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14 Attorneys for Defendant State of California,
acting by and through the Department of Parks & Recreation

15 IN THE UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 **BONNIE TUCKER, PETER MENDOZA,**
18 **CALIFORNIA COUNCIL OF THE BLIND**
19 **and CALIFORNIANS FOR DISABILITY**
20 **RIGHTS, a non-profit corporation, on**
behalf of themselves and all others similarly
situated,

21 Plaintiffs,

22 v.

23 **STATE OF CALIFORNIA**
24 **DEPARTMENT OF PARKS AND**
RECREATION, RUTH COLEMAN, and
25 **the STATE OF CALIFORNIA,**

26 Defendants.

Case No. C 98-04935 CRB (PJH)

CLASS ACTION

AMENDED CONSENT DECREE

27
28

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1 Plaintiffs Bonnie Tucker, Peter Mendoza, California Council of the Blind, and
2 Californians for Disability Rights (collectively, “Named Plaintiffs”) and Defendants California
3 Department of Parks and Recreation (the “Department”), Armando Quintero (in his official
4 capacity as Director of the Department), and the State of California (collectively, “Defendants”)
5 hereby agree to resolve this action as follows:

6 **I. RECITALS**

7 A. The Named Plaintiffs brought this lawsuit, *Tucker v. California Department of*
8 *Parks and Recreation*, Case No. C-984935 CRB (the “Federal Action”), on behalf of themselves
9 and all others similarly situated against Defendants alleging that they have been denied their
10 right to full and equal access to, and use and enjoyment of, the facilities and programs of the
11 Department because of architectural and programmatic access barriers. Plaintiffs have pursued
12 related state law claims and remedies in a parallel case filed in San Francisco Superior Court,
13 *Tucker v. California Department of Parks and Recreation*, Case No. 99-302586 (the “State
14 Action”).

15 B. Defendants deny any and all liabilities to the Named Plaintiffs and the Class, and
16 deny that Defendants have violated any laws – federal, state, or local – pertaining to access for
17 persons with disabilities at the Department’s programs, services, activities, and facilities.

18 C. The Department has developed a Self-evaluation and Transition Plan, pursuant to
19 the Americans with Disabilities Act, for its programs, services, activities, and facilities, and has
20 begun and intends to continue implementation of its Transition Plan.

21 D. The Parties now desire to resolve their differences and disputes included in both
22 the Federal Action and the State Action by settling the lawsuits in such a manner as to:

23 1. Achieve improvements to architectural and programmatic access at the
24 Department’s programs, services, activities and facilities for persons with disabilities
25 under both state and federal law;

26 2. Assure that the Named Plaintiffs and the Class will not attempt to enforce,
27 and the Department will not be subject to, conflicting standards regarding compliance
28 with state and federal access laws; and

1 3. Avoid the uncertainties and costs of further or future litigation for all
2 Parties.

3 **II. DEFINITIONS**

4 A. “Class” or “Class Members” shall mean and refer to the class of persons
5 described in Section VIII.A. below.

6 B. “Class Counsel” shall mean and refer to the law offices of Disability Rights
7 Advocates and the attorneys practicing therein.

8 C. “Consent Decree” shall mean and refer to this document.

9 D. “Defendants” shall mean and refer to Defendants California Department of Parks
10 and Recreation, Armando Quintero or his successor (in his or her official capacity as Director of
11 the Department), and the State of California.

12 E. “Department Facilities” shall mean and refer to all Department facilities including
13 (1) all park units owned and/or operated by the Department, (2) all concessions operated at
14 Department facilities, and (3) all park units which are owned by the Department but operated by
15 various local entities.

16 F. “Fairness Hearing” shall mean and refer to the hearing described in Section
17 VIII.D.

18 G. “Final Approval” shall mean and refer to an order approving the Consent Decree
19 after Notice to the Class and the holding of a Fairness Hearing.

20 H. “Level,” “Priority Level,” “Park Level,” and “Trail Level” shall mean and refer to
21 the priority level assigned to the park unit and/or trail under the Department’s Transition Plan
22 and/or Trails Plan.

23 I. “Monitor” shall mean and refer to the person or firm selected in Section V.

24 J. “Named Plaintiffs” shall mean and refer to Bonnie Tucker, an individual, Peter
25 Mendoza, an individual, California Council of the Blind, an organization whose membership is
26 comprised of persons who are blind or visually impaired in California, and Californians for
27 Disability Rights, a non-profit organization whose membership is comprised of persons with
28 disabilities in California.

- 1 K. “Notice” shall mean and refer to the notice described in Section IX.
- 2 L. “Objection” shall mean and refer to any written objection submitted by any Class
3 Members described in Section VIII.C.
- 4 M. “Outdoor Developed Areas Standards” shall mean and refer to the U.S. Access
5 Board’s Architectural Barriers Act Accessibility Guidelines - Outdoor Developed Areas,
6 codified at 36 C.F.R. Ch. XI, Part 1191, which is available at [http://www.access-
8 board.gov/guidelines-and-standards/recreation-facilities/outdoor-developed-areas](http://www.access-
7 board.gov/guidelines-and-standards/recreation-facilities/outdoor-developed-areas) or
<https://www.access-board.gov/aba/guides/chapter-10-outdoor/>.
- 9 N. “Park Activity” or “Park Activities” shall mean and refer to all park-sanctioned
10 regular activities, programs and/or special programs.
- 11 O. “Parties” shall mean and refer to Defendants, Named Plaintiffs, and Class
12 Members.
- 13 P. “Persons with Disabilities” shall mean and refer to persons with disabilities as
14 defined under the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation
15 Act of 1973, and/or California Disability Access Laws (including, but not limited to, California
16 Code §§ 51 and 54, *et seq.*).
- 17 Q. “Play Areas Standards” shall mean and refer to the Access Board Americans with
18 Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities – Play Areas,
19 codified at 36 C.F.R. Ch. XI, Part 1191, which is available at [https://www.access-
21 board.gov/aba/guides/chapter-10-play-areas/](https://www.access-
20 board.gov/aba/guides/chapter-10-play-areas/).
- 22 R. “Preliminary Approval” shall mean and refer to the preliminary approval by the
23 Court of the terms of this Consent Decree which shall occur prior to any Notice being provided
24 in accordance with Section IX.
- 25 S. “Released Claims” shall mean and refer to those described in Section XI.
- 26 T. “Released Parties” shall mean and refer to those described in Section XI.
- 27 U. “Self-evaluation” shall mean and refer to the Department’s Self-evaluation
28 required pursuant to Title II of the Americans with Disabilities Act. The Self-evaluation is
attached as Exhibit D.

1 V. “Settlement Period” shall mean and refer to the period of time described in
2 Section III.

3 W. “Supporting Facilities” shall mean and refer to facilities that serve the Park
4 Activities defined above. Supporting Facilities include, but are not limited to, the park entrance,
5 parking, path of travel, restrooms, telephones, drinking fountains, and signage, where such
6 facilities are provided. Supporting facilities also include amenities provided by the Department’s
7 concessionaires operating under contract with the Department.

8 X. “Trails Plan” shall mean and refer to the Department’s Trails Plan for improving
9 access to the Department’s trails. The Trails Plan is attached as Exhibit C.

10 Y. “Transition Plan” shall mean and refer to the Department’s Transition Plan,
11 required pursuant to Title II of the Americans with Disabilities Act. The Transition Plan is
12 attached as Exhibit A.

13 Z. “Work Plan” shall mean and refer to the Department’s Work Plan for improving
14 access to the Department’s facilities. The Work Plan is attached as Exhibit B.

15 **III. SETTLEMENT PERIOD**

16 This Consent Decree shall become effective on the date of Final Approval. The terms of
17 this Consent Decree shall expire on June 30, 2038, except that Plaintiffs or Defendants may
18 petition the Court for an extension to the extent any of the improvements required under Sections
19 IV.A., IV.K., IV.L., or IV.M.1. will not be completed within the Settlement Period. In deciding
20 a disputed request for an extension, the Court may exercise its discretion, taking into account all
21 relevant information (including whether a new concessionaire is hired or a new park unit is
22 acquired so close to the end of the Settlement Period that extending the Consent Decree is
23 inappropriate).

