Six Coastal Access Case Studies

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Cape Hatteras National Seashore, North Carolina - Beach Driving

Cape Hatteras National Seashore has long been a popular location for off-road vehicle use. Some members of the community maintained that this use of the beach and dunes is integral to their local traditions and vital for their economy. Surf fishers claimed that driving on the beach provides them with the mobility needed to fish successfully along the many miles of shoreline. Environmental groups and their members were concerned about the impact on beach species and some residents feared for the safety of children who played on the beach among the cars and trucks. In 2007, a lawsuit forced the National Park Service to embark on a planning project to regulate beach driving to protect the Cape’s coastal habitat and vulnerable species.

In 2012 the National Park Service issued their plan for off-road vehicles on Cape Hatteras. Drivers were required to purchase a permit for their vehicle. Driving at night was restricted to certain routes and times of year. Certain locations were closed between April 1 and October 31 for nesting birds and turtles, and locations may be closed at other times if needed for resource protection. In 2015 off-road permits brought in almost $2 million to the National Park Service. Some local business owners say that limiting off-road vehicle use has reduced sales of businesses that depend on those visitors.

In 2015 construction continued on a new road along the dunes to enhance access to much of the park while bypassing areas that are seasonally closed due to bird and turtle nesting. That same year, after continued protests that rules were too restrictive, the park service began holding public meetings to discuss potential changes to the off-road vehicle policy, such as increasing the dates and times when cars are allowed on the beach. Audubon Society representatives called for letting the current policy continue to protect shorebirds and turtles.

Greenwich, Connecticut - Private Beaches

In 1995 the town of Greenwich was sued by a man who was prevented from jogging along the beach. The town employed guards to keep people who did not live in Greenwich from traveling on or otherwise using the beach. Lawyers for the town argued that the public trust doctrine should not apply to their parks because in 1919 the state of Connecticut passed an act saying that Greenwich may establish parks, playgrounds, and beaches “for the use of the inhabitants of said town.”

In 2001 the lawsuit landed with the Connecticut Supreme Court, who ruled that Greenwich’s beaches are “public forums” which must be open to “expressive activity” of any kind, meaning that non-residents must have access to them.

While allowing non-residents to visit the beach, the City of Greenwich requires that they purchase a beach pass from a city office during business hours. As of 2015, a pass for the day costs $6. Guards are still present to enforce this policy. Some residents feel that since they pay taxes for park maintenance, that they should be the only ones to access the beach. Others think that there are too many regulations and people should have the right to go where they please. Some hope that more visitors will help diversify and support the businesses in town.

Wainiha, Kauai’i, Hawai’i - Defining the Beach

In 2000, a property owner planted and installed irrigation for vegetation in the shoreline area of his beach-front lot. In 2002, the owner hired a surveyor to identify the public shoreline. This private surveyor determined that the human-planted vegetation line, rather than the upper wash of the waves, should serve as the official shoreline. This determination was agreed to by a state government surveyor. In Hawai’i, the public shoreline is the high water mark. Since this is often identified by a debris line or line of inland vegetation, the surveyors chose to use the more stable line of vegetation. Based on this survey, the property owner submitted an application for a new property line certification. A local activist contested the certification with photos showing waves washing inland of the vegetation line.

The activist filed a lawsuit. The State took the position that the property’s shoreline was consistent with mature vegetation on adjoining properties and that the vegetation was no longer being irrigated and was stable and well established despite recent winter storms. The State submitted that “the edge of vegetation growth is the best evidence of the shoreline in this case, as it shows the result of the natural dynamics and interplay between the waves and the line of vegetation over a period of time for stability, as against a debris line which may change from week to week or from day to day,” and that “the use of the edge of vegetation growth is advantageous over the debris line in that it is practical, easily identifiable and stable. “

The lawsuit finally reached the Hawai’i State Supreme Court in 2006. The Court noted that Hawai’i state law defined “shoreline” as, “the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidence by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves,” and that it did not state a preference for the vegetation line. The Court noted that a previous Supreme Court case found that “public policy…favors extending to public use and ownership as much of Hawaii’s shoreline as is reasonably possible.” They then stated that “the utilization of artificially planted vegetation in determining the certified shoreline encourages private landowners to plant and promote salt-tolerant vegetation to extend their land…, which is contrary to the objectives and policies of [state law and] public policy…”

Destin, Florida - Beach Nourishment

The law in Florida states that land that is gradually added to the shoreline (called “accretion”) belongs to the beachfront property owner, but a sudden addition of land (called “avulsion”) belongs to the State.

The state of Florida has artificially deposited sand on hundreds of its beaches in order to fight erosion. This process is called beach nourishment, and is done in order to protect coastal property from waves and storms and to restore the recreation area and habitat of the sandy beach. This is a very expensive process; between 1998 and 2016 Florida spent $626.6 million, in addition to local government contributions.

Beachfront homeowners in Destin, Florida, on the Gulf of Mexico, contended that the government’s plan to deposit sand on their coast was for the purpose of increasing visitors in order to support a tourism economy, which they felt was not in property owners’ interest. Before a beach nourishment project begins, the government establishes a fixed “erosion control line” which becomes the permanent property line. The Public Trust Doctrine holds that in Florida the State owns the land up to the mean high tide line. The setting of an “erosion control line” prior to depositing sand on the beach may result in a property line that is inland from the mean high tide line. The Destin homeowners felt that this would be taking property away from them, by changing their homes from waterfront to water-view.

