

The



RAB



AUSE



## A Newsletter for Citizens Concerned with Beach Access

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### What Is Wrong With This Picture???

Convinced that the public has no right to use private dry sand areas, newly formed homeowners' associations have fenced off a large section of beachfront property in Point Pleasant Beach. Undaunted by their actions, the determined beach goer pictured below makes the best of her day at the beach by staking her claim to a small portion of sand. What started out as dry sand was eventually overtaken by the rising tide.

The loss of public beachfront to private associations must not continue. All coastal development should include provisions that maximize the public's right to use our beautiful beaches for a variety of recreational activities such as swimming, surfing, fishing, sun bathing and/or socializing.

This issue of "THE CRAB CAUSE" reaffirms our commitment to educating the public on its rights to use and enjoy our beaches as stated in the Public Trust Doctrine.



*How long will it take before we all are forced to enjoy the beach this way?*

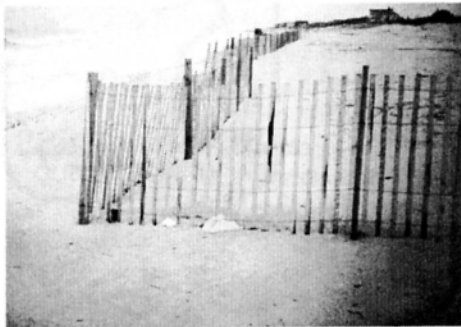
# Message from the President

## Why is Public Beach Access So Important?

Citizen's Right to Access Beaches, C.R.A.B., was formed in August of 1996 because residents of the Point Pleasant Beach area, including myself, were very complacent about the loss of Public Beach Access. We had no idea that beaches always available to the public would be closed to the people who have enjoyed them for generations. Access points were vacated by our governing bodies making way for the construction of **EXCLUSIVE** communities. Beaches, where once thousands of people enjoyed the sand and surf, have become private. Now only an elite group of **EXCLUSIVE** associations and private property owners can access these beaches.

The story has become even worse as the last three years have passed. Illegal fences have been placed perpendicular and parallel to and into the ocean on these beaches to keep the public out. **"KEEP OUT," "NO TRESPASSING,"** and **"PRIVATE BEACH"** signs have been placed on these fences along once accessible beaches.

In order to erect a fence on the beach, permits have to be filed with the town and the state. These fences are to be used for protecting sand dunes ... not to keep people out. As an official from the Department of Environmental Protection stated: "... As placed, the fence is clearly a people fence and is not intended to build or enhance dunes." If a permit is granted, fences must be at least 140 feet above the mean high water mark [NJAC 7:7E-3A.3(d)]. These fences have actually been placed so that they are in the water at high tide. They pose a hazard for anyone attempting to walk, swim, surf or navigate a water craft. The ocean does not understand signs or the meaning of fences. A number of times this summer, these fences have been knocked down and washed away into the surf only to be deposited back on the beach with the next tide. Again, becoming a hazard to all.



*"What have they done to the earth? What have they done to our fair sister? ... Ravaged and plundered and ripped her and bit her, stuck her with knives in the side of the dawn and tied her with fences and dragged her down."*  
- J. Morrison, 1967

This could happen to you, even if you don't use the beaches in southern Point Pleasant Beach. Beaches in Sea Bright and Monmouth have public access, but the parking areas are about a mile away. Half of Loch Arbor's beachfront was sold to a private landowner who built a "U" shaped dune to keep out the public who used this area for years. Lower Township between Wildwood Crest and Cape May has all of its beaches private, because of an **EXCLUSIVE** development!!! (According to Webster: Exclusive means excluding all others; shutting out other considerations, happenings, existences, occupations, etc.)

In just three short years, over one half mile of beaches in Point Pleasant Beach that had been accessible to the public is gone! It is going to get worse if these private developments are allowed to build along the coast. Can this happen to the beach **YOU** enjoy in New Jersey? The answer is **YES!**

How can you help keep the beaches we now have and acquire more reasonable Public Beach Access?