24 **IV. INJUNCTIVE RELIEF**

25 The following provisions are intended to provide injunctive relief.

26 **A. Transition Plan Completion Schedule**

27 The Department shall schedule and complete the access modifications described in its
28 Transition Plan (attached as Exhibit A hereto), including its Work Plan (attached as Exhibit B

1 hereto) and Trails Plan (attached as Exhibit C hereto), and as detailed in its 2023 Proposed Work
2 Plan Benchmarks (attached as Exhibit X hereto) and in other sections of this Consent Decree,
3 according to the following schedule:

4 1. Level 1 Park Units - The access work at Level 1 park units shall be
5 completed no later than June 30, 2026.

6 2. Level 2 Park Units - The access work at Level 2 park units shall
7 commence no later than July 1, 2008 and be completed no later than June 30, 2032.

8 3. Level 3 Park Units - The access work at Level 3 park units shall
9 commence no later than July 1, 2011 and be completed no later than June 30, 2038.

10 4. Level 4 Park Units - The access work at Level 4 park units shall
11 commence no later than July 1, 2013 and be completed no later than June 30, 2038.

12 5. Level 1 Trails - The trail access work at Level 1 park units was completed
13 by no later than June 30, 2018.

14 6. Level 2 Trails - The trail access work at Level 2 park units shall
15 commence no later than July 1, 2007 and be completed no later than June 30, 2026.

16 7. Level 3 Trails - The trail access work at Level 3 park units shall
17 commence no later than July 1, 2011 and be completed no later than June 30, 2035.

18 8. Level 4 Trails - The trail access work at Level 4 park units shall
19 commence no later than July 1, 2012 and be completed no later than June 30, 2038.

20 9. Improved Access Trails – The trail access work for improved access trails
21 at Level 1-4 park units shall commence no later than July 1, 2024, and be completed no
22 later than June 30, 2038.

23 **B. Access Standards**

24 The Department has used and will continue to use the following accessibility standards in
25 developing and implementing the Department’s Self-evaluation, Transition Plan, Work Plan, and
26 Trails Plan: Title 24 of the California Code of Regulations, the Americans with Disabilities Act
27 Standards for Accessible Design, and the Architectural Barriers Act Accessibility Guidelines for
28 Outdoor Developed Areas, Play Areas, and Public Right-of-Way. In the event of conflict

1 between any of these applicable standards, the Department will use the standard which applies
2 and which provides the highest level of access. In conducting barrier removal work during the
3 Settlement Period, the Department will comply with the above-referenced standards as they are
4 in effect at the time the work is performed, subject to the exceptions process set forth in Section
5 IV.D. To ensure that the Parties are utilizing the same standards, Class Counsel, the Department,
6 and the Monitor will promptly notify each other in writing if they believe changes to these
7 standards have occurred.

8 **C. California State Parks Accessibility Guidelines**

9 The Department will maintain and update the California State Parks Accessibility
10 Guidelines (“Accessibility Guidelines”) (attached as Exhibit E). The Department will notify
11 Class Counsel in writing if the Accessibility Guidelines are updated and/or revised. Any
12 revisions may not reduce the level of access set forth in this Consent Decree. If revisions are
13 made which Class Counsel contends reduce the level of access set forth in this Consent Decree,
14 Class Counsel may object that the revisions reduce the level of access set forth in the Consent
15 Decree, and may initiate the dispute resolution process of Section VII. Any such objection shall
16 be made in writing and within 60 days of receipt of those revisions.

17 **D. Exceptions Process**

18 1. In making access modifications to existing facilities, the Department need not
19 correct existing facilities that are within the minor deviations listed on Exhibit F. In addition,
20 Class Counsel and the Department may agree, in writing, to additional deviations at specific
21 locations if those deviations are appropriate.

22 2. For any program, service, or activity where the Department believes that meeting
23 current access standards would result in an undue financial or administrative burden or change
24 the fundamental nature of the program, service, or activity, the Department will notify the
25 Monitor and Class Counsel of the proposed exception as part of its Yearly Work List provided
26 pursuant to Section VI.A.1. The notification shall be in a form acceptable to the Monitor and
27 shall include the following information: (a) a list of the proposed exceptions; (b) the reason for
28 each proposed exception; and (c) any proposed equivalent facilitation that the Department will

1 provide. In the event that the Department identifies a new proposed exception later in the year,
2 the Department will provide the above notice to the Monitor and Class Counsel with its next
3 semi-annual report pursuant to Section VI.A.3. The Monitor will, within 30 days of receipt of
4 notification of a proposed exception, indicate in writing to the Department and Class Counsel
5 whether or not she accepts the Department's proposed exception request, and she may also
6 provide further comments. Class Counsel may, within 30 days after receipt of the Monitor's
7 responses, review and comment on the proposed exceptions. Any such comment may include an
8 objection to the Department's position, seeking compliance with the current access standards for
9 such disputed exceptions. If there are any disputes as to these proposed exceptions, such dispute
10 will be resolved through the dispute resolution process of Section VII.

11 **E. Park Activities**

12 The Parties agree that all Park Activities have been and/or will be included in one or
13 more of the 12 major activity categories listed in the Department's Transition Plan as follows:
14 Bicycling, Boating, Exhibits/Interpretive Programs, Camping, Fishing, Hiking, Horseback
15 Riding, Junior Lifeguards/Rangers, Off Highway Vehicle Use, Picnicking, Visitor
16 Center/Museum, and Water Access.

17 **F. Currently Accessible Activities**

18 The Parties recognize that certain new construction and/or alteration work has already
19 been completed in certain of the existing Department Facilities so as to improve and/or provide
20 access. To the extent such Department Facilities are required to be accessible under the terms of
21 this Consent Decree and the level of access provided by such earlier construction and/or
22 alteration work does not meet the access standards otherwise required under this Consent Decree,
23 additional barrier removal work will be conducted to bring such Department Facilities up to the
24 required access standards.

25 **G. Level 1 Parks**

26 There are 37 Level 1 park units listed in the Department's Transition Plan (attached as
27 Exhibit A). For each Level 1 park unit, the Department will make each Park Activity listed in
28 the Transition Plan Appendix B, Program Matrix by Level, programmatically accessible utilizing

1 the legal standards of Section IV.B. and the exceptions process of Section IV.D., if applicable.
2 In addition, the Department will make all Supporting Facilities for each such listed Park Activity,
3 where such facilities are provided, programmatically accessible utilizing the legal standards of
4 Section IV.B. and the exceptions process of Section IV.D.

5 **H. Level 2 and Level 3 Parks**

6 1. There are 54 Level 2 park units and 69 Level 3 park units listed in the Transition
7 Plan. The Department will make each Park Activity listed in the charts entitled, “Transition Plan
8 Programs, Level 2 Parks- Major Activities” (attached hereto as Exhibit G) and “Transition Plan
9 Programs, Level 3 Parks - Major Activities” (attached hereto as Exhibit H), programmatically
10 accessible utilizing the legal standards of Section IV.B. and the exceptions process of Section
11 IV.D. These Park Activities have been selected for accessibility work because they represent the
12 highest usage and are the primary reason visitors go to the particular park.

13 2. The Department will also make all Supporting Facilities for each of the selected
14 Level 2 and Level 3 activities, where such facilities are provided, programmatically accessible,
15 utilizing the legal standards of Section IV.B. and the exceptions process of Section IV.D.

16 3. The Department will make the visitor centers at all Level 2 and 3 parks
17 programmatically accessible, utilizing the legal standards of Section IV.B. and the exceptions
18 process of Section IV.D., except for the visitor center facilities at Castle Crags, Montana de Oro,
19 and Prairie Creek, which are small, open only on a limited basis, and which have staff available
20 to provide assistance.

21 4. Wherever a campfire center is provided as a significant Park Activity within a
22 Level 2 or 3 park unit, the Department will make the campfire center programmatically
23 accessible, utilizing the legal standards of Section IV.B. and the exceptions process of Section
24 IV.D.

25 5. The Department will make the camping program at Mt. Diablo State Park
26 programmatically accessible, utilizing the legal standards of Section IV.B. and the exceptions
27 process of Section IV.D.

