community Revitalization* (The City Project Policy Report 2009), available at [www.cityprojectca.org/blog/archives/1332](http://www.cityprojectca.org/blog/archives/1332); Robert García and Aubrey White, *Healthy Parks, Schools, and Counties: Mapping Green Access and Equity for California* (The City Project Policy Report 2007); available at [www.cityprojectca.org/blog/archives/362](http://www.cityprojectca.org/blog/archives/362).
  37. *Id.*
  38. Jane Lawler Dye and Tailse Johnson, U.S. Census Bureau, *A Child’s Day 2003: Selected Indicators of Child Well-Being*, Table D29 (Jan. 2007) (“*A Child’s Day*”), available at [www.census.gov/population/www/socdemo/wellbeing.html](http://www.census.gov/population/www/socdemo/wellbeing.html).
  39. 33% of Hispanic children in suburban areas were kept inside because of perceived dangers, followed by 25% of Blacks and 15% of non-Hispanic Whites. The number of Asian respondents in metropolitan areas outside central cities was not statistically significant. *Id.* at 19-20.
  40. Non-Hispanic White children were most likely to participate in sports – 45% of both 6- to 11- and 12- to 17-year-old children, compared to 26% and 42% of Asians; 24% and 35% of blacks; and 21% and 35% of Hispanics. Only 26% of 6- to 17-year-old children in poverty participated in after school sports, compared to 46% living at twice the federal poverty level or higher. *Id.* at 13-14.
  41. *Id.* at 13, citing Joseph Mahoney, *School Extracurricular Activity Participation as a Moderator in the Development of Antisocial Patterns*, 71 *Child Development* 502-16 (2000), and National Institute of Child Health and Human Development Early Child Care and Youth Development Research Network (NICHD), *Are Child Developmental Outcomes Related to Before- and After-School Care Arrangements? Results from the NICHD Study of Early Child Care*, 75 *Child Development* 284-95 (2004).
  42. Mark Baldasare, *Public Policy Institute of California Statewide Survey: Special Survey on Californians and the Environment* vi (June 2002).
  43. SCAG Regional Transportation Plan Environmental Justice Report (2008), available at [www.cityprojectca.org/blog/archives/880](http://www.cityprojectca.org/blog/archives/880).
  44. See generally Robert García and Aubrey White, *Healthy Parks, Schools, and Communities: Mapping Green Access and Equity for the Los Angeles Region* 16-18 (The City Project Policy Report 2006); available at [www.cityprojectca.org/ourwork/mappinggreenaccess](http://www.cityprojectca.org/ourwork/mappinggreenaccess).
  45. Los Angeles County Department of Public Health, Office of Health Assessment and Epidemiology, *Preventing Childhood Obesity: the need to create healthy places. A Cities and Communities Health Report*. October 2007.
  46. Harold Goldstein, California Center for Public Health Advocacy, *Dropping the Ball: California Schools Fail to Meet Physical Mandates* (June 8, 2006).
  47. On the importance of public pools as a social justice issue, see generally Jeff Wiltse, *Contested Waters: A Social History of Swimming Pools in America* (2007); *Open the Miguel Contreras Pool! Joint Use of Schools, Pools, and Parks*, available at

---

www.cityprojectca.org/ourwork/schools.html#miguelcontreraspool.

48. See generally Robert García and Aubrey White, *Healthy Parks, Schools, and Communities: Mapping Green Access and Equity for the Los Angeles Region* 8-10 (The City Project Policy Report 2006); available at [www.cityprojectca.org/ourwork/mappinggreenaccess](http://www.cityprojectca.org/ourwork/mappinggreenaccess).

49. See Mehta and Jason Song, *Nation's Schools Would Get \$106 Billion from Economic Stimulus Package*, L.A. Times, Feb. 13, 2009.

50. See generally Robert García and Chad Fenwick, *Social Science, Equal Justice, and Public Health Policy: Lessons from Los Angeles*, 30 *Journal of Public Health* S26 (2009); Robert García et al., "A Tipping Point to a Physical Education Revolution:" *Enforcing Physical Education Laws in Public Schools*, forthcoming in *IMPACT: A Multidisciplinary Journal Addressing the Issues of Urban Youth*; Tara Parker-Pope, *The 3 R's? A Fourth Is Crucial, Too: Recess*, N.Y. Times, Feb. 23, 2009.

