

Sword & Scales

SUMMER 2019

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**Safeguarding America's
fisheries and fishermen**

**Finding the right price
for preservation**



**PACIFIC LEGAL
FOUNDATION**

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Unnecessary enemies

When my cousins and I were much younger than we are now, a trip to the beach meant piling into an orange Dodge van and tumbling around inside as we whipped around corners on the way to a lazy afternoon. I remember this like it was yesterday.

Such were the summer days in my hometown neighborhood of Ocean View along the Chesapeake Bay. (Ocean View is a strange name for a place along a bay, but as the story goes, the dunes were once so high you could see all the way to the Atlantic Ocean.)

Countless stories in my life come from the coast. I spent a good bit of my childhood riding my blue beach cruiser bicycle up and down East Ocean View Avenue. I delivered the *Virginian-Pilot* newspaper and got candy from the now-shuttered Seabreeze convenience store. I played my Little League games at the largest naval base in the world.

Later, I met my wife at a spot along the Pacific in Costa Rica and we honeymooned in the same town years later.

Oddly, my oldest son once went through a phase where he was terrified of the transition between pavement and beach (well, maybe not that odd—given my summer experiences as a sweaty and sandy kid, I'm averse to that perpetual sandy feeling too). I could fill this entire issue with anecdotes like these—I'm certain you could say the same.

As I think about it, maybe it's these stories that ultimately led me to Pacific Legal Foundation. I've spent most of my professional career working on property issues. And nowhere are those issues—namely the nature of our right to property—more relevant than along the water, where governments are aggressively challenging property owners' rights.

Growing up, I never much thought about the concepts we discuss in this issue of *Sword & Scales*. But now, I can see they were there all along—the development of beach homes and additions; the shifting beach caused by erosion, jetties, and rip raps; the property lines defined by tidal changes and sand dunes; and the construction of public access points, among others.

Property rights are the foundation of all our other rights. There's no better place to start defining them—not to mention ride your bike, toss a ball, or change your life—than at the beach.

Steven D. Anderson

PRESIDENT & CEO



The first American romance



Scott Barton

SENIOR DIRECTOR OF COMMUNICATIONS AND OUTREACH

AMERICA IS BLESSED with an abundance of natural beauty. Our country boasts a greater diversity of climates and landscapes than most, from tropical beaches and sandy deserts to wind-swept farmland and snow-capped peaks. This bountiful earth has provided a fertile birthplace for the Great American Experiment.

Imagine yourself atop Pike's Peak, among the first of the Rocky Mountains that American settlers encountered on their journey west. From up there, vast plains stretch out to the east, and rugged mountains dot the landscape to the west. Down below, the city's buildings look like tiny specks, barely noticeable amid the landscape's grandeur. No wonder this vista inspired Katharine Lee Bates to pen the verses for "America the Beautiful."

From that vantage point, you might naturally feel a desire to protect America's natural treasures at all costs so that others may have a similar experience. But at the same time, we must use the land to provide for our needs. After all, the "amber waves of grain" you see in the distance serve the clear purpose of feeding a hungry nation.

It's tempting to see a conflict here between preserving nature as it is now, and our need to transform the land for things like agriculture, mining, and housing. How are we to find the right balance?

But we must resist accepting this false dichotomy. Promoting human prosperity and protecting the environment need not be conflicting goals. Instead, our thriving can depend on a healthy and beautiful environment. Our continued use of natural resources

depends on careful stewardship. And our continued enjoyment of nature depends on our ability to transform the land around us.

You can see that from the mountaintop. The fact that you can easily drive a car or take a train all the way up the summit shows how we've tamed the unforgiving terrain in a positive way. Every year millions of visitors across the country are inspired by breathtaking scenes of nature because they've been made accessible. Nature is not a museum, walling it off doesn't save it.

Our challenge now is to embrace systems, like property rights, that encourage productive, useful, and life-giving relationships with nature. That way, nature can meet our needs and we continue to enjoy all the wonders it provides. ♦

A line in the sand: Property rights and America's beaches



Christina Martin
ATTORNEY

FROM THE CALIFORNIA coast to the Florida Keys, Americans treasure our nation's beaches for their breathtaking beauty. But in the name of public access, and sometimes in the name of conservation, many local, state, and federal government agencies go too far in dictating how that beauty is protected.

There are countless examples of governments taking private beach property, issuing outrageous fines, or leveling absurd land use requirements on private homeowners whose only offense was owning property near a beach.