1 **I. Level 4 Parks**

2 1. There are 75 Level 4 park units listed in the Transition Plan. These are the least
3 visited of the state parks, currently representing only about 4% of the annual visitation. The
4 Department will make each Park Activity listed in the chart entitled, “Transition Plan Programs,
5 Level 4 Parks”(attached hereto as Exhibit I) programmatically accessible, utilizing the legal
6 standards of Section IV.B. and the exceptions process of Section IV.D.

7 2. The Department will also make all Supporting Facilities for each of the selected
8 Level 4 activities programmatically accessible, where such facilities are provided, utilizing the
9 legal standards of Section IV.B. and the exceptions process of Section IV.D.

10 **J. Park Level Changes**

11 The Parties agree that no Park Level changes are anticipated. However, if in the future
12 the Department wishes to change a Park Level so as to reduce the level of access, the Park Level
13 for another park unit will promptly be increased so as to maintain the overall level of access
14 agreed upon herein. The Department will notify Class Counsel and the Monitor of any future
15 proposed Park Level changes as part of the Yearly Work List and/or in the Department’s
16 semi-annual reports pursuant to Section VI.A.

17 **K. Locally Operated Parks**

18 1. There are currently 27 park units owned by the State of California which are
19 operated entirely by local entities. These kinds of park units and their operating entities are
20 referred to in this section as “Locally Operated Parks.” The Parties agree that Locally Operated
21 Parks will be addressed as follows.

22 2. The Department has assigned a priority level to each of the Locally Operated
23 Parks. A list of the Locally Operated Parks and their assigned priority levels is attached hereto
24 as Exhibit J.

25 3. Within 30 days of Final Approval, the Department will send a letter in
26 substantially the same form as Exhibit T (and attaching a copy of the Consent Decree) to each of
27 the Locally Operated Parks, informing each local entity that it may participate in the Consent
28

1 Decree. It is the intent of the Parties to urge the Locally Operated Parks to participate fully in the
2 Consent Decree on the conditions set forth in this section.

3 4. Each Locally Operated Park may participate in this Consent Decree if it meets the
4 following conditions:

5 a. The Locally Operated Park must, within six months of the Department's
6 mailing of the letter under Section IV.K.3. (or as may be extended by written agreement
7 of Class Counsel and the Department), provide to the Department and Class Counsel a
8 self-evaluation and transition plan, as required by the Americans with Disabilities Act,
9 covering all programs, services, and activities provided in the Locally Operated Park. To
10 meet this condition, the Locally Operated Park's self-evaluation and transition plan must:
11 (i) be of equivalent scope and detail as the Department's Self-evaluation and Transition
12 Plan (taking into account the differing sizes, scope, and nature of activities of the Locally
13 Operated Park and the Department); (ii) utilize the same access standards as used in the
14 Department's Self-evaluation and Transition Plan; and (iii) provide for an equivalent
15 level of access concerning the programs, services, and activities at the Locally Operated
16 Park as is provided at park units in the same priority level which are operated by the
17 Department itself.

18 b. The Locally Operated Park's transition plan must provide a timeline for
19 barrier removal at the Locally Operated Park which coincides with the Department's
20 timeline for the priority level assigned to the Locally Operated Park. However, Locally
21 Operated Parks assigned to Level 1 will have one additional year to complete
22 programmatic access modifications beyond the Department's Level 1 completion
23 schedule for state park units operated by the Department.

24 c. The Locally Operated Park must also adopt and implement policies and
25 procedures to ensure program access equivalent to the policies and procedures that have
26 been adopted by the Department for state park units operated by the Department itself (as
27 described in the Department's Transition Plan).

- 1 d. The Locally Operated Park must implement its transition plan.
- 2 e. The Locally Operated Park must fully assume the Department’s reporting
3 and monitoring obligations for that Locally Operated Park, as set forth Section VI of this
4 Consent Decree. The Locally Operated Park must timely provide to the Department a
5 copy of all reports and other documents submitted pursuant to Section VI of this Consent
6 Decree.
- 7 5. For those Locally Operated Parks that seek to participate in this Consent Decree,
8 the Department agrees to use its reasonable best efforts to provide guidance and oversight in
9 determining the access modifications which will be completed at such Locally Operated Parks,
10 and will use its reasonable best efforts to confirm actual completion of the access modifications.
- 11 6. Any Locally Operated Park’s costs of compliance (with this Consent Decree or
12 the underlying standards), including any monitoring or consulting costs of the Monitor, shall be
13 the Locally Operated Park’s expense, not the Department’s expense.
- 14 7. Those Locally Operated Parks which comply fully with the provisions set forth
15 above will be entitled to the benefits of the releases set forth in Section XI below. However, any
16 Locally Operated Park that fails to provide a self-evaluation and transition plan within six
17 months of the Department’s mailing of the letter under Section IV.K.3. (or as extended by
18 written agreement of Class Counsel and the Department) will be deemed to be excluded from
19 this Consent Decree. In addition, if Class Counsel determines, at any time during the Settlement
20 Period, that a particular Locally Operated Park has not complied fully with the provisions of
21 Section IV.K.4., such Locally Operated Park will not thereafter be a part of this Consent Decree
22 and neither the Department nor the non-Department entity operating the Locally Operated Park
23 will be entitled to the benefits of the releases set forth in Section XI below. Class Counsel will
24 notify the Department and the Locally Operated Park promptly after any such determination of
25 non-compliance. Within 14 days of such notification, the Department or the Locally Operated
26 Park may request that the Parties and the Locally Operated Park meet and confer regarding any
27 dispute. Any determination by Class Counsel will not be final until the Parties and the Locally
28

1 Operated Park have met and conferred (and, as appropriate, included the Monitor in any such
2 discussions), which will occur within 30 days, at the latest.

3 **L. Concessions**

4 1. The Parties agree that all concessions and Supporting Facilities will be made
5 programmatically accessible, as detailed in this Section. The criteria for compliance will be the
6 legal standards of Section IV.B. and the exceptions process of Section IV.D. (except that the
7 exceptions process of Section IV.D. will not apply to new concessions as described in Section
8 IV.L.3.). A list of the concessions, including one state park unit which is owned by the
9 Department, but operated by concessions (Brannan Island), is attached hereto as Exhibit K.

10 2. Existing concessions – The Department agrees to make reasonable, good faith
11 efforts to ensure that the concessionaire achieves compliance with all deliberate speed.

12 3. New concessions – For a new concession in a new facility or a new concession in
13 an existing facility which involves a change in use for the facility, the Department will ensure
14 that each such concessionaire achieves compliance by the time such concessionaire begins
15 operation.

16 4. Existing concessions which may come under new operation – The Department
17 will make its best efforts to ensure that the new concessionaire achieves compliance within a
18 reasonable time, not to exceed one year unless Class Counsel and the Department otherwise
19 agree in writing. For the Mexican Commercial Corner concession at Old Town San Diego and
20 the Big Sur Lodge concession at Pfeiffer Big Sur State Park, the Department will make its best
21 efforts to ensure that any new concessionaires achieve compliance as set forth in the Requests for
22 Proposals dated March 13, 2003 and September 29, 2003, respectively.

23 5. Privatization of a current state function - For any existing state-operated program,
24 service, activity, or facility which may in the future become operated as a concession but which
25 involves no change in use of the facility, the Department will ensure that the concessionaire
26 achieves compliance pursuant to the existing Transition Plan and the completion schedule for the
27 park unit.

1 6. Brannan Island State Recreational Area which is currently operated entirely as
2 concessions will be addressed under the Transition Plan in the same manner as the other
3 concessions as discussed above.

4 **M. New Parks and/or New Construction**

5 1. New Parks - Should the Department acquire a new park unit, within a reasonable
6 time (taking into account factors such as when the new park unit is or will be open to the public
7 and when the Department will determine the uses of the new park unit) after the Department
8 acquires that park unit, the Department will: (a) comprehensively survey that new park unit for
9 access for persons with disabilities to the same degree as other state park units, unless a
10 comparable and up-to-date survey has already been completed; (b) prepare a transition plan
11 comparable to the Department's Transition Plan for such new park unit, unless a comparable
12 transition plan has already been completed; (c) assign a reasonable priority level to the new park
13 unit according to the criteria used in the Transition Plan; and (d) remove barriers at the new park
14 unit according to a reasonable timeline taking into account the park unit's priority level and the
15 date when the Department obtains control over the new park unit. The Department will provide
16 notification to the Monitor and Class Counsel regarding any new parks in its Yearly Work List
17 and in its semi-annual reports pursuant to Section VI.A.