51. Robert D. Bullard et al., *Toxics Waste and Race at Twenty 1987-2007: A Report Prepared for the United Church of Christ Justice & Witness Ministries* at x, 52, 152 (2007), available at [www.ucc.org/justice/pdfs/toxic20.pdf](http://www.ucc.org/justice/pdfs/toxic20.pdf).

52. *Id.* at xi, 58, 74, 154.

53. *Id.* at 61, 62, 154.

54. *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.

55. U.S. Declaration of Independence. See also Cal. Const., art. I, § 1.

56. S. Jay Olshansky, et al., *A Potential Decline in Life Expectancy in the United States in the 21st Century*, 352 *New England Journal of Medicine* 1138-45 (2005).

57. Centers for Disease Control and President's Council on Fitness and Sports, *Healthy People 2010*, available at [www.healthypeople.gov/Document/HTML/Volume2/22Physical.htm#\\_Toc490380803](http://www.healthypeople.gov/Document/HTML/Volume2/22Physical.htm#_Toc490380803).

58. See <http://www.rwjf.org/childhoodobesity/product.jsp?id=21938>.

59. See generally Andrew Mowen et al., *The Potential of Parks and Recreation in Addressing Physical Activity and Fitness*, President's Council on Physical Fitness and Sports Research Digest (March 2008).

60. See generally Susan H. Babey et al., *Teens Living in Disadvantaged Neighborhoods Lack Access to Parks and Get Less Physical Activity* (UCLA Center for Health Policy Research 2007); San Diego State University, *Physical Education Matters* (California Endowment Policy Brief 2008); UCLA Center to Eliminate Health Disparities and Samuels & Associates, *Failing Fitness: Physical Activity and Physical Education in Schools* (California Endowment Policy Brief 2007); Susan H. Babey et al., *Access to Safe Parks Helps Increase Physical Activity among Teenagers* (UCLA Center for Health Policy Research 2006); Robert García and Aubrey White, *Healthy Parks, Schools, and Communities: Mapping Green Access and Equity for the Los Angeles Region* 8-10, 19 (The City Project Policy Report 2006); Neal Kaufman et al., *Evidence-based Programs to Promote Physical Activity among Youth* (UCLA Center for Health Policy Research, Sept. 9, 2005). *Accord*, U.S. Dep't of Health and Human Services, *Physical Activity Fundamental to Preventing Disease* 9 (June 20, 2002); U.S. Dep't Health & Human Services, *The Surgeon General's Call to Action To Prevent and Decrease Overweight and Obesity* 9-10 (2001); U.S. Dep't 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); U.S. Dep't of Health and Human Services, *Physical Activity and Health: A Report of the Surgeon General* 200 (1996); PolicyLink, *Regional Development and Physical Activity: Issues and Strategies for Promoting Health Equity* 9-12 (Nov. 2002); *Gangs, Crime and Violence in Los Angeles: Findings and Recommendations from the District Attorney's Office* (1992).

61. See generally Russell R. Pate et al., *Sports Participation and Health-Related Behaviors among US Youth*, *Archives Pediatrics & Adolescent Med.* (Sept. 2000); U.S. Dep't of Health and Human Services, *Physical Activity Fundamental to Preventing Disease* 9 (June 20, 2002); Ca. Dep't of Ed., Press Release, Dec. 10, 2002; *Gangs, Crime and Violence in Los Angeles: Findings and Recommendations from the District Attorney's Office* (1992); Anastasia Loukaitou-Sideris & Orit Stieglitz, *Children in Los Angeles Parks: A Study of Equity, Quality, and Children Satisfaction with Neighborhood Parks*, 73 (4) *Town Planning Rev.* 1-6 (2002); William G. Bowen & Sarah A. Levin, et al., *Reclaiming the Game: College Sports and Educational Values* (2003).

62. C. Maller et al., *Healthy Nature Healthy People: 'Contact With Nature' as an Upstream Health Promotion Intervention for Populations*, 21 *Health Promotion Int'l* 45-53 (2005).

63. A.F. Taylor et al., *Coping with ADD: The Surprising Connection to Green Play Settings*, 33 *Environment and Behavior* 54-77 (2001).

64. F.E. Kuo, *Coping with Poverty Impacts of Environment and Attention in the Inner City*, 33 *Environment and Behavior* 5-34 (2001).

