

COPY

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ORIGINAL  
FILED

JUN 24 2005

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No. C 98-04935 CRB (PJH)

CLASS ACTION

**CONSENT DECREE**

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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”), Ruth Coleman, and the State of  
4 California (collectively, “Defendants”) hereby agree to resolve this action as follows:

5 **