18 2. New Construction - All new construction undertaken by the Department,
19 including at concessions, will conform with the applicable access standards of Section IV.B.
20 Such new construction will be subject to all of the otherwise applicable provisions of this
21 Consent Decree. The Department will make its best efforts to report in its Yearly List and in its
22 semi-annual reports any major new construction and renovation projects with a total estimated
23 construction cost of \$500,000 or more which have not otherwise been reported. New
24 construction at locally operated parks is not included within the scope of this Consent Decree.

25 **N. Trails Plan**

26 The following section defines the Department's obligations to provide programmatic
27 access for the programs, services, and activities of hiking and trails, and supersedes any contrary
28 provisions.

1 1. Level 1 Parks – At Level 1 parks that currently have three or more trails
2 (excluding off-highway vehicle park units that do not have pedestrian trails), the Department will
3 provide at least three accessible trails as follows: (a) one accessible trail will be at least 1.5 miles
4 long, and (b) two additional accessible trails will be at least .5 miles long.

5 2. Level 2 Parks – At Level 2 parks that currently have two or more trails, the
6 Department will provide at least two accessible trails as follows: (a) one accessible trail will be at
7 least one mile long, and (b) one additional accessible trail will be at least .5 miles long.

8 3. Level 3 Parks – At Level 3 parks that currently have at least one trail, the
9 Department will provide at least one accessible trail which is at least .5 miles long.

10 4. Additional Trails at Level 2 and 3 Parks – In addition to Sections IV.N.2. and
11 IV.N.3., the Department will provide an additional accessible trail which is at least one mile long
12 at 38 Level 2 and/or Level 3 parks.

13 5. Level 4 Parks – At Level 4 parks that currently have at least one trail, the
14 Department will provide at least one accessible trail that is .25 miles long.

15 6. Selection of Trails – In selecting trails to be made accessible under the Trails
16 Plan, the Department will make its reasonable best efforts to maximize the variety and quality of
17 the outdoor experience offered to trail users with disabilities. Other than any necessary
18 reconfiguring of existing trails to make them accessible, nothing in this Consent Decree shall
19 require the Department to build or otherwise create any new trails.

20 7. Website – The Department will provide information on its website that describes
21 the type of trail experience provided at each accessible trail and the location of the nearest
22 accessible restroom.

23 8. Easy Fixes to Trails – In addition to the above, the Department agrees to make
24 reasonable and good faith efforts to remove easily-removable barriers as they are identified on
25 additional trails where such efforts will improve access. The Parties will meet and confer
26 regarding such areas as appropriate.

27 9. Signage – The Department shall ensure that all future new and altered trail
28 signage will meet applicable code requirements for access for persons with vision disabilities.

1 10. Cross Slopes – The Department will make its best efforts to minimize cross slopes
2 at culverts on accessible trails.

3 11. Improved Access Trails – In addition to the above, for Level 1, 2, 3, and 4 parks,
4 the Department shall evaluate all parks to determine if an additional trail or a portion of a trail
5 can be modified to provide improved access to persons with disabilities according to the terms of
6 the Acceptable Deviations to the 2013 Outdoor Developed Areas Amendments to the
7 Architectural Barriers Act Accessibility Guidelines (attached as Exhibit W hereto).

8 **O. Maintenance of Access Features**

9 The Department will use its best efforts to ensure that access features are maintained in
10 usable condition. The Department will: (1) schedule ongoing, regular inspections of access
11 features at all park units, and (2) promptly repair access features. These inspections and repairs
12 may be performed as part of the Department’s regular maintenance program.

13 **P. Miscellaneous Departmental Access Policies**

14 The Department will comply with the six policies listed below, and will distribute the
15 Special Events Checklist to all appropriate Department staff. The policies and checklist listed
16 below will be summarized in the Accessibility Guidelines in the appropriate chapter relating to
17 the subject matter of each policy. The Department will also maintain and update these policies
18 and checklist, and will notify Class Counsel in writing if any of them are updated and/or revised.
19 If revisions are made which Class Counsel contends reduce the level of access set forth in this
20 Consent Decree, Class Counsel may object that the revisions reduce the level of access set forth
21 in the Consent Decree, and may initiate the dispute resolution process of Section VII. Any such
22 objection shall be made in writing and within 60 days of receipt of those revisions.

- 23 1. Accessibility & Historic Properties Policy - Attached as Exhibit L;
- 24 2. Accessible Campsites Policy - Attached as Exhibit M;
- 25 3. Sign Language Interpreter Policy - Attached as Exhibit N;
- 26 4. Accessibility and Publications Policy - Attached as Exhibit O;
- 27 5. Complaint Policy - Attached as Exhibit P. The Department will maintain a link
28 on the Department’s website allowing for park users to make comments and complaints. This

1 link will be maintained on the Accessibility Division’s home page. The Department will forward
2 any complaints received (with redaction of personal identification information) to the Monitor as
3 part of the Department’s monitoring reports pursuant to Section VI.A.

4 6. Special Events Checklist - Attached as Exhibit Q. The Department will provide
5 the Special Events Checklist to all coordinators of special events at park units.

6 **Q. Miscellaneous Provisions**

7 1. Access to Beaches and Shores – Where beach access is designated as a Park
8 Activity that will be made accessible under the Transition Plan, the Department will provide a
9 path of travel to the beach and/or shore utilizing the legal standards of Section IV.B. and the
10 exceptions process of Section IV.D. In addition, at those locations, the Department will provide
11 at least 2 beach wheelchairs, unless (a) there are no staff or facilities at the park unit reasonably
12 available to store and supervise the use of the beach wheelchairs, and/or (b) the slope conditions
13 at the park unit make use of beach wheelchairs hazardous. In addition, if the use of beach
14 wheelchairs increases such that additional beach wheelchairs are necessary to accommodate such
15 need, more beach wheelchairs will be provided contingent upon the reasonable availability of
16 adequate storage and supervision for the wheelchairs. The Department will make reasonable,
17 good faith efforts to provide such beach wheelchairs with all deliberate speed and within two
18 years of Final Approval. The Department will also provide information regarding its provision
19 of beach wheelchairs in its reporting pursuant to Section VI. The above policy information will
20 be included in the Accessibility Guidelines in the appropriate chapter relating to beach and/or
21 water access. The Department shall commit to maintain and update the above policy, and will
22 notify Class Counsel in writing of any update and/or revision. If revisions are made which Class
23 Counsel contends reduce the level of access set forth in this Consent Decree, Class Counsel may
24 object that the revisions reduce the level of access set forth in the Consent Decree, and may
25 initiate the dispute resolution process of Section VII. Any such objection shall be made in
26 writing and within 60 days of receipt of those revisions.

27 2. Website – The Accessibility Division of the Department’s website as well as the
28 link on the Department’s home page to the Accessibility Division will be maintained.

1 3. Ranger Stations – To the extent that Ranger Stations are not open to the public,
2 they are not covered by the Transition Plan and the Consent Decree.

3 4. Reservations – The Parties agree to the following campsite reservation policies:

4 a. Many park units allow for advance reservations, either by phone or via the
5 internet up to six months prior to date of arrival. Designated accessible campsites and
6 other overnight facilities are identified for the person interested in making a reservation.
7 Anyone attempting to reserve an accessible campsite or overnight facility must claim to
8 have a disability. The Department requires that its accessible campsites and overnight
9 facilities be reserved exclusively for persons with disabilities. In order to preserve the
10 use of accessible sites and facilities by visitors with disabilities, the Department requires
11 that individuals reserving those sites or facilities possess and display a valid Disabled
12 Discount Pass issued by the California Department of Parks and Recreation, a disabled
13 person or disabled veteran’s parking placard or license plates issued by the California
14 Department of Motor Vehicles, or similarly-reliable documentation of the need for an
15 accessible campsite or facility that has been issued by a governmental entity. Upon
16 arrival at the park, visitors must display one of the forms of acceptable documentation of
17 disability identified above, and the person to whom the documentation is assigned must
18 be an occupant of the accessible campsite or overnight facility during the entirety of the
19 stay at the reserved site. Accessible campsites or overnight facilities available by
20 advance reservation will be held for people with disabilities until 5:00 p.m. each day. If
21 an accessible campsite or overnight facility is not filled by 5:00 p.m. each day, that
22 campsite or overnight facility may also be provided first-come-first-served to a person
23 without a disability for one night only; this process repeats each day.