1. Join C.R.A.B
2. Write to your Legislators to reinstate the State Public Advocate's Office - Bill #A-885.
3. Obtain a case study of the Public Trust Doctrine - learn your rights.
4. Ask your Legislators to change the Public Trust Doctrine into a Statute.
5. Pass Bill #S-166 - No Loss Liability, into law.
6. Contact your State Representatives, including the Governor to approve bills regarding open spaces and public access.
7. Elect representatives who are for the Public's Interest.
8. Remember to WRITE (or E-Mail), for the pen (and the computer) are very powerful tools!

## Visit Our Web Site



[www.americom.net/users/ralphc](http://www.americom.net/users/ralphc)

Visit our site at [www.americom.net/users/ralphc](http://www.americom.net/users/ralphc) and learn about C.R.A.B.'s origins and goals, what new projects are in the making, and any legislation being introduced pertaining to Beach Access. Or if you don't feel like reading, just click on the "SurfCam" and have a live look at the ocean in Point Pleasant Beach!!!



## A Case Study

The need for all citizens to understand the Public Trust Doctrine and how it applies to New Jersey Beaches has never been more apparent than it is today. *Not only is the general public confused as to their rights of access but municipal governments and police departments are not clear on this issue either.*

The following are excerpts from a case study of *Matthews vs The Bay Head Improvement Association* in which the Public Trust Doctrine was used to open up Bay Head Beaches and ensure public access to non-residents. This study helps to define the public's rights to not only get to the water but to use a portion of privately-owned dry sand for enjoyment of the ocean.

**"THE PUBLIC TRUST DOCTRINE - Beach Access - The Public Right to Cross and to Use Privately Owned Upper Beach Areas - *Matthews v. Bay Head Improvement Association*, 95 N.J. 306, 471 A.2d 355, cert. denied, 105 S. Ct. 93 (1984)."**

In *Matthews* the New Jersey Supreme Court analyzed the relationship between the public trust doctrine and privately owned dry sand areas. After tracing the development of the public trust doctrine in New Jersey, the *Matthews* court stated that the public's interest in privately-owned dry sand may give rise to two kinds of rights: first, the "right to cross privately-owned dry sand beaches in order to gain access to the foreshore (wet sand)"; and, second, "the right to sunbathe and generally [to] enjoy [the dry sand for] recreational activities."

Writing for a unanimous court, Justice Schreiber reiterated the "unique" nature of the New Jersey shoreline and substantiated the growing public need for open beaches. Relying on a variety of authorities, the court emphasized that the projected demand for ocean swimming could not be met unless existing beach areas were expanded. Justice Schreiber began his analysis of the access question by noting that the opportunity to swim and bathe may be entirely dependent upon the public's ability to reach the foreshore. Absent the right to gain access to the foreshore, he observed, the public's right to use the beach would be effectively eliminated. The public simply required "reasonable access to the sea." The test, the court concluded, was whether the existing means of entry to the beachfront were "reasonably satisfactory."

After determining that the public has a right of reasonable access to the sea, the *Matthews* court proceeded to address the issue of whether the public has the right to use and enjoy privately-owned dry sand. The court immediately recognized that one cannot truly enjoy the ocean without taking brief periods for rest and relaxation on the dry sand. Absent the ability to use the upper beach area for recreation, enjoyment of the foreshore for swimming and bathing would be greatly curtailed. That fact, the court stated, furnished the basis for the holdings in *Avon* and *Deal* (two additional cases involving beach access). Moreover, the *Matthews* court found that the rights flowing from the public trust doctrine are not limited to municipally owned property. Accordingly, it was held that the public does indeed have a right to use private dry sand areas when such use is "essential or reasonably necessary for enjoyment of the ocean."

Although ambiguity potentially may arise from the quasi-public status of the Bay Head Improvement Association, a thorough prospective analysis of the *Matthews* decision cannot ignore the court's clear statements regarding public rights in privately-owned dry sand beaches. For the first time, it was made clear that "private land is not immune from a possible right of access to the foreshore ... nor is it immune from the possibility that some of the dry sand may be used by the public." The court held that the public may cross private dry sand if alternative means of reaching the ocean are not "reasonably satisfactory." In addition, it is now clear that the public may use privately-owned upper beach areas for rest and relaxation if such use is "reasonably necessary" in order to enjoy the foreshore.