Too often the government's heavy-handed abuse of beachfront landowners risks turning natural allies into adversaries. After all, coastal landowners not only pay steep property taxes, which often help fund public conservation efforts, but they also care for the land and important coastal vegetation. No one benefits more from a healthy coast than someone who lives or works on it.

The Nollan decision stated that government could not force property owners into surrendering their constitutional property rights.

To be sure, the government has the power to take private land, even in the name of conservation. But in executing that power, the government must compensate the landowner for what it takes, and too often it doesn't.

For decades, PLF has fought to help coastal landowners fight for their right to use their property. And in case after case for our coastal landowner clients, we have set important precedents that protect both property owners and the beaches they love.

An important precedent

Thirty years ago, PLF fought on behalf of Pat and Mary Nollan, who owned coastal property in Ventura County. The California Coastal Commission (CCC), a powerful state agency that regulates beachfront land use, refused to issue the Nollans a building permit for their home unless they constructed a public walkway to the beach through their property (and in front of their bedroom windows).



We argued that the government can't hold your property rights hostage over a sidewalk, and the Supreme Court agreed. The *Nollan* decision stated that government could not force property owners into surrendering their constitutional property rights. This victory would ultimately prove to be a critical win for property owners everywhere.

More recently, when Eric Wills and his family sought a permit to replace their 40-year-old, mold-plagued mobile home in San Clemente with a smaller new unit, the CCC demanded that in exchange for their permit, they give up the right to repair or maintain their seawall. Without a functioning seawall, they would one day lose their beachfront home.

As in the *Nollan* case, PLF helped the Wills family defend their property from the CCC's ransom demand and won with the help of the precedent set by the earlier victory.

No trespassing on "No Trespassing"

Unfortunately, attacks on the rights of coastal landowners aren't limited to California. Ed and Delanie Goodwin of Santa Rosa Beach, Florida, know this truth all too well. In 1978 the Goodwins built their beachfront home in the state's Panhandle. Like their neighbors, they own the section of the beach behind their home.

After repeatedly having to pick up trash on the beach from trespassers and rowdy spring breakers, the Goodwins posted signs to keep people off their property. But in 2016, Walton County officials tried to ban "No Trespassing" signs after already outlawing fences. Then the county went even further and passed a law that said any member of the public had a right to use any private beach in the county.

Protecting your property from trespassers isn't illegal, so the Goodwins and PLF filed a lawsuit challenging the county's absurd law. Then, partly prompted by the Goodwins' lawsuit, the Florida legislature passed a law to limit such land grabs.

Beauty is no substitute for rights

Ask anyone strolling along a beach at twilight or enjoying their first cup of coffee on their deck overlooking the ocean—there's something indescribably special about our coastlines.

But no matter how beautiful our coasts are, no one—including the government—is allowed to steal them. PLF has fought for decades to defend landowners' fundamental rights, and we will continue that fight as long as those rights are being put at risk. ♦

At a glance: The battle of ideas

Four perspectives on who owns America's beaches

PROFESSOR ANDREW KAHRL writes in *The New York Times* that beachfront property owners have created “anti-social” and “environmentally destructive” barriers to beach access. He calls on Congress to dedicate all beaches to the states for public use.

“As a state legislator, Mr. Eckhardt had passed the nation’s first open beaches law, the Texas Open Beaches Act of 1959, which defined all land below the vegetation line as belonging to the state for use by the people.”

“Rather than a departure, this bill was a restoration of the ancient right of the public to the foreshore—a right dating from Roman civil law that was incorporated into English common law, transported to the American colonies and finally preserved in the new nation in what came to be known as the Public Trust Doctrine.”

WET BEACH AREAS are already public, and in no danger of being privatized, writes PLF attorney J. David Breemer in *The New York Times*. The real danger is governments expanding the public beach area onto private property without compensating owners for their loss.

“Such uncompensated ‘public-ization’ of present and future dry beach areas deprives homeowners of privacy and, in some cases, threatens private homes. Once the government asserts that the public has rights to the dry beach, it may try to forcibly remove any beachfront home—again without payment—on a lot that has become a part of the dry sand beach (for instance, after a storm denudes the vegetation from the lot)...

“After all, if the government can evade the Constitution on the coast, no property is safe. Confiscating private property isn’t the American way and it isn’t appropriate for American land—whether far inland, or next to the sea.”

IN THE PRESERVATION Leadership Forum, attorney Grady Gammage concedes that property owners are often abused, which drives support for property protections. But he argues that forcing the government to pay for the property it devalues is not the answer.