24 b. At other park units, the campsites may not be reserved in advance. At
25 these park units, the accessible campsites are held for persons with disabilities (with valid
26 documentation, as described in Section IV.Q.4.a.) on a first-come-first-served basis until
27 5 p.m. each day. If an accessible campsite is not filled by 5:00 p.m. each day, that
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1 campsite may also be provided first-come-first-served to a person without a disability for
2 one night only; this process repeats each day.

3 c. The Department will maintain and update the above campsite reservation
4 policies, and will notify Class Counsel in writing of any update and/or revision. If
5 revisions are made which Class Counsel contends reduce the level of access set forth in
6 this Consent Decree, Class Counsel may object that the revisions reduce the level of
7 access set forth in the Consent Decree, and may initiate the dispute resolution process of
8 Section VII. Any such objection shall be made in writing and within 60 days of receipt
9 of those revisions.

10 d. Information regarding the Department's camping reservations policies
11 affecting access will be posted on the Department's website and on any website used by
12 the Department for reservations for campsites, overnight facilities, or activities, whether
13 the website is owned and operated by the Department or owned or operated by a
14 contracted third-party. Information concerning the above-described reservation policies
15 will be included. In addition, the website will recommend that persons with disabilities
16 should always call the State Park District for the individual park unit in advance for the
17 most current access and reservation information.

18 e. Any website used by the Department for reservations for campsites,
19 cabins, or activities (including any web or mobile applications used by the Department
20 for this purpose) (collectively, "reservation website"), whether owned and operated by
21 the Department or owned or operated by a contracted third-party, shall comply with the
22 accessibility and usability standards for people who are blind or low vision set forth by
23 the United States government in the regulations for Section 508 of the Rehabilitation Act
24 or, if a higher standard, the accessibility standards set forth by the California government
25 in its laws or regulations (collectively, "Applicable Accessibility Standards").

26 f. When the Applicable Accessibility Standards are amended, the
27 Department shall have one year from the effective date of the changed requirement to
28 update the reservation website for compliance with any amended Applicable

1 Accessibility Standards, unless the Department's ability to modify the website is limited
2 by the terms of an existing contract. If the Department's ability to modify the reservation
3 website for compliance with the amended Applicable Accessibility Standards is limited
4 by the terms of an existing contract, any new contract or extension or renewal of the
5 existing contract shall require the updating of the reservation website in accordance with
6 this paragraph.

7 g. The Department will ensure that current and future versions of its
8 reservation website are evaluated for compliance with Applicable Accessibility
9 Standards. At least once a year, the Department shall conduct manual usability testing
10 and automated accessibility testing to confirm that the reservation website complies with
11 Applicable Accessibility Standards. Manual usability testing shall be conducted by
12 testers who are blind and testers who have low vision. If the Department and/or
13 contracted third party make any updates that may reasonably affect the ability of persons
14 with visual impairments to use the reservation website, these updates will be evaluated
15 for compliance with Applicable Accessibility Standards prior to the public rollout of such
16 updates. After the completion of any accessibility evaluation described herein, the
17 Department shall use its best efforts to ensure that any accessibility barriers identified are
18 remedied, in a timely manner, to the maximum extent feasible. The Department will
19 provide the Class Counsel with regular updates regarding such remediation efforts,
20 including the anticipated time of completion. If the Department's ability to comply with
21 this paragraph is limited by the terms of an existing contract, the Department will ensure
22 that any new contract or extension or renewal of the existing contract requires
23 compliance evaluations in accordance with this paragraph.

24 h. The Department shall maintain a reservation call center. During the
25 Department's regular operating hours, all call center representatives shall be able to assist
26 customers with disabilities with placing or cancelling reservations, and trained to answer
27 accessibility-related questions regarding the lodging accommodations or recreational
28 activities for which they offer such assistance to persons without disabilities. Information

1 regarding this reservation call center shall be posted in an accessible format on the
2 reservation website's home page, "Contact Us" page, "FAQ" page, and any other
3 relevant pages of the Department's website concerning reservations for campsites or
4 overnight facilities.

5 i. Notwithstanding Section VII, any dispute regarding the reservation
6 website's compliance with Applicable Accessibility Standards, including the usability of
7 this website, shall be resolved as follows:

8 1. Notice
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10 Step One: The Party that wishes to initiate the dispute resolution
11 process shall notify the other Parties in writing of the nature of the
12 dispute. Such notification shall include a reasonable explanation of the
13 legal and factual bases for the Party's position, so that it can be
14 understood and investigated. If another Party believes this explanation
15 is insufficient, that Party's remedy is to request a fuller explanation, not
16 to contest the triggering of the dispute resolution process.

17 2. Meet and Confer
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19 Step Two: Counsel for the Parties shall meet and confer within 30 days
20 of notification of the dispute pursuant to Section IV.Q.4. to attempt to
21 resolve the dispute without further involvement by any intermediary.
22 The Parties will allow reasonable time (for example, 30 to 60 days) to
23 attempt to resolve the dispute without the need to proceed further in the
24 dispute resolution process.

25 3. Selection of Web Access Consultant
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27 Step Three: If the Parties are unable to resolve the dispute without a
28 third-party intermediary, then the Parties shall endeavor to jointly select

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a person or firm to operate as a Web Access Consultant no later than 60 days after the parties determine that the meet and confer process in Step Two has not resolved the matter. Each Party shall submit to the other Parties in writing their recommendation for the appointment of a Web Access Consultant to assess the compliance of the website with Applicable Accessibility Standards. The Parties shall then agree upon the selection of one of the proposed experts. If the Parties are unable to agree upon the selection of a Web Access Consultant, then the counsel for the Parties shall seek resolution of this dispute by the Court.

4. Dispute Resolution by Magistrate Judge

Step Four: If the Parties are unable to agree upon the selection of Web Access Consultant, counsel for the Parties will submit the matter to the assigned magistrate judge for formal resolution. The Parties may each submit to the Court the names and qualifications of up to three proposed Web Access Consultants. Thereafter, the Parties shall have up to 14 days to submit comments to the magistrate judge concerning any or all of the proposed consultants, and the magistrate judge shall thereafter select a Web Access Consultant from the names provided. If, at any time the Web Access Consultant is unable to serve, the Parties shall make a good faith effort to promptly agree on a replacement. If they are unable to agree within 30 days, replacement candidates may be submitted to the magistrate judge for selection, using the same process described above.

5. Work to Be Performed by Web Access Consultant

Step Five: The selected Web Access Consultant shall use generally accepted methods of automated and manual testing to assess the

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compliance of the website with Applicable Accessibility Standards. Testing shall include the use of manual usability testing by testers who are blind or have low vision, as applicable. The Web Access Consultant shall prepare a report to the Parties from the result of their work within no more than 90 days after the Web Access Consultant has been selected by the magistrate judge, subject to a commensurate addition of time caused by any delay in the Department’s process of contracting with the Web Access Consultant or an extension of time granted by stipulation of the Parties or at the discretion of the magistrate judge.

6. Remediation of Website

Step Six: If the Web Access Consultant finds that the Department’s reservation website does not comply with Applicable Accessibility Standards, as defined above, then the Parties shall meet and confer on a timeline for remediation of the reservation website so that it becomes compliant. If the Parties are unable to agree upon a timeline or if remediation is not completed within the agreed-upon timeline, counsel for either of the Parties may submit the matter to the assigned magistrate judge for mediation or formal resolution.