65. R.S. Ulrich, *View through a Window May Influence Recovery From Surgery*, *Science* 421 (1984).

66. S. de Vries et al., *Natural Environments - Healthy Environments? An Exploratory Analysis of the Relationship Between Green Space and Health*, 35 *Environment and Planning* 1717-31 (2003)

67. See, e.g., Alison H. Deming & Lauret E. Savoy, ed., *The Colors of Nature: Culture, Identity, and the Natural World* (2002); Setha Low, Dana Taplin, & Suzanne Scheld, *Rethinking Urban Parks: Public Space and Cultural Diversity* 40-43 (2005); M.K. Cronan et al., *Physical Activity Patterns and Preferences among Latinos in Different Types of Public Parks*, 5 *Journal of Physical Activity and Health* 894 (2008); Deborah J. Chavez, *Adaptive Management in Outdoor Recreation: Serving Hispanics in Southern California*, 17 (3) *West. J. Applied Forestry* 132 (July 2002); 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); Anastasia Loukaitou-Sideris, *Urban Form and Social Context: Cultural Differentiation in the Uses of Urban Parks*, 14 J. Planning & Ed. & Research 89, 100-02 (1995); Anastasia Loukaitou-Sideris & Orit Stieglitz, *Children in Los Angeles Parks: A Study of Equity, Quality, and Children Satisfaction with Neighborhood Parks*, 73 (4) Town Planning Rev. 1-6 (2002).
68. L.F. Berkmana et al., *From Social Integration to Health: Durkheim in the New Millennium*, 51 Social Science and Medicine 843-57 (2000).
69. W.C. Sullivan et al., *The Fruit of Urban Nature: Vital Neighborhood Spaces*, 36 Environment and Behavior 678-700 (2004).
70. See generally Sustainable Cities Initiative, *Guidelines and Performance Benchmarks* (Draft 2008) (sustainable land practices will enable natural and built systems to work together to protect and enhance the ability of landscapes to provide services such as climate regulation, clean air and water, and improved quality of life), available at [www.sustainablesites.org/report/SSI\\_Guidelines\\_Draft\\_2008.pdf](http://www.sustainablesites.org/report/SSI_Guidelines_Draft_2008.pdf).
71. James Barret, Earth Day Network Conference for People of Color and Spiritual Leaders, Washington, D.C. April 17, 2007; Redefining Progress, *Climate Justice, The Time Is Now*, <http://www.ejcc.org>; letter from the Alianza de los Pueblos del Río, May 31, 2007, re: Support AB 31, available at [www.cityprojectca.org](http://www.cityprojectca.org).
72. *Five Views* is available at [www.cityprojectca.org/blog/archives/708](http://www.cityprojectca.org/blog/archives/708).
73. See [www.cityprojectca.org/ourwork/publicart.html](http://www.cityprojectca.org/ourwork/publicart.html).
74. See [www.cityprojectca.org/ourwork/publicart.html](http://www.cityprojectca.org/ourwork/publicart.html).
75. On the Heritage Parkscape, see generally [www.cityprojectca.org/ourwork/heritageparkscape.html](http://www.cityprojectca.org/ourwork/heritageparkscape.html). Democracy, diversity and freedom are values celebrated in the Mission Statement for the Manzanar National Historic Site. See [www.flickr.com/photos/cityprojectca/616104463](http://www.flickr.com/photos/cityprojectca/616104463).
76. See [www.savepanhe.org](http://www.savepanhe.org) and [www.savesanonofre.org](http://www.savesanonofre.org); Editorial, *The Acjachemen's Victory*, L.A. Times, Dec. 28, 2008.
77. Robert D. Bullard et al., *Toxics Waste and Race at Twenty 1987-2007: A Report Prepared for the United Church of Christ Justice & Witness Ministries* (2007), available at [www.ucc.org/justice/pdfs/toxic20.pdf](http://www.ucc.org/justice/pdfs/toxic20.pdf).
78. According to the United States Catholic Conference, for example, Catholics show their respect for the Creator through stewardship and care for the earth as a requirement of their faith. United States Catholic Conference, Inc., Washington D.C. (1999). The United Nations has published an interfaith book of reflection for action. See Libby Bassett, et al., *Earth and Faith* (2000).
79. See video of Ms. Menchu on The City Project's YouTube website at <http://www.youtube.com/profile?user=CityProjectCA>.
80. Patrick E. Tyler, *Kenyan Environmentalist Wins Nobel Prize for Peace*, N.Y. Times, Oct. 8, 2004.
81. See generally García and White, *Healthy Parks, Schools, and Communities*, at 8-19, 21-24, *supra*; 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).
82. Gail Collins, *Lily's Big Day*, N.Y. Times, Jan. 29, 2009.
83. Peter R. Orszag, Director, Office of Management and Budget, Memorandum re: Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, April 3, 2009, at page 2 and Guidance at page 6, available at [www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-10.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-10.pdf).
84. 42 U.S.C. § 2000d (2004). 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). See also Executive Order 12,898 on Environmental Justice (Feb. 11, 1994). 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.
85. *Guardians Ass'n v. Civil Service Comm'n*, 463 U.S. 582, 629 (1983) (Justice Marshall, concurring in part and dissenting in part).
86. See Cal Gov. Code § 11135 *et seq.*; 22 CCR § 98101.
87. Cal. Gov. Code § 65040.12.
88. The statement is available at [www.mrca.ca.gov/pdf/attachment1388\\_Staff%20Report](http://www.mrca.ca.gov/pdf/attachment1388_Staff%20Report).
89. Malibu Local Coastal Program Plan adopted by California Coastal Commission 9 (Sept. 13, 2002).
90. Brookings Institution, *Racial Change in the Nation's Largest Cities: Evidence from the 2000 Census* (2001).
91. See generally Robert García & Erica Flores Baltodano, *The Urban Park Movement: Equal Justice, Democracy and Livability in Los Angeles*, chapter in book by Dr. Robert Bullard, ed., *The Quest for Environmental Justice: Human Rights and the Politics of Pollution* (2005); Robert García & Erica Flores Baltodano, *We Shall Be Moved: Community Activism As a Tool for Reversing the Rollback*, section in book edited by Denise C. Morgan et al., *Awakening from the Dream: Pursuing Civil Rights in a Conservative Era* (2006); Robert García & Erica Flores Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast*, 2 Stanford Journal of Civil Rights and Civil Liberties 143 (2005); Robert García and Chad Fenwick, *Social Science, Equal Justice, and Public Health Policy: Lessons from Los Angeles*, 30 Journal of Public Health S26 (2009); Robert García et al., "A Tipping Point to a Physical Education Revolution:" *Enforcing Physical Education Laws in Public Schools*, forthcoming in IMPACT: A Multidisciplinary Journal Addressing the Issues of Urban Youth; Robert García et al., *Healthy Parks, Schools and Communities for All: Park Development and Community Revitalization* (The City Project Policy Report 2009), available at [www.cityprojectca.org/blog/archives/1332](http://www.cityprojectca.org/blog/archives/1332); Robert García & Aubrey White, *Healthy Parks, Schools, and Communities: Mapping Green Access and Equity for the Los Angeles Region* 16-18 (The City Project Policy Report 2006); available at [www.cityprojectca.org/ourwork/mappinggreenaccess](http://www.cityprojectca.org/ourwork/mappinggreenaccess).
92. See Richard J. Jackson, MD, MPH & Chris Kochtitzky, MSP, *Creating a Healthy Environment: The Impact of the Built*

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*Environment on Public Health*, Sprawl Watch Clearinghouse Monograph Series, Public Health/Land Use Monograph 5, available at <http://www.sprawlwatch.org/Jackson>.

93. *See generally* California Green Stimulus Coalition Principles, available at <http://californiagreenstimulus.org/our-principles>.

94. Charles A. Birnbaum & Robin Karson, *Pioneers of American Landscape Design* 275 (2000). *See also* the California State Parks and Recreation web site at [www.parks.ca.gov/default.asp?page\\_id=940](http://www.parks.ca.gov/default.asp?page_id=940).

**Troy White**

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**From:** Judi Tamasi [judi.tamasi@mrca.ca.gov]  
**Sent:** Wednesday, October 07, 2009 11:14 AM  
**To:** April Winecki  
**Cc:** Troy White  
**Subject:** More comments-Scoping EIR Malibu Parks Public Access Enhancement Plan

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**From:** Healypatt@aol.com [mailto:Healypatt@aol.com]  
**Sent:** Wednesday, October 07, 2009 11:00 AM  
**To:** judi.tamasi@mrca.ca.gov  
**Subject:** Scoping EIR Malibu Parks Public Access Enhancement Plan

To Judi Thomasi  
From Malibu Coalition for Slow Growth (MCSG) by Patt Healy  
Re: Scoping EIR Malibu Parks Public Access Enhancement Plan  
Date: 10-7-09

MCSG asks that the following impacts be evaluated in the EIR:

1. the impact of fire emanating from each of the overnight camping sites on the surrounding residential area if the fire were to spread beyond the boundary of public lands.
2. the ability of the surrounding residents to evacuate in a safe and timely manner .

Thank you for considering our concerns.

\*\*\*\*\*  
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\*\*\*\*\*



GAIL FARBER, Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (626) 458-5100  
<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE  
REFER TO FILE: **LD-1**

October 6, 2009

Ms. Judi Tamasi  
Santa Monica Mountains Conservancy  
Mountains Recreation and Conservation Authority  
570 West Avenue 26, Suite 100  
Los Angeles, CA 90065

Dear Ms. Tamasi:

### **NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT (EIR) FOR MALIBU PARKS PUBLIC ACCESS ENHANCEMENT PLAN CITY OF MALIBU**

We reviewed the Notice of Preparation for the proposed Malibu Parks Public Access Enhancement Plan. The project is located at various parks/trails/recreation areas in the City of Malibu and unincorporated Los Angeles County. The following comments are for your consideration and relate to the environmental document only.

#### **Hazards–Flood/Water Quality**

We agree with the finding that there may be potentially significant impacts to Hydrology and Water Quality and that these issues should be further addressed in the EIR. If the project include a future connection to a Los Angeles County Flood Control District facility, a construction permit from the County of Los Angeles Department of Public Works' Construction Division, Permits Section, will be required.

If you have any questions regarding flood comments, please contact Mr. Christopher Sheppard at (626) 458-4921 or by e-mail at [cshppard@dpw.lacounty.gov](mailto:cshppard@dpw.lacounty.gov).

Ms. Judi Tamasi  
October 6, 2009  
Page 2

### **Hazards–Geotechnical/Soils/Geology**

We concur that an EIR is the appropriate document from a geotechnical standpoint. The site is located in a potentially liquefiable area per the State of California Seismic Hazard Zones Map–Point Dume and Malibu Beach Quadrangles and within the Alquist-Priolo Earthquake Fault Zone. If applicable, geotechnical and geology reports addressing any proposed development and recommending mitigation measures for the geotechnical hazards should be included as a part of the EIR.

If you have any questions regarding geotechnical comments, please contact Mr. Jeremy Wan at (626) 458-3873 or by e-mail at [jwan@dpw.lacounty.gov](mailto:jwan@dpw.lacounty.gov).

### **Services–Traffic/Access**

The project will include a comprehensive set of policies and implementation measures and identify specific actions and park improvements to enhance public access and recreation opportunities for specific park properties and recreation areas within the City of Malibu and the unincorporated Los Angeles County area.

We generally agree with the Notice of Preparation that the proposed project has the potential to significantly impact the adjacent roadways and intersections in the area. The County's methodology shall be used when evaluating County and/or County/City intersections. A copy of our Traffic Impact Analysis Report Guidelines may be accessed on Public Works' website at <http://dpw.lacounty.gov/traffic>.

Kanan Dume Road right of way along Assessor Parcel No. 4465-003-900 is currently only 50-feet-wide. Typically, Kanan Dume Road right of way in this area is 100-feet-wide. Therefore, as part of the real estate transaction with the Mountains Recreation and Conservation Authority additional road right of way and perhaps other easements (i.e., slope) might have to be reserved to the County.

Any access from public right of way onto proposed parking areas will require an encroachment permit from Public Works' Construction Division.

If you have any questions regarding traffic comments, please contact Ms. Peggy Oki at (626) 300-4866 or by e-mail at [poki@dpw.lacounty.gov](mailto:poki@dpw.lacounty.gov).

Ms. Judi Tamasi  
October 6, 2009  
Page 3

**Services-Sewer**

The EIR should discuss the collection and disposal of the wastewater that would be generated within the proposed project area especially its potential impact on the available capacity in the existing local sewer lines for both peak-dry and wet-weather flows pursuant with the Statewide General Waste Discharge Requirements (Order No. 2006-0003).

If you have any questions regarding sewer comment, please contact Mr. James Hilovsky at (626) 300-3388 or by e-mail at [jhilovsky@dpw.lacounty.gov](mailto:jhilovsky@dpw.lacounty.gov).

Finally, we would like the opportunity to review the project's draft EIR, including the traffic impact studies and technical reports, upon its completion. If you have any other questions or require additional information, please contact Mr. Toan Duong at (626) 458-4921 or by e-mail at [tduong@dpw.lacounty.gov](mailto:tduong@dpw.lacounty.gov).

Very truly yours,

GAIL FARBER  
Director of Public Works



*for*  
*SD* DENNIS HUNTER, PLS PE  
Assistant Deputy Director  
Land Development Division

MA:ca

P:\dpub\CEQA\CDM\THE SANTA MONICA MOUNTAINS CONSERVANCY - MALIBU PARKS PUBLIC ACCESS ENHANCEMENT PLAN\_NOP.doc

## Linda Oppen Giles

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**Subject:** FW: MALIBU PARKS PUBLIC ACCESS ENHANCEMENT PLAN- CITY OF MALIBU-More LA Co. DPW comments

**Attachments:** Draft EIR Comments.doc



Draft EIR  
Comments.doc (25 KB)

-----Original Message-----

**From:** Duong, Toan [mailto:TDUONG@dpw.lacounty.gov]

**Sent:** Tuesday, October 13, 2009 3:51 PM

**To:** judi.tamasi@mrca.ca.gov

**Subject:** RE: NOTICE OF PREPARATION OF AN EIR - MALIBU PARKS PUBLIC ACCESS ENHANCEMENT PLAN- CITY OF MALIBU

Judi

Here are some additional comments related to this project EIR. Please address them as needed. Thank you.

Toan Duong

Los Angeles County Public Works

Land Development Division

(626)458-4945

Please take a moment to let us know how we are doing by going to the link below:

<http://dpw.lacounty.gov/go/lddsurvey>

**CONFIDENTIALITY NOTICE:** This email message, including any attachments, from the Department of Public Works is intended for the official and confidential use of the recipients to whom it is addressed. It contains information that may be confidential, privileged, attorney work product, or otherwise exempted from disclosure under applicable law. If you have received this message in error, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify the sender of this email immediately by reply email that you have received this message in error, and immediately destroy this message, including any attachments. Thank you in advance for your cooperation.

-----Original Message-----

**From:** Angeles, Carmen

**Sent:** Thursday, October 08, 2009 3:24 PM

**To:** 'judi.tamasi@mrca.ca.gov'

**Cc:** Duong, Toan; Ibrahim, Amir; Ali, Muhammad; Yanez, Jarrett

**Subject:** FW: NOTICE OF PREPARATION OF AN EIR - MALIBU PARKS PUBLIC ACCESS ENHANCEMENT PLAN- CITY OF MALIBU

## Comments on Malibu Parks Access Enhancement Plan

### Kanan Dume Road Parking Area

1. Provide drainage to prevent sheet flow over the road
2. Drainage should be directed away from the road and down to the eastern slope.
3. Any drainage structures built outside County road right of way should be operated and maintained by MRCA.

### Escondido Canyon Park - Winding Way

1. The entrance road to the parking lot is to be built over a consolidating, creeping fat clay. Stabilization of this material as it connects to Winding Way is needed to prevent damage to Winding Way.
2. A retaining wall is to be built for the parking lot next to Winding Way. Assuming fill will be placed behind this wall sufficient support must be provide for the foundation as it is to be placed on a creeping consolidating clay.
3. If significant fill is going to be placed for the parking lot some consolidation will take place. Some investigation should be made as how this will affect the surrounding slope. Geogrid layers with a base material could be used to spread the load allowing less fill to be placed.
4. The drainage on Winding Way should be kept on the inboard side to prevent water form accumulating on the park land down slope from Winding Way.

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 7, REGIONAL PLANNING

IGR/CEQA BRANCH

100 MAIN STREET, MS # 16

LOS ANGELES, CA 90012-3606

PHONE: (213) 897-3747

FAX: (213) 897-1337

*Flex your power!  
Be energy efficient!*

IGR/CEQA No. 090909AL, NOP  
Malibu Parks Public Access Enhancement Plan-Public  
Works Plan  
Vic. LA-01 / Various Locations  
SCH # 2009091018

October 21, 2009

Ms. Judi Tamasi  
Santa Monica Mountains Conservancy  
570 West Avenue 26, Suite 100  
Los Angeles, CA 90065

**RECEIVED  
STATE OF CALIFORNIA**

**OCT 27 2009**

**SMMC  
MALIBU**

Dear Ms. Tamasi:

Per phone conversation with Mr. Paul Edelman on October 14, 2009, the lead agency agrees to accept Caltrans' letter after the deadline. Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the above referenced project. The project is a public access enhancement plan that would enhance public access and recreation opportunities by developing an interconnected system of trails, parks, open space, and habitats. The project also includes potential widening of, improvements to, and removal of encroachments impacting public safety along certain access roads within the project area.

To assist us in our efforts to evaluate the impacts of this project on State Transportation Facilities, please forward a copy of an updated traffic study for our review, if one has been prepared. Otherwise, a new traffic study should be prepared to analyze the following information:

1. Traffic impacts on Pacific Coast Highway, State Route 01, and all affected significantly impacted streets, crossroads and controlling intersections, as well as analysis of existing and future conditions.
2. Traffic volume counts to include anticipated AM and PM peak-hour volumes.
3. Level of service (LOS) before and after development.
4. Future conditions, which include both, project and project plus cumulative traffic generated up to build out year.

5. A brief traffic discussion showing ingress/egress, turning movements, and a directional flow for project vehicle trips.
6. Discussion of mitigation measures appropriate to alleviate anticipated traffic impacts, including sharing of mitigation costs.

We look forward to reviewing the traffic study. We expect to receive a copy from the State Clearinghouse when the DEIR is completed. However, to expedite the review process, and clarify any misunderstandings, you may send a copy in advance to the undersigned.

If you have any questions, please feel free to contact me at (213) 897-6696 or Alan Lin the project coordinator at (213) 897-8391 and refer to IGR/CEQA No. 090909AL.

Sincerely,



ELMER ALVAREZ  
IGR/CEQA Branch Chief

cc: Scott Morgan, State Clearinghouse



State of California - The Resources Agency

Arnold Schwarzenegger, Governor

DEPARTMENT OF PARKS AND RECREATION

Ruth Coleman, Director

Angeles District  
1925 Las Virgenes Road  
Calabasas, California, 91302

October 30, 2009

Judi Tamasi  
Santa Monica Mountains Conservancy  
570 West Avenue 26, Suite 100  
Los Angeles, California, 90065

Re: Notice of Preparation, Malibu Parks Public Access Enhancement Plan -  
Public Works Plan  
SCH#2009091018

Dear Ms. Tamasi:

The California Department of Parks and Recreation, Angeles District, has reviewed the Notice of Preparation (NOP) for the above project and offers the following comments on the Malibu Bluffs Park portion of the plan.

Malibu Bluffs Park offers the visiting public outstanding views of the Santa Monica Bay, as well as the opportunity to view and study coastal sage scrub and related habitats and resident native fauna. While portions of the park have been disturbed by human activities and invasion of non-native plants, the landscape has a great potential for restoration to a more pristine state.

The conceptual plan for campsites and trails indicates that these facilities may be dispersed throughout the park. The Environmental Impact Report (EIR) should include alternatives that allow for a less intensive use of the park. One alternative should consider keeping campsites to one or two more concentrated locations, as well as the elimination of some proposed or existing trails. A less intensive human footprint in the park would permit opportunities for habitat restoration in more areas.

A habitat restoration plan should be included in the EIR. This plan should be based upon a baseline condition assessment and should include revegetation with appropriate coastal sage scrub, coastal bluff scrub, grassland and riparian species native to the area and propagated from local sources. The plan should also include prioritization and strategy for the eradication of invasive species.

A focused search should be conducted for special status and uncommon species of plants and animals. This search should guide the ultimate location and configuration of developed facilities in order to avoid impacts to these species. In particular, a survey should be made for *Atriplex coulteri*, a population of which was extirpated from the park

FROM :

FAX NO. :8188806165

Oct. 30 2009 05:12PM P2

Ms. Tamasi  
October 30, 2009  
Page two

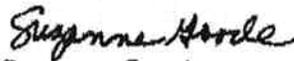
as a result of a vegetation removal project that was conducted in response to a wildfire in 2005. If this plant is not found, it should be included in a revegetation plan.

A fuel management plan should be formulated that allows for vegetation modification to occur no more than one hundred horizontal feet from habitable structures. Research conducted by Dr. Jack Cohen of the United States Forest Service shows that structures are in no danger from ignition by radiant heat from sources further away than one hundred horizontal feet. While structures may be subject to ignition from wind-blown embers, protection from ignition by this source is more properly the responsibility of the owner of the structure.

Malibu Bluffs Park suffers from numerous encroachments by private property owners along its southern boundary at Malibu Road. Residents have planted ornamental species in the park, some of them invasive. Other encroachments include stairways, vegetable gardens and storage areas for trash containers. These encroachments should be removed at the earliest opportunity, possibly at the same time any fuel modification is performed in preparation for the next fire season, if not before. Removal of these encroachments will provide areas for additional habitat restoration that could mitigate the loss of habitat associated with installation of visitor serving facilities.

Thank you for the opportunity to comment on the NOP and for the consideration of our comments. We are more than willing to help provide any assistance with the formulation of any of the plans suggested above.

Sincerely,



Suzanne Goode  
Senior Environmental Scientist



# COUNTY OF LOS ANGELES

## FIRE DEPARTMENT

1320 NORTH EASTERN AVENUE  
LOS ANGELES, CALIFORNIA 90063-3294

(323) 890-4330

P. MICHAEL FREEMAN  
FIRE CHIEF  
FORESTER & FIRE WARDEN

December 16, 2009

Rorie Skei, Chief Deputy Director  
Santa Monica Mountains Conservancy  
570 West Avenue 26, Ste. 100  
Los Angeles, CA 90065

Dear Mr. Skei:

### **NOTICE OF PREPARATION, PROJECT TITLE: MALIBU PARKS PUBLIC ACCESS ENHANCEMENT PLAN-PUBLIC WORKS PLAN, MALIBU (FFER #200900179)**

The Notice of Preparation has been reviewed by the Planning Division, Land Development Unit, Forestry Division, and Health Hazardous Materials Division of the County of Los Angeles Fire Department. The following are their comments:

#### **PLANNING DIVISION:**

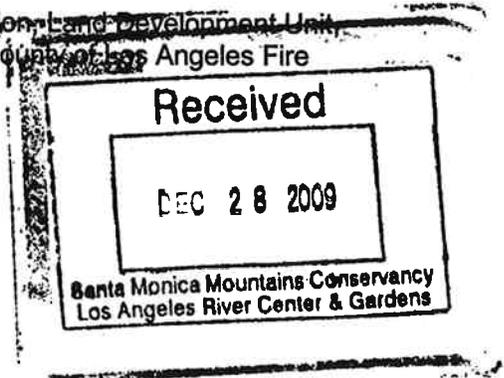
1. We have no comments at this time.

#### **LAND DEVELOPMENT UNIT:**

1. We have no comments at this time.

#### **FORESTRY DIVISION - OTHER ENVIRONMENTAL CONCERNS:**

1. The statutory responsibilities of the County of Los Angeles Fire Department, Forestry Division include erosion control, watershed management, rare and endangered species, vegetation, fuel modification for Very High Fire Hazard Severity Zones or Fire Zone 4, archeological and cultural resources, and the County Oak Tree Ordinance. Potential impacts in these areas should be addressed in the Draft Environmental Impact Report.



#### **SERVING THE UNINCORPORATED AREAS OF LOS ANGELES COUNTY AND THE CITIES OF:**

AGOURA HILLS	BRADBURY	CUDAHY	HAWTHORNE	LA MIRADA	MALIBU	POMONA	SIGNAL HILL
ARTESIA	CALABASAS	DIAMOND BAR	HIDDEN HILLS	LA PUENTE	MAYWOOD	RANCHO PALOS VERDES	SOUTH EL MONTE
AZUSA	CARSON	DUARTE	HUNTINGTON PARK	LAKESWOOD	NORWALK	ROLLING HILLS	SOUTH GATE
BALDWIN PARK	CERRITOS	EL MONTE	INDUSTRY	LANCASTER	PALMDALE	ROLLING HILLS ESTATES	TEMPLE CITY
BELL	CLAREMONT	GARDENA	INGLEWOOD	LAWNDALE	PALOS VERDES ESTATES	ROSEMEAD	WALNUT
BELL GARDENS	COMMERCE	GLENDORA	IRWINDALE	LOMITA	PARAMOUNT	SAN DIMAS	WEST HOLLYWOOD
BELLFLOWER	COVINA	HAWAIIAN GARDENS	LA CANADA-FLINTRIDGE	LYNWOOD	PICO RIVERA	SANTA CLARITA	WESTLAKE VILLAGE
			LA HABRA				WHITTIER

Rorie Skei, Chief Deputy Director  
December 16, 2009  
Page 2

**HEALTH HAZARDOUS MATERIALS DIVISION:**

1. Health Hazardous Materials Division has no objection with the proposed project.

If you have any additional questions, please contact this office at (323) 890-4330.

Very truly yours,



FRANK VIDALES, ACTING CHIEF, FORESTRY DIVISION  
PREVENTION SERVICES BUREAU

FV:lj