As a result of *Matthews*, and in order to determine when the public has the right to cross private dry sand in any particular case, courts will be forced to determine when "reasonable access" exists. Such a determination should involve consideration of the following factors:

- (1) the availability and proximity of publicly owned property that can be used as an alternative means of access to the foreshore;
- (2) the availability and proximity of undeveloped parcels of land adjacent to the shoreline that can provide a public right-of-way to the wet sand;
- (3) the availability and proximity of public streets that can provide a public right-of-way to the wet sand;
- (4) the availability and proximity of municipally owned upland sand areas adjacent to public streets that can provide a right-of-way to the wet sand;
- (5) the accessibility to the foreshore through neighboring municipalities;
- (6) the length and continuity of oceanfront property held by private owners;
- (7) the safety of alternative access routes;
- (8) the nature, safety, and suitability for swimming and recreation of the beach to which access is sought as compared to surrounding beach areas;
- (9) the private owner's present use of the property in question and the expectation of privacy on the part of the owner; and
- (10) the past use of the property in question and the expectations of the public.



# How It Was ... And How It Is Today!



*The top two pictures are of Beacon Beach as it was. The remaining pictures below are of what has become of this beach where thousands of beach goers were welcomed each summer for over 65 years.*



*Three EXCLUSIVE ASSOCIATIONS now claim the sole right to use 978 feet of oceanfront.*

## Legislative Update



C.R.A.B.'s Legislative Action Committee is again calling upon our membership to support two important bills currently before our state lawmakers.

**Assembly Bill A-885** sponsored by Assemblyman Wilfredo Carabello (District 28) and Assemblywoman Arline Friscia (District 19) calls for the reinstatement of the office of the PUBLIC ADVOCATE.

Historically the office of the Public Advocate has successfully represented the interests of the public regarding public trust doctrine interpretations. The case study highlighted on page one of this publication was argued by this office and upheld by the New Jersey Supreme Court.

The "voice of the public" has been silenced (or least muffled) by the loss of the office of the Public Advocate, and the fight for beach access has been seriously curtailed. C.R.A.B. is renewing its efforts to move **A-885** from the Assembly State Government Committee to a vote in the Assembly.

**Bill S-166** Sponsored by Senators Andrew Ciesla (District 13) and Joseph M. Kyrillos (District 10) deals with immunity from liability for certain recreational activities and from injuries caused by acts of God.

As we reported in our Spring/Summer 1998 newsletter, *"if there is less likelihood of a lawsuit, there is more likelihood that municipalities and private entities as well will provide the public with greater access to the beaches."*

**Bill S-166** passed the Senate in May of 1998. It is currently stalled in the Assembly Judiciary Committee. C.R.A.B. is calling upon its membership to urge Assemblyman Russo, the Chairman of the Judiciary Committee, to report this bill out of committee.

To view these bills in their entirety please visit our web page at: [www.americom.net/users/ralphc/page3.htm](http://www.americom.net/users/ralphc/page3.htm). You will also find a link providing the addresses and phone numbers of our legislators.

Please join us in our letter writing campaign regarding these important bills. Feel free to copy letters from our web site, or use them as samples for our own letters. These letters can be found at: [www.americom.net/users/ralphc/page4.htm](http://www.americom.net/users/ralphc/page4.htm).



Signs at the water's edge on the north and south ends of the "private beach." They are inaccurate and misleading ... but they remain !!!



## Public Access???

Last year through the efforts of CAFRA (Coastal Area Facility Review Act), a department of the DEP, and C.R.A.B., a 10 foot Public Beach Access point was established at the northern end of the old Beacon Beach Property - 110 feet south of Carter Avenue. The Borough of Point Pleasant Beach has assumed title to this access point which begins at Ocean Avenue and ends at the Atlantic Ocean. The DEP has set regulations about the operation and design of this access point.