7. Submission to Court

Step Seven: If a dispute between the Parties still has not been resolved, counsel for the Parties will submit the matter to the assigned District Judge for formal resolution.

8. Fees and Costs for Dispute Resolution

Reasonable fees and costs by counsel for the Parties incurred under this section may be claimed and recovered pursuant to the standards set forth

1 in Section VII.E, with the exception that if the Web Access Consultant
2 finds that there is no violation of Applicable Accessibility Standards, as
3 defined above, Class Counsel shall compensate the Department for half
4 of the costs of the Web Access Consultant for any work conducted
5 pursuant to this Section. Otherwise, the Department shall compensate
6 the Web Access Consultant for any work conducted pursuant to this
7 Section.

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9 5. Hunting – Based upon the Department’s contention that: (a) hunting is not a Park
10 Activity sponsored by the Department of Parks and Recreation, and (b) hunting, including access
11 to hunting, is the responsibility of the California Department of Fish and Game, the Parties agree
12 that this activity is not included in the Department’s Transition Plan or this Consent Decree.

13 6. Policy Review – The Department will review and revise, as necessary, the
14 Department’s written policies regarding reservations, fees, field operations, concessions, and
15 maintenance to ensure access in compliance with the requirements of this Consent Decree.

16 7. Electricity at Campsites and Picnic Sites – The Department will add information
17 to its website listing those park locations where electricity is available.

18 8. Emergency Procedures – The Department will include information regarding
19 emergency procedures affecting disabled persons at the park units in its self-evaluation.

20 9. Captioning of Videos – For videos that the Department shows to the public, the
21 Department will: (a) caption any new videos; and (b) within 15 months of Final Approval,
22 provide scripts for and caption any existing videos. At any location where the Department shows
23 a closed captioned video, the Department will ensure that staff at that location are trained in how
24 to operate the closed captioning.

25 10. Portable Toilets – If a portable toilet is available that meets the standards set forth
26 in Section IV.B. and is reasonably functional, when the Department purchases portable toilets
27 that are meant to be accessible, it will only purchase these fully accessible portable toilets. The
28 Parties agree that the portable toilet Satellite Freedom 2 (with the 68 gallon tank) fully meets the
standards set forth in Section IV.B. and is reasonably functional. In meeting the applicable

1 requirements for the number of accessible portable toilets at particular locations, the Department
2 may utilize portable toilets that it already owns that meet the federal Americans with Disabilities
3 Act Access Guidelines but may not fully meet Title 24 of the Code of California Regulations.

4 11. Kitchens – When the Department replaces appliances and/or equipment in
5 kitchens open for public use, it shall install appliances and/or equipment that have access
6 features, including tactile signage and controls, that enable users with mobility, vision, and
7 hearing impairments to independently and safely use such appliances and/or equipment, to the
8 extent they are available on the market or can be readily modified at a reasonable expense.

9 12. Grills, Fire Rings and Fireplaces – Accessible grills, fire rings and fireplaces shall
10 be placed so there is a minimum 48 inches clear space 360 degrees surrounding the cooking
11 facility. In accessible developed campground sites and picnic areas where paving is or is to be
12 installed, a firm-surfaced warning area shall be provided around the grill, fire ring or fireplace to
13 alert blind and visually impaired persons to the location of the grill, fire ring or fireplace. This
14 warning surface will have a minimum depth of 24 inches and shall provide clear visual contrast
15 from the immediate adjoining surfaces. The Department shall use as guidance all applicable
16 codes (including ADAAG and Title 24) as well as existing research on detectable warnings in
17 developing the design to ensure that it is detectable. The Parties agree: (i) prior to the initial
18 design stage, there will be a joint site visit by the parties to a typical campsite in order to
19 determine the needs and what has to be done for the detectable warning to be effective; (ii) a
20 prototype of a proposed design will then be constructed by the Department at a typical
21 campground site; (iii) within thirty (30) days, the Parties will jointly inspect the prototype; (iv) if
22 the prototype is satisfactory to all Parties, then it will be used as the design model for other
23 accessible grills, fire rings and fireplaces; (v) if the prototype is not acceptable to all Parties, then
24 alternative prototypes will be evaluated using the same process described herein in items (i)
25 through (iv) until a prototype acceptable to all Parties is identified. This process will be followed
26 to reach an agreed upon design within the first year following approval of the consent decree. If
27 the Parties are unable to agree on a design, either Party may initiate the “Dispute Resolution”
28 process of Section VII herein.

1 13. Fire & Service Roads – In addition to altering existing trails for access
2 improvements, the Department will evaluate existing fire and service roads for the potential to be
3 used for low gradient hiking activities with minimal obstacles. To be considered, existing fire
4 and service roads must have, or must be reasonably capable of developing, the following:

- 5 • Space near the trailhead for parking unless an ADA-compliant parking area is
6 already present, or the road can be reached from an accessible trail or other outdoor
7 recreational access route;
- 8 • Pedestrian access through or around a road gate, unless the fire or service road
9 can be accessed from an existing accessible trail or outdoor recreational route;
- 10 • Receives regular fire or service road maintenance activity; and
- 11 • Provides visitor experience benefit.

12 **R. Year One List**

13 The Department commenced certain access projects during fiscal year 2002/2003. These
14 projects are referred to as the “Year One List” and are included within the year one work. The
15 Year One List is attached as Exhibit R.

16 **V. MONITOR**

17 To assist in ensuring compliance with this Consent Decree, the Department has hired
18 and/or will hire, consistent with State contracting requirements, a person or firm with substantial
19 experience in evaluating and/or assisting public entities in evaluating the accessibility of
20 programs, services, activities and facilities under Title II of the Americans with Disabilities Act
21 (the “Monitor”). The Monitor shall be a person or firm acceptable to Class Counsel and the
22 Department. The firm hired as a facilitator under Court’s Order for Stay (filed June 22, 1999),
23 Moore Iacofano Goltsman Inc., shall be acceptable to the Parties. If the Parties are unable to
24 agree on a Monitor, the Parties shall seek mediation or the assistance of the Court in a settlement
25 conference. If the Parties still are unable to agree on the selection of a Monitor, they shall tender
26 the issue to the Court and the Court shall determine the appropriate means of selection of a
27 Monitor consistent with this Consent Decree.

1 **VI. REPORTS, MONITORING AND ENFORCEMENT**

2 **A. Reports**

3 The Parties agree to the following reporting under the Consent Decree:

4 1. Each fiscal year, the Department shall provide to Class Counsel and the Monitor a
5 detailed Yearly Work List of the access work that it proposes to engage in that fiscal year
6 pursuant to the timeline set forth in the Transition Plan. The Yearly Work List will be provided
7 in July of each year and will also include any significant developments that may cause delays or
8 problems in timely completion of projects listed in the Yearly Work List and what efforts the
9 Department has made or plans to make to mitigate the delays.

10 2. The Department shall provide to Class Counsel and the Monitor semi-annual
11 written reports in January and July of each year as to access work performed in the last six
12 months. The semi-annual report will also include: (a) a spreadsheet showing cumulative
13 progress towards programmatic access for each park level; (b) an assessment of the
14 Department's progress in completing the Transition Plan items for each park level; (c) any new
15 proposed exceptions, pursuant to Section IV.D.2.; (d) any new proposed Park Level changes,
16 pursuant to Section IV.J; (e) any planned new parks and/or new construction (costing over
17 \$500,000), pursuant to Section IV.M.; (f) any new complaints received regarding the
18 maintenance of access features done pursuant to Section IV.O.; and (g) any access complaints
19 received by the Department pursuant to Section IV.P.5.

20 3. The Monitor will review (i) the Yearly Work List and (ii) the semi-annual reports'
21 spreadsheet showing cumulative progress towards programmatic access and, within 30 days of
22 receipt of the relevant document, will provide comments to the Parties concerning: (a) its
23 conformance with the Parties' written agreements, and (b) its representing reasonable and
24 consistent semi-annual progress towards achieving the access improvements detailed in the
25 Transition Plan and Trails Plan as set forth in both the schedule pursuant to Section IV.A. and
26 the Department's 2023 Proposed Work Plan Benchmarks, contained in Exhibit X.