“The property rights legislation being proposed in Congress and most of the states is a bad idea. Bad because it would create a needless new bureaucracy of ‘takings analysis’ ... bad because we as a society cannot afford to compensate for every action that cuts a property’s value; bad because we do not recoup for the things society does that enhance the value of the same property; bad, ultimately, because it misses the central point of a democracy. We must balance private rights and public needs to achieve a consensus of social justice.”

IN THE LIBERTARIAN REVIEW, journalist Jeff Riggensbach argues that free markets make land both more productive and more beautiful.

“In Alaska, about 99.75% of the land is publicly owned.... All the food produced in the state is produced on the .25% of the land which is privately owned. The government-owned land is unproductive.”

“... Perhaps the most important fact in the TIME magazine report on [privately owned parks] is the news that the men who are developing them are making a lot of money doing it: that there’s a demand, on the market, for the kind of wilderness conservation the government would like us to believe is only possible through public ownership of land. It isn’t always or necessarily true that the drive to make money produces despoilers of nature.”

The right to rebuild



Erin Wilcox
ATTORNEY



ON OCTOBER 10, 2016, Michael and Cathy Zito's beach home at Nags Head, North Carolina, burned to the ground. Luckily no one was hurt, but as the Zitoss were about to discover, the sadness of losing their dream home was nothing compared to the bureaucratic nightmare that followed.

Michael and Cathy loved everything about their modest beach house, and no fire could change that. So they planned to rebuild with the same layout on the same footprint as their previous house. But when they asked city officials for a permit to begin repairs, their request was denied for reasons that defied logic.

The Zitoss' rebuilt house wouldn't be any different than the one that had stood there since 1982. But since 1982, the legal setback line for coastal buildings had moved closer inland. Since the Zitoss' rebuilt house would no longer meet the setback requirements, town

officials refused to grant them permission to rebuild, even though the houses on either side of the Zitoss are the same distance from the water.

The Zitoss then asked the North Carolina Coastal Resources Commission for an exception, but were denied based on the ludicrous conclusion that being barred from rebuilding their home wasn't an "unnecessary hardship." According to the commission, losing almost all your property's value and being stripped of future family memories is no big deal.

Suddenly bureaucracy—not fire—had transformed the Zitoss' property from the site of their dream home to a charred ocean campground. Now the Zitoss have nothing except continuing tax bills and a vacant, unusable lot.



Michael and Cathy Zito enjoy the beach with a friend.

But the Zitoss' story is not one of defeat. This government overreach is unconstitutional. The First Amendment and the North Carolina Constitution say the government can't take your property or enforce laws that regulate the use and value of your property out of existence without paying a fair price.

PLF is fighting alongside the Zitoss in federal court against the North Carolina Coastal Resources Commission to protest this absurd, unfair, and unconstitutional land grab.

Michael and Cathy Zito lost their beach home to fire. But because of their bravery in standing up for their property rights, they are refusing to let bureaucrats take those rights away. ♦

Finding the right price for preservation



Jonathan Wood
SENIOR ATTORNEY



WHAT IS NATURE'S beauty worth? How can you put a price on a pristine beachfront or a secluded coastal alcove? Are some worth more than others? Are some worth preserving more than others?

Finding answers to these questions is critical, even if it can be difficult and uncomfortable at times. Land, time, money, and political will are all limited resources—and they are all necessary for every environmental campaign.

There's no one-size-fits-all answer. But as with any economic challenge dealing with limited resources, the best tool for balancing these tradeoffs is the free market backed by secure property rights.

Respecting people's right to securely own property allows us to see what a piece of land—whether it's a beachfront, a house on the coast, or a place in the suburbs—is worth in the real world. If you're a private citizen wanting to own a piece of land, you need to pay what the market demands.

Ignoring property rights is not only a bad deal for property owners. It's often an equally bad deal for the environment.

If the government wants a piece of land for a highway, public building, or conservation project, they need to do the same.

Unfortunately, the government doesn't always agree.

As we've discussed in this issue, the California Coastal Commission (CCC) engaged in an "out-and-out plan of extortion" when they attempted to get part of Pat and Mary Nollan's beachfront land. At least, that was how the late Justice Antonin Scalia described the CCC's attempt to force the Nollans to "donate" a significant portion of their property to the CCC in exchange for a building permit to complete repairs on their beach house. Thirty years ago—in PLF's first Supreme Court victory—the court struck down this abusive tactic.

On the other coast, David H. Lucas received even worse treatment when he sought to build a home on his coastal property outside of Charleston, South Carolina. The South Carolina Coastal Council declared his property a "critical area" for beach conservation and restricted Lucas's ability to develop the land and refused to pay him anything for it.



The Supreme Court, in another Scalia opinion, forced the council to pay for the lots it claimed were essential to its conservation goals.