On August 26, 1999, a private homeowner from the newly formed Paradise Beach Association removed the state DEP Public Beach Access sign and placed his own signs that read ... **"PUBLIC ACCESS TO WATER / BEACH USE FOR ASSOCIATIONS ONLY"**! Signs were also placed along the access point and at the water's edge with arrows pointing out into the ocean ... **"PRIVATE PROPERTY EXTENDS 50 FEET FROM THIS POINT."**

This just goes to emphasize the need for the public to be watch dogs when it comes to access. After numerous calls by concerned citizens to the DEP, police department and township the State Access signs were put back where they belong. The Private Property signs at the water's edge, however, still remain. Diligence is the only defense we have to ensure that the "one step forward" does not become "two steps back."



One of two homeowner's personal "Water Access" sign which was removed and replaced by the proper state "Public Access" signs.



## Maryland Avenue Beach



Maryland Avenue Beach, Point Pleasant Beach's only municipal beach is located at the end of Maryland Avenue and is 450' of

oceanfront property. This is predominantly a local, family oriented beach where it is very common to see a familiar face. (A much, much smaller version of the now extinct "Beacon Beach.")

Although this is a very small beach with fences surrounding it on the north, south and west sides, it is still a pleasure to see surfers, body boarders and swimmers enjoying the ocean in these designated areas under lifeguard supervision. However, with all this activity it is very difficult for just two lifeguards to constantly watch the water and maintain a peaceful atmosphere on the beach. A second lifeguard stand equipped with two additional guards would make this a safer beach.

Parking for this municipal beach is very scarce causing people to cross Route 35 South without any assistance from crossing guards. We urge Point Pleasant Beach to search for feasible parking for this area. At the very least, the township should post pedestrian crossing signs and crosswalk markings on the street to alert motorists to be prepared for heavy pedestrian traffic.

One of the main complaints we have heard this summer is that there is no regular cleanup procedure performed on the beachfront. A daily cleanup program should be adhered to by the lifeguards or extra hired help.

Unfortunately, the only public bathrooms are the port-o-johns stationed at the beach's entrance. The main complaint about this facility (except from the obvious) is that they are not cleaned out frequently enough. Permanent public bathrooms would be beneficial and more aesthetically pleasing to the area.

All in all the Maryland Avenue Beach, with the cooperation of the town and the beach goers, has the potential to become a beach that any town would like to call their own.

## C.R.A.B. Joins Coast Access Alliance

C.R.A.B. is proud to announce that it has joined the Coast Access Alliance. The alliance, formed in June of 1999, is a coalition of fishing, surfing, environmental, beach access and citizen's groups dedicated to reforming and making more equitable New Jersey's beach access and beach fee system. Member organizations include: The American Littoral Society; Jersey Shore Audubon Society; NJ Sierra Club; NJ Environmental Federation, Surfers Environmental Alliance; Jersey Coast Anglers; NJPIRG, NJ Federation of Sportsmen's Clubs; Monmouth County Friends of Clearwater; and C.R.A.B. The Alliance affords C.R.A.B. the ability to expand its efforts and will provide a variety of additional resources while still allowing us to retain our autonomy. We look forward to working with our alliance partners.

## Join C.R.A.B. Today!

If you are interested in becoming an active member and wish to join, please fill out the form below and return it with your check for \$10 for each membership to **C.R.A.B., P.O. Box 1064, Point Pleasant Beach, NJ 08742.**

☐ YES, I am interested in becoming a member.

Enclosed please find \$ \_\_\_\_\_ for \_\_\_\_\_ memberships.

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

PHONE \_\_\_\_\_ TOTAL ENCLOSED \$ \_\_\_\_\_

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## C.R.A.B.

Citizens' Right to Access Beaches

P.O. Box 1064, Point Pleasant Beach, NJ 08742  
732-714-CRAB (2722)

## Mission Statement

To ensure that the public has the right to access our beaches as stated in the Public Trust Doctrine.