27 4. The Monitor shall perform spot-checks of 5% of the access improvement projects
28 reported in the semi-annual reports to confirm the accuracy and comprehensiveness of the

1 reports. The Monitor shall provide the Parties with semi-annual reports in June and December of
2 each year as to the results of the spot-checks.

3 5. The Department shall review the Monitor's semi-annual reports as to the result of
4 the spot-checks and will provide, within 45 days of receipt of those reports, a written response to
5 the Monitor and Class Counsel. That written response will address any concerns, questions, or
6 recommendations raised by the Monitor in its spot-check semi-annual reports.

7 6. Any objections that Plaintiffs may have to any of the reports (or the underlying
8 information) provided pursuant to this Section must be provided in writing within 60 days of
9 receipt by Class Counsel of those reports.

10 7. The Department will make its reasonable best efforts to make these reports
11 available in alternate formats upon request, consistent with 28 C.F.R. § 35.160.

12 **B. Monitoring**

13 In conjunction with Class Counsel's monitoring of the Consent Decree, the Department
14 will pay Class Counsel its reasonable fees and costs of up to \$20,000 per year commencing on
15 the date of Final Approval and continuing during the Settlement Period. Class Counsel will
16 submit written records of fees and costs to the Department quarterly. The Parties may meet and
17 confer regarding monitoring fee and/or cost issues. In the event that a dispute arises regarding
18 monitoring fees, the Parties will proceed under the dispute resolution process of Section VII.

19 **VII. DISPUTE RESOLUTION**

20 Any dispute concerning interpretation, implementation, and/or compliance with this
21 Consent Decree shall be resolved as follows:

22 **A. Notice**

23 Step One: The Party which wishes to initiate the dispute resolution process shall notify
24 the other Parties in writing of the nature of the dispute. Such notification shall include a
25 reasonable explanation of the legal and factual bases for the Party's position, so that it can be
26 understood and investigated. If another Party believes this explanation is insufficient, that
27 Party's remedy is to request a fuller explanation, not contest the triggering of the dispute
28 resolution process.

1 **B. Meet and Confer**

2 Step Two: Counsel for the Parties shall meet and confer within 30 days of notification of
3 the dispute pursuant to Section VII.A., to attempt to resolve the dispute without further
4 involvement by any intermediary. The Parties will allow reasonable time (for example, 30 to 60
5 days) to attempt to resolve the dispute without the need to proceed further in the dispute
6 resolution process. If the Parties are unable to resolve the dispute without assistance, the Parties
7 shall confer with the Monitor as a part of this meet and confer effort before proceeding further in
8 the dispute resolution process.

9 **C. Mediation**

10 Step Three: If the dispute has still not been resolved, counsel for the Parties will request
11 that the Court refer the matter to a Magistrate Judge for mediation.

12 **D. Submission to Court**

13 Step Four: If the dispute has still not been resolved, counsel for the Parties will submit
14 the matter to the Court for formal resolution.

15 **E. Fees and Costs for Dispute Resolution**

16 Reasonable fees and costs incurred under this section may be claimed and recovered by
17 the prevailing party pursuant to the standard set forth in *Christianberg Garment Co. v. EEOC*,
18 434 U.S. 412 (1978).

19 **F. Timing of Dispute Resolution**

20 The Parties agree that, if access work scheduled by the Department is delayed by time
21 spent by the Parties in the dispute resolution process, the time deadlines for that access work
22 shall be extended a commensurate period of time. No such extension shall be provided to the
23 extent the Parties were engaged in the dispute resolution process to resolve a dispute over
24 whether the Department was meeting its obligations on time.

25 **VIII. APPROVAL AND CLASS CERTIFICATION**

26 **A. Certification of a Settlement Class**

27 The Parties stipulate to class certification at the time of the Fairness Hearing of a
28 settlement class as follows:

1 All persons with physical disabilities, including hearing, mobility and vision
2 disabilities, who allege they have been denied or are being denied access to
California State Parks due to alleged disability access violations.

3 The Parties further stipulate that class certification shall not provide for a right to opt out
4 of the Class.

5 These stipulations are contingent upon the Court granting Final Approval of the Consent
6 Decree, and shall not be binding or of any consequence if Final Approval is not granted.

7 **B. Joint Approval Action**

8 The Parties shall jointly move for an order granting Preliminary Approval of this Consent
9 Decree, directing Notice to the settlement class as described in Section IX., and setting a hearing
10 for Final Approval allowing for at least 30 days notice.

11 **C. Objections**

12 Any Class Member may object to the proposed Consent Decree by filing with the Clerk
13 of the Court a written objection filed or postmarked no later than a date set by the Court in this
14 case after Preliminary Approval of the Consent Decree.

15 **D. Fairness Hearing**

16 The Court shall hold a hearing to establish the fairness of the final settlement of the
17 claims of the Class against Defendants and to decide whether there will be Final Approval of the
18 Consent Decree and certification of the settlement class. This hearing shall take place at a date
19 allowing for a period of notice to the Class as the Court may direct. At this hearing, the Parties
20 shall jointly move for Final Approval of this Consent Decree and entry of the Consent Decree.

21 **E. Final Approval**

22 The Consent Decree will take effect upon Final Approval.

23 **IX. NOTICE TO THE CLASS**

24 The Department shall provide Notice to the Class, and shall bear the costs of such Notice.
25 Notice shall be distributed by the Department as follows:

26 1. Mailing of the full-length Notice to all persons with disabilities and disability
27 groups known to the Department, including all persons with disabilities and disability groups to
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1 which the Department mailed its disability questionnaires as part of the Transition Plan survey
2 process (Exhibit S);

3 2. Posting of the full-length Notice at visitor bulletin boards at all park units which
4 have bulletin boards for 90 days (Exhibit S);

5 3. Posting of the full-length Notice on the Department's website in the Accessibility
6 Division for 90 days (Exhibit S);

7 4. Posting of the full-length Notice on the following disability list serves:
8 adapt.cal@egroups.com; berkeley-disabled@onelist.com; and
9 disability-civil-rights@yahoogroups.com (Exhibit S);

10 5. Mailing of the full-length Notice to any individuals or organizations which
11 request information concerning the proposed settlement (Exhibit S);

12 6. Including in the Notice the TTY number of Class Counsel;

13 7. Publishing a shortened version of the Notice (Exhibit V) as a one-half page
14 advertisement in the Los Angeles Times, the Sacramento Bee, and the San Francisco Chronicle,
15 which directs readers to the Department's website and to the address, phone number, and TTY
16 number of Class Counsel to obtain further information regarding the proposed settlement.

17 **X. PAYMENT TO THE NAMED PLAINTIFFS**

18 In consideration of the time, expense, and risk that the Named Plaintiffs have spent in
19 connection with this class action, the Department has paid a total of \$24,000 to the Named
20 Plaintiffs, to be divided between the 4 class representatives at the Named Plaintiffs' discretion.

21 **XI. RELEASES**

22 In return for the consideration provided for in this Consent Decree, on the date of Final
23 Approval, the Named Plaintiffs and all Class Members (which include the Named Plaintiffs),
24 both individually and as a class, shall and do release, discharge and covenant not to sue the State
25 of California, and each and every constituent agency, board, department, office, commission or
26 entity of the State of California, the California Department of Parks and Recreation, the Director
27 of the California Department of Parks and Recreation, and their officers, directors, employees,
28 attorneys, agents, insurers, contractors, lenders, predecessors in interests, successors and assigns

1 (the “Released Parties”) from any and all actions, causes of action, claims, or other demands for
2 declaratory and/or injunctive relief relating to class-wide architectural and/or programmatic
3 access for persons with disabilities at the Department’s programs, services, activities and
4 facilities prior to and during the settlement period. This release includes claims under the
5 Americans with Disabilities Act, the Rehabilitation Act of 1973, and California Disability
6 Access Laws (including, but not limited to, California Civil Code §§ 51 and 54, et seq.) against
7 the Released Parties. This release includes litigation costs and attorney and consultant fees
8 incurred by Plaintiffs in this Action, except as otherwise provided by this Consent Decree. This
9 release does not apply to programs, services and activities of state agencies other than the
10 Department of Parks and Recreation (such as hunting activities regulated by the State
11 Department of Fish and Game) that may occur within Departments’ parks that are not sponsored
12 by the Department. This release does not apply to any Class Member damage claims.

13 The Parties hereto agree that all rights under § 1542 of the Civil Code of the State of
14 California are hereby waived by the Parties. Section 1542 provides as follows:

15 A general release does not extend to claims which the creditor does not know or
16 suspect to exist in his or her favor at the time of executing the release, which if
17 known by him or her must have materially affected his or her settlement with the
debtor.

18 The Named Plaintiffs have previously executed individual releases of their damages
19 claims in a compromise settlement with Defendants in return for the payment described in
20 Section X. Copies of these releases are attached as Exhibit U.

21 **XII. ATTORNEYS’ FEES AND COSTS**

22 Upon Final Approval, Class Counsel will file a motion for reasonable attorneys’ fees and
23 costs to be decided by the United States District Court for the Northern District of California
24 (with any applicable rights to appeal). Class Counsel will seek an award of fees and costs in the
25 amount of \$697,651.80 for work through March 1, 2005. Class Counsel will also seek a separate
26 award of fees and costs for work performed after March 1, 2005. Defendants reserve their right
27 to oppose said motion, except that Defendants hereby stipulate that in any such motion for
28 reasonable fees and costs that Plaintiffs will be considered the prevailing parties for purposes of
fee and cost claims.

1 The Parties further agree that all attorneys’ fees and costs awarded to Class Counsel in
2 this action shall be attributed solely to work on the injunctive relief issues for the enforcement of
3 state and federal disability access laws for the benefit of all persons with physical disabilities,
4 including hearing, mobility and vision disabilities, to ensure programmatic access to the entire
5 California State Parks system. The allocation of all attorneys’ fees and costs to the injunctive
6 relief issues is appropriate in light of the substantial injunctive relief obtained for the class as a
7 whole in this action as compared with the proportionally low damages recovery totaling \$24,000
8 paid to the Named Plaintiffs.

9 **XIII. FURTHER RELIEF**

10 Any Party may petition the Court for relief from the provisions hereunder upon a
11 showing of events beyond the control of that Party which may preclude either Plaintiffs on the
12 one hand, or Defendants on the other hand, from their timely compliance with the provisions of
13 this Consent Decree.

14 **XIV. MEDIA**

15 The Parties intend to proceed constructively with the implementation of the Consent
16 Decree. The Parties agree to meet and confer prior to Preliminary Approval to attempt to reach
17 an agreement on a joint press release regarding the Consent Decree. If they are unable to agree
18 by the date of Preliminary Approval, each side may issue its own press release.

19 **XV. DISMISSAL OF COMPLAINT**

20 Within fourteen (14) days of Final Approval, Class Counsel shall file a request for
21 dismissal of the Federal Action, in its entirety, with prejudice, except that the Court shall retain
22 jurisdiction to enforce the Consent Decree and to determine reasonable attorneys’ fees and costs.
23 Class Counsel shall concurrently with filing the request for dismissal in this Action, file a request
24 for dismissal with prejudice in State Court regarding the entire State Action.

25 **XVI. GENERAL PROVISIONS**

26 **A. Conditions**

27 This Consent Decree shall be conditioned upon and shall be effective only upon the
28 occurrence of all of the following events:

1 1. The Parties move for an order granting Preliminary Approval in accordance with
2 Section VIII. B., and such motion is granted by the Court;

3 2. Commencing at the time of Preliminary Approval of the Consent Decree, the
4 Department provides Notice in accordance with Section IX.;

5 3. The Fairness Hearing is held in accordance with Section VIII. D.; and

6 4. The Court approves the settlement and enters judgment in accordance with the
7 terms of the Consent Decree after the conduct of the Fairness Hearing.

8 If any of these events to do not occur, this Consent Decree shall be null and void, and
9 may not be used for any purpose.

10 **B. Non-Determination**

11 The Court has made no findings concerning alleged violations of any law, whether state
12 or federal, local, regulation, order or rule at this time, and the Parties expressly reserve the right
13 to litigate these matters (should this Consent Decree not receive Final Approval). The Parties
14 agree that nothing in this Consent Decree may be interpreted as an admission by any Party of any
15 fact, legal principle, or conclusion. If, for any reason, settlement is not effectuated, no evidence
16 of this proposed Consent Decree shall be admissible for any purpose in this Action.

17 **C. Entire Agreement**

18 This Consent Decree, including its Exhibits, expresses and constitutes the sole and entire
19 agreement between the Parties and supersedes all prior agreements, negotiations and discussions
20 between the Parties and/or their respective counsel with respect to the subject matter of the State
21 and Federal Court Actions and/or this Consent Decree. The Consent Decree supersedes any
22 prior or contemporaneous oral or written agreements or understandings between and among the
23 Parties and/or counsel for the Parties regarding the subject matter of the State and Federal Court
24 Actions and/or this Consent Decree.

25 **D. Notices to Parties**

26 Other than the Notice provided under Section IX., all notices and reports provided for
27 under this Consent Decree shall be sent to the following individuals at the following addresses
28 (or as may be modified by written notice to the other Parties):

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For Named Plaintiffs, Class, and Class Counsel:

Managing Director of Litigation
Disability Rights Advocates
2001 Center Street, Fourth Floor
Berkeley, CA 94704-1204
Telephone: (510) 665-8644
Facsimile: (510) 665-8511

For Defendants:

Gary Ostrick
Deputy Attorney General
Tort & Condemnation Section
California Attorney General's Office
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6523
Facsimile: (916) 731-2120
(Notification shall be provided to all parties when assignment to another
Deputy Attorney General occurs.)

and

Chief, Accessibility Division
Department of Parks and Recreation
2241 Harvard Street, Suite 200
Sacramento, CA 95815
Telephone: (916) 445-8949
Email: access@parks.ca.gov

E. Authority

Each Party represents to all other Parties that such Party has the full power and authority to enter into this Consent Decree, that the execution and delivery thereof will not violate any agreement to which such Party is a Party or by which such Party is bound, and that this Consent Decree, as executed and delivered, constitutes a valid and binding obligation of such Party, enforceable in accordance with its terms. The signatories to this Consent Decree expressly warrant that they have been authorized to execute this Consent Decree and to bind their respective Parties to the terms and provisions herein.

F. Knowing Agreement

Each Party to this Consent Decree acknowledges that it has been represented by legal counsel, and that each Party has reviewed, and has had the benefit of legal counsel's advice concerning, all of the terms and conditions of this Consent Decree.

1 **G. Successors**

2 This Consent Decree shall be binding upon and inure to the benefit of the respective
3 heirs, successors, assigns and representatives of the Parties.

4 **H. Severability**

5 In the event that any one or more of the provisions contained in this Consent Decree
6 shall, for any reason, be held to be invalid, void, illegal or unenforceable in any respect, such
7 invalidity, voidness, illegality or unenforceability shall not affect any other provision of this
8 Consent Decree, and the remaining portions shall remain in full force.

9 **I. Counterparts**

10 This Consent Decree may be executed in counterparts, each of which shall constitute an
11 original, but all of which, when taken together, shall constitute one and the same instrument.
12 Facsimile signatures shall be considered valid signatures as of the date thereof, although the
13 original signature pages shall thereafter be appended to this Consent Decree and filed with the
14 Court.

15
16 DATED:

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18 _____
19 BONNIE TUCKER

20 DATED:

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22 _____
23 PETER MENDOZA

24 DATED:

25 CALIFORNIA COUNCIL OF THE BLIND

26 _____
27 JEFF THOM

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DATED:

DATED:

CALIFORNIANS FOR DISABILITY RIGHTS

JOHN LONBERG

STATE OF CALIFORNIA, DEPARTMENT OF
PARKS & RECREATION

ARMANDO QUINTERO
Director

1 APPROVED AS TO FORM:

2 DATED:

DISABILITY RIGHTS ADVOCATES

3

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By:

SEAN BETOULIERE
Attorneys for Plaintiffs

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7 DATED:

ROB BONTA
Attorney General of the State of California

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GARY OSTRICK
Deputy Attorney General
Attorneys for Defendants

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