However, when the government was forced to bear the costs of its own regulation—rather than getting land for free—the state decided it wasn't so critical after all and quickly issued a permit to construct a 5,000-square-foot mansion on the property.

The lesson of the *Nollan* and *Lucas* Supreme Court victories is that weakening property rights inevitably leads to government abuse. Secure property rights, on the other hand, encourage governments to apply market-based decision making to environmental policies. Put more simply: The government—or private groups—can conserve valuable coastal areas if they're willing to pay for it.

For example, the Nature Conservancy, the world's largest conservation organization, recently proved this simple but important concept in California. They purchased 24,000 acres of unique coastal habitat at Point Conception with the intent of conserving its ecological, cultural, and historical resources forever.

They might allow public access someday, but for now the Conservancy is keeping the land private to protect it. Without secure property rights, they could be forced to open the land up to public use and jeopardize the entire conservation project.

Ignoring property rights is not only a bad deal for property owners. It's often an equally bad deal for the environment.

The Constitution's compensation requirement gives regulators (and the taxpayers who fund them) skin in the game. Without this incentive, governments too often acquire land without considering how to manage it for the public's benefit. The \$12 billion backlog in maintenance needs of national parks is clear evidence of this. By championing property rights, we're championing our right to express our values with our land, whether that's having a comfortable oasis for our family and friends, or preserving a unique place for prosperity.

What's nature's beauty worth? The only way to find out is to ask what we're willing to pay for it. ♦

How to win against a government bully



Tony Francois
SENIOR ATTORNEY



ASK ANY CHILD navigating the world of playground politics and they'll tell you there are few things worse than a bully. A bully can take away your freedom and dignity to dictate their will or get you to fall in line.

Ask any homeowner what it feels like to deal with a government agency like the California Coastal Commission (CCC) and those playground days with schoolyard bullies might come back into the frame.

We bring up the CCC a lot in this issue—and for good reason: The commission has a long history of hostility toward private property owners and abusing their rights.

The CCC's stated mission is to protect coastal resources while ensuring the public has adequate access to the coastline. But since its inception, the CCC has taken that mission to extreme lengths by using fines, regulatory takings, and bureaucratic purgatory to violate coastal homeowners' rights. In the most extreme cases, they've even sought to force landowners off their own property.

The CCC is not the only agency abusing its power in the name of public access and conservation. But it's one of the worst.

The CCC has enormous power. For example, they recently fined Warren and Henny Lent more than \$4 million for failing to remove a gate and outdoor stairway at their Malibu beach home. Never mind that the Lents' gate helped prevent pedestrians from falling down a 7-foot drop to the Lents' stairway landing. In the eyes of the CCC, defying their order just to protect people's safety was a multi-million-dollar offense. The Lents are fighting this absurdity, but for most private homeowners, it's easier to simply comply than fight and risk bankruptcy.

The most insidious part of the commission's abuses is the fact that there are hardly any checks on the CCC's power.

The CCC can issue a seven-figure penalty on its own authority, without first obtaining a court's approval. That's like a traffic cop giving you a ticket (a \$4 million ticket) that you have to convince a judge to reject.

Coastal commissioners set their own rules, review those rules themselves, and can change their rules at any time for any reason. This warped bureaucratic nightmare is the reason PLF is currently fighting the CCC's unchecked power.

The Constitution is designed to prevent any government body from being judge, jury, and executioner. There's a reason the separation of powers of the executive, legislative, and judicial branches is so important.

The CCC is not the only agency abusing its power in the name of public access and conservation. But it's one of the worst. And because it continually twists that mission to violate people's rights and ruin lives, homeowners must wield their constitutional rights for protection from these government bullies. ♦

Why feel-good policy rarely works best



Timothy Snowball
ATTORNEY



DEVELOPING EFFECTIVE PUBLIC policy is tough, thoughtful work. There is so much to consider:

- What is the problem?

- What can be done about it?

- Who is best equipped (and legally authorized) to do it?

- What is the likelihood of success?

Time, study, and seriousness are the name of the game.

That is, unless you're a California state official. In that case, no hard thinking—or data—is needed. Just develop public policy based on what feels good. The California plastic straw ban is a prime example.

In an effort to seem as eco-friendly as possible, California, along with several cities and localities around the country, have decided to outlaw plastic straws in bars and restaurants unless upon specific request.

These sweeping policy decisions were not based on serious contemplation of the issue, studies looking into the best environmental practices, or considering reality. Instead, they were inspired by a report from a

9-year-old and a viral YouTube video featuring an injured sea turtle.

Here's the background: Eight years ago, a fifth-grader named Milo Cress began a campaign urging his hometown to "Be Straw Free." He encouraged restaurants to ask customers before offering straws. As part of the campaign, Milo called a handful of straw manufacturers and asked them how many straws they sell. Then, based on that limited data, he extrapolated a claim that Americans consume 500 million plastic straws a day.

That study might be fine for a middle school project. But actual daily straw usage in the United States is between 170 million and 390 million according to real data, still high—but much lower than Milo's guesstimate.

Despite the true numbers showing otherwise, *The New York Times*, CNN, *The Washington Post*, *The Wall Street Journal*, *USA Today*, and other media outlets all ran stories citing the 500 million straw estimate. Then, when the sad but

hardly scientific video of the sea turtle with a plastic straw stuck in his nose went viral, California lawmakers jumped on the bandwagon to feign legislative concern.

The straw ban makes for a feel-good story and nice talking point for politicians. But as actual public policy, it distracts from potentially much more consequential environmental policies like improving plastic use in products such as shipping containers. It also disregards how many of the proposed alternatives like paper straws and sippable cup lids have a worse environmental impact than plastic straws, or how the amount of plastic waste produced by Americans, relative to the rest of the world, is negligible.

Politicians pushing the straw ban narrative seem to think that reality or actual solutions shouldn't get in the way of a feel-good story or scoring political points. But knee-jerk public policy making like this is a poor excuse for real solutions. ♦

Property rights: Conservationists' most effective tool



Tate Watkins

RESEARCH AND PUBLICATIONS FELLOW
PROPERTY AND ENVIRONMENT
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THE CONCEPTS OF property rights and conservation are unfortunately, and mistakenly, pitted against each other on a regular basis. But what happens when people are forced to fight for their property rights in order to *conserve* their land?

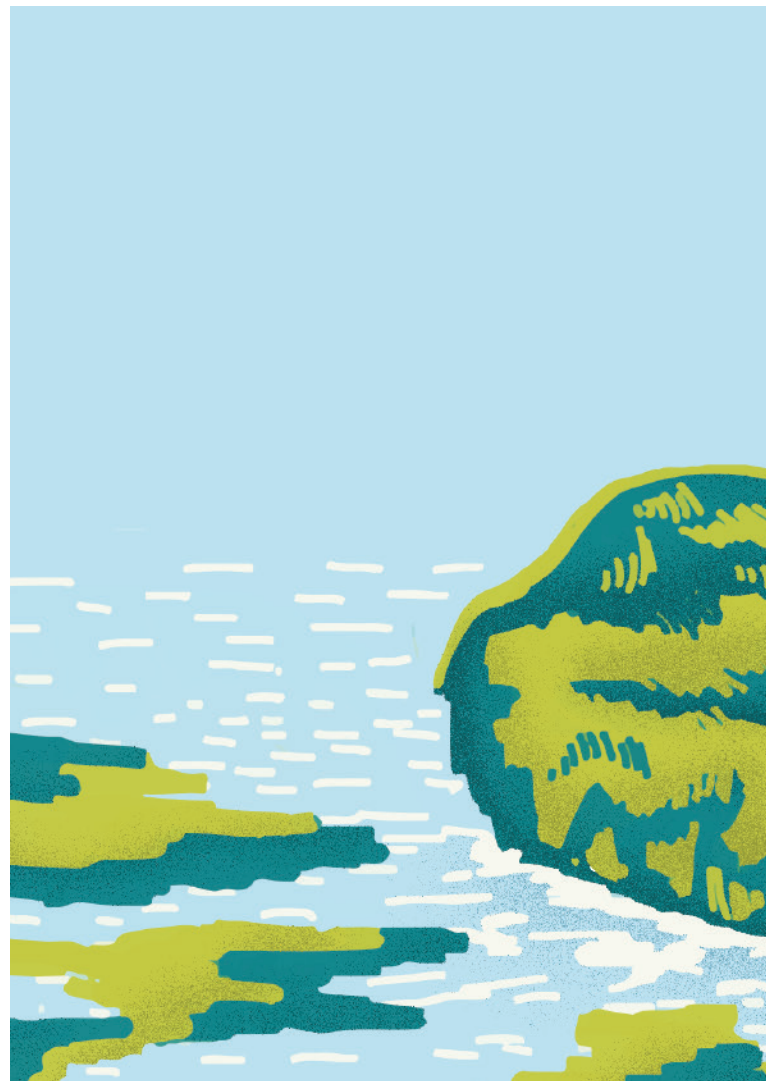
That's the case in coastal Maine, where rockweed algae is king. Rockweed is a brown algae that grows in abundance along the state's coastal areas. Its presence indicates high water quality, and it serves as a source of food, shelter, and spawning habitat for a wide variety of fish, shellfish, and waterfowl. It's also one of the state's most valuable natural resources. The algae is used in fertilizer, animal feed, and health supplements and has an annual harvest worth about \$20 million.

Because of rockweed's environmental and economic value, there's a big market for companies looking to harvest it. In recent years, more commercial marine-product companies such as Acadian Seaplants began harvesting massive amounts of the algae all along Maine's coast. But the land where Acadian was harvesting rockweed was the private property of coastal homeowners.

Many of the homeowners grew concerned that companies were overharvesting, which would hurt the marine habitat where the algae grew. And the homeowners have the right to decide what happens on their property.

Because of this, hundreds of coastal property owners formed the Rockweed Coalition to fight commercial harvesting on their property. The group established a no-cut registry that allows owners to explicitly signal they do not approve of rockweed harvesting on their land.

Harvesters and property owners have wrangled over the issue for years. Acadian argued that rockweed on private property could be harvested as a public right.



But just because a company wants to make money doesn't mean they can use someone's property against their will.

So members of the Rockweed Coalition sued Acadian for violating their property rights, and the coalition's case against Acadian Seaplants ended up in front of Maine's highest court. In 2017, PLF and the Property and Environment Research Center (PERC), a think tank dedicated to sustainable free market environmental policies, filed an amicus brief in the case supporting the property owners' rights.

"Recognizing the property owners' right to the rockweed growing on their land," the brief read, "will encourage putting it to its highest use by allowing property owners to weigh the value of conserving rockweed against what harvesters are willing to pay."

In March, the Supreme Judicial Court of Maine finally settled the dispute, siding with private property owners. Justice Jeffrey Hjelm summed up the majority opinion: "We agree that rockweed in the intertidal zone belongs to the upland property owner and therefore is not public



property [...] and cannot be harvested by members of the public as a matter of right.”

The decision was welcome not only because property rights are important for their own sake, but also because the ruling allowed the incentives that promote better conservation of the land and rockweed.

In siding with property owners, the Maine Supreme Judicial Court prevented environmental problems like the ones that have plagued some fisheries around the globe. Poorly planned government regulations that discourage property rights for natural resources have incentivized a free-for-all in some fisheries, resulting in overharvesting. Fortunately, management systems rooted in property rights appear to be curbing the problem.

Many fisheries have adopted systems that use catch shares, which set an ecologically sustainable harvest quota and then divvy it up into tradable portions. A landmark study in *Science* looked at 11,000 fisheries and found that catch shares hold the potential to halt or even reverse the collapse of fisheries.

By deferring to property rights in the case of rockweed, the Maine court championed constitutional rights and good policy. Property rights produce the strongest incentives for good environmental stewardship. If owners use their resources unsustainably, they bear the consequences. When it comes to rockweed, poor caretakers will lose the economic and environmental benefits that come from healthy algae on their property. A good caretaker, on the other hand, enjoys healthier land and a potentially healthier bank account.

Now, when companies want to harvest resources like rockweed, they can negotiate fair, sustainable, and mutually beneficial harvest agreements with landowners. That’s a win for property owners and algae alike.

Tate Watkins is a research fellow at PERC—the Property and Environment Research Center—a nonprofit in Bozeman, Montana, dedicated to improving environmental quality through property rights and markets. ♦

A Scout and a billionaire: Champions of preservation



Nathaniel Hamilton
MANAGING EDITOR

THE FIRST ROUND of nerves really bubbled up when I finally made it to Philmont's base camp. I'd been to Boy Scout camps and countless campouts before but this was the big one: This was Philmont. No amount of merit badges on a khaki uniform could prepare me for those visceral feelings of uncertainty, awe, and excitement for the adventure I was about to experience.

Amazing plots of wilderness do that—they exhilarate you to be part of something so closely linked with the natural world.

Philmont is a 140,000-acre ranch owned by the Boy Scouts of America in northern New Mexico near the Rocky Mountains. More than one million young men have hiked the trails there and it stands as the pinnacle of everything scouting has to offer adventure-loving youth. The reservation is also one of the largest privately owned and administered conservation projects in the world.

But this isn't a questionably placed promotion for a Boy Scout camp in the middle of a magazine on coastal property rights. This is an illustration of how vital privately owned conservation projects, and the property rights that make them possible, are for champions of nature—and liberty.

When guided along the trails of Philmont you learn a lot about the land, the history of the region, and the stewards who have lived, worked, and ranched there over the last 90 years. You also learn that Philmont is in a healthy competition for the crown of largest private conservationist of the West.

Next door to Philmont is the Vermejo Park Ranch, owned by the media magnate Ted Turner. He is coincidentally also one of the largest private landowners in the world, with more



The Karl Bodmer watercolor that inspired Ted Turner.

than two million acres across the country, nearly all of it undeveloped and reserved solely for environmental projects.

The Boy Scouts of America is a protagonist you'd expect in a story of conservation champions; a billionaire media mogul is more of a stretch. But that's what strong property rights can produce: A system where anyone can contribute to the fair and sustainable protection of America's beauty.

The ranch manager of another one of Ted Turner's properties, the Flying D Ranch, shared an anecdote in *The Land Report* magazine that gets to the heart of why so many of us fight for conservation with property rights:

"When Turner learned that South Dakota's Standing Butte Ranch was going to auction and about to be divided up, he preserved the pristine prairie by buying it outright.

"Then Ted said to Bud and me, 'You see this watercolor?' It was a painting of bison crashing through the underbrush in Northern Montana. He said, 'That's what I want the Flying D to look like. Those Angus cattle? Gone. Those tractors putting up hay? Gone. Those power lines? Gone. That's your job, boys. And what do you know about bison?'

"'Not much' was the answer.

"'Well, you better start learning because that's what we're going to be running.'"

The Flying D is a working ranch serving as a habitat for bison, deer, elk, moose, and myriad other endangered and threatened animals. It's the exact vision of what Turner wanted for the property.

The opportunity to make a piece of nature better through ownership is how we can live up to our responsibilities as stewards of our plot of earth. I know now that's part of



Philmont base camp in 2004, captured by the author.

the connection I was feeling as a 15-year-old Scout. I was honoring the purpose that the Boy Scouts have for their land and I was carrying out the vision Waite Phillips—the oil tycoon—created when he donated Philmont’s land to the Scouts so long ago.

It’s a coincidence that Philmont and Turner’s lands sit next to each other. But the fact that two of the largest and most successful conservation projects in the Southwest are privately owned is no accident. The Framers knew what too many of our leaders today are still learning: Individuals care for what they own better than the government controls what it takes.

Turner might not have been thinking about how he was

exercising his property rights when he envisioned herds of bison powerfully lumbering across his ranches; I know land policy was the farthest thing from my young mind sitting there at base camp. But perhaps that’s how it should be. The great American experiment is made possible by our fundamental ability to freely build on, preserve, or live on our land. We don’t always think about that fact until it’s threatened. Honor that freedom by experiencing firsthand the beauty that it makes possible. ♦

Safeguarding America's fisheries and fishermen



Daniel Ortner
ATTORNEY

WHEN GOVERNMENT REGULATIONS for America's coastline go too far, there are real consequences. As you've read, many beach homeowners can be forced to give up their property or acquiesce to absurd bureaucratic rules.

But when the government sweeps in like a red tide, beachfront homeowners aren't the only victims. Small businesses can also be suffocated by red tape and regulatory overreach. Nowhere is this more apparent than in America's fishing industry.

In New England, generations of fishermen and lobstermen have fished the coastal waters of the Atlantic Ocean. Fishermen and regional councils take their work seriously and operate together to regulate fishing methods, set catch limits, and operate catch-share programs to protect their waters for generations to come. These science-based collaborations are incredibly successful at sustaining economic growth, preserving the environment, and ensuring the sustainability of fishing stock.

Cue the government overreach.

Shortly before leaving office, President Obama used the Antiquities Act to designate a 5,000-square-mile plot of ocean—an area roughly the size of Connecticut—as a national monument. Then, despite the fact that sustainable fishing has gone on in these waters since colonial times, the President determined, unilaterally and without consulting any industry stakeholders, that fishing anywhere in the new ocean “monument” was banned.

Commercial fisheries ... have worked with federal and state representatives to develop ecologically smart and economically feasible fishing techniques that reduce the unintentional impact on sea life.



As a result, most fishermen who fished these waters have been forced to move or go out of business, and the area will be completely off-limits for all commercial fishing as of 2024. So far, President Trump has resisted calls

from within his administration to reverse his predecessor's fishing ban.

Several commercial fishermen and lobstermen associations turned to PLF to fight back against this abuse of power. The legal argument centers on the fact that there are limits on the government's ability to regulate areas it doesn't own—including the ocean. But the moral argument cuts to the core of the issue: Too often the government ignores facts and wages battles

it doesn't need to fight in the first place.

For many New Englanders, fishing represents not only their livelihood, but their way of life. The livelihood of these men's families depends on a healthy ocean, and



Beth Casoni, Executive Director, Massachusetts Lobstermen's Association (left), and a New England lobsterman (right).

they've worked together to ensure that ocean stayed healthy while providing sustenance for hundreds of thousands of people every year. But now that partnership of man and nature is at risk.

Meanwhile, on the other side of the country, the state of California is leading its own misguided battle against fishermen and their way of life.

For decades, commercial fisheries on the West Coast, like their eastern counterparts, have worked with federal and state regulators to develop ecologically smart and economically feasible fishing techniques that reduce the unintentional impact on sea life.

When fishing for swordfish—one of the most abundant types of fish on the West Coast—the nets can sometimes snag other sea animals by accident. But by collaborating with regulators, fishermen have been successful in reducing these unintentional catches as much as possible.

Despite the fishing industry's successful operations, California recently phased out the use of swordfish (or drop-gill) nets. This is already having devastating impacts on the

fishing industry and could cripple the domestic swordfish supply. California policy is obliterating the domestic supply of one of the most popular types of seafood; so many retailers are purchasing their swordfish from foreign markets which are poorly regulated and have little oversight for quality or environmental impact. This is what happened in Hawaii when similar federal regulations were put in place in 2011.

While the swordfish fishermen of California and the lobstermen of New England are thousands of miles apart, they share two common bonds. One is their relation to the ocean and the sustenance that it provides them and their customers; the other is their unearned, government-given scarlet letter of enemies to the environment.

It's unclear how either of these situations will resolve, but what is clear is a better path forward: Instead of regulating fishermen out of existence, the government can treat them as partners and stakeholders. When fishermen are given a vested property interest in the fish they catch, they have been shown to be more effective stewards of the oceans than government regulators could ever be. ♦

Unnecessary enemies



Larry Salzman
DIRECTOR OF LITIGATION



FOR MANY AMERICANS, the cornerstone of “the American dream” is the possibility to someday own a slice of a beach paradise. But as you’ve read throughout this issue, when it comes to beaches—or any land along our coasts—government agencies have declared open season on private property rights.

Government agencies and environmental organizations often suggest there’s an inherent conflict between private land ownership and the public good. Don’t buy it.

Private land ownership and development do not remove the beach or other coastal resources from the public’s reach. To the contrary, private ownership can dramatically increase opportunities for the public to experience that beauty—and protect it.

Take the highly developed southern California coast. Housing, hotels, restaurants, boardwalks, and tourist attractions line the coast of Malibu, Santa Monica, Laguna Beach, and other

sun-soaked SoCal destinations. People flock to the coast to enjoy all those sights, including the natural beauty that the development has made accessible and financially sustainable.

Some of the nation’s most celebrated coastal destinations, like Miami or the Marina District in San Francisco, are located in former marshes and swamps that were uninhabitable until opened for public enjoyment by development.

Development of this kind, too often demonized by government agencies and environmental activists, is undeniably of value to the people who visit these destinations to enjoy their beauty.

Private property is a threat to the coast only in the minds of those who believe that untouched open space is the sole “correct” way to enjoy the coast.

The reality is that people enjoy nature in different ways. Many may get a spiritual boost simply viewing the coastline. But others will benefit from residential or commercial development.



Some benefit from the jobs and profits that come from tourist-serving businesses—enterprises that will in turn be enjoyed and appreciated by visitors in a virtuous circle.

Even when the goal is conservation, strong property rights allow owners to protect land from encroachment or damage by others. Nonprofit organizations, for instance, may choose to preserve undeveloped land; private associations may dedicate coastal land for parks or beaches for public access. Our Constitution even allows the government to seize private property for public use, so long as the owner receives just compensation.

Property rights mean that some coastal lands may be used for homes or business, and others might be preserved entirely, according to the land's value in each form.

Yet over and over, government agencies have been hostile to private property rights and unwilling to pay

anything when they take property for public use. Instead, they demand that private property be given for public use through restriction or outright theft.

We fight these abuses through the courts and on behalf of our clients.

Whether it's preventing Texas officials from forcefully converting private beaches to public property or stopping the California Coastal Commission from blocking development along the coast based on what might be seen by passing kayakers, PLF fights for people's rights to preserve, build, and live responsibly as they choose.

PLF fights these cases because the unchallenged absurdities of today become the enforced policies of tomorrow. The surest way to enhance the public's access and enjoyment of the coast is to promote and secure every individual's right to own a part of it. ♦



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