The property owners sued the State, and the case eventually landed at the U.S. Supreme Court. In its 2009 decision, the Court stated that “the State as owner of the submerged land adjacent to littoral property has the right to fill that land, so long as it does not interfere with the rights of the public and of littoral landowners. Second, if an avulsion exposes land seaward of littoral property that had previously been submerged, that land belongs to the State even if it interrupts the littoral owner’s contact with the water. Prior Florida law suggests that there is no exception to this rule when the State causes the avulsion. Thus, Florida…allowed the State to fill in its own seabed, and the resulting sudden exposure of previously submerged land was treated like an avulsion for ownership purposes.” The new beach created by beach nourishment is public, not private, property.

Quinault Indian Nation - Beach Passes

The Quinault Indian Reservation includes 26 miles of coastline on the Olympic Peninsula of Washington State. In 2012, the Quinault Indian Nation closed their beaches to all except enrolled Quinault members. Non-members are only allowed if accompanied by a tribal member.

There is a lengthy and complex historical backdrop for this action. In 1887, the United States Congress passed the General Allotment Act, which divided up reservations into individual properties. Eventually, tribal members were allowed to sell property to non-members. Most of the Quinault reservation land was sold; however, the tribe continues to own all beach lands up to the ordinary high water mark. Prior to the late 1960s, the Quinault coast was open to the public without restriction, and included a popular surfing spot at Point Grenville. Problems, including litter and graffiti on the bluffs, prompted the Quinault Tribe to limit this access. As tribes across the country began asserting their authority over reservation lands during the American Indian rights movement, in 1969 the Quinault Nation closed Grenville Beach to surfing and began requiring a beach pass from the tribal office for any non-tribal member wanting to visit the beach. Access was further restricted in 2012, when the Tribe made the decision to stop issuing beach passes. According to the Tribe, the access is being restricted to preserve functional coastal ecosystems.

The Washington State Office of the Attorney General provided the following official opinion in 1970 regarding rights of coastal access:

(1) Without regard to any other property interests or rights which the state may have, members of the public have the right to use and enjoy the wet and dry sand areas of the ocean beaches of the state of Washington by virtue of a long-established customary use of those areas. (2) The right of members of the public to use and enjoy the wet and dry sand areas of the ocean beaches of Washington by virtue of a long-established customary use of those areas does not presently extend to such ocean beach areas as are within the exterior boundaries of the Quinault Indian Reservation.

This opinion is based on an 1873 Executive Order by President Ulysses S. Grant that withdrew the reservation’s lands from the public domain, reserving them for the exclusive use and occupancy of the Quinault and other area tribes. The Washington Attorney General stated that “If the public had any rights in the beaches fronting on the Quinault Reservation on November 4, 1873, those rights were extinguished by that Executive Order.”

Sea Ranch, Sonoma County, California - Coastal Trail

In the 1960s, developers purchased a former sheep ranch in rural Sonoma County and planned a private community of beach homes that would have closed 10 miles of the coast to the public. As part of the county approval of the development plan, developers gave to Sonoma County land adjacent to the proposed development that would become Gualala Point Regional Park. Although Sea Ranch was designed as an environmentally sensitive development, the proposed privatization of this stretch of coastline led local activists to propose a county initiative requiring public access whenever coastal property was developed. This initiative was defeated, with the opposition funded in large part by the Sea Ranch developers.

Spurred by Sea Ranch and other issues impacting the coast, the Sonoma County activists joined other organizations and individuals to bring a statewide initiative to the voters to create a California Coastal Commission, which would be responsible for regulating coastal development and protecting coastal access in California. Approved in 1972, the California Coastal Zone Conservation Act (or “Prop 20”) called for “maximum visual and physical use and enjoyment of the coastal zone by the public.” In 1976, the state legislature passed the Coastal Act, defining the regulations the California Coastal Commission would uphold.

For years, Sea Ranch developers disputed California Coastal Commission jurisdiction over the Sea Ranch. While the initial subdivision had received approval from Sonoma County prior to the passage of the Coastal Act, lots were owned by individuals who still needed permits to build their homes and were now subject to this law. Individual owners were unable to provide shoreline access as demanded by the California Coastal Commission because common areas between residential lots were owned by the Sea Ranch Association. In 1981, in a case brought by the Sea Ranch Association, a district court upheld the California Coastal Commission’s ability to impose coastal development permit conditions relating to public access and coastal views. The court concluded that “public access to the coastline and protection of the coastline’s scenic and visual qualities are areas within the Commission’s regulatory authority under the California Coastal Zone Conservation Act and that the Act empowers the Commission to implement its goals through the permitting process.” The court found that “the permit conditions do not constitute a taking of either an individual lot owner’s property or the Association’s property.” It ultimately took the state legislature passing a law specifically for the Sea Ranch in order to settle the issue. Known as the Bane Bill, it required five public access points and a blufftop public trail within the property, as well as specific design guidelines. The bill authorized a payment of $500,000 from the State to the Sea Ranch Association in exchange for the public access easements and other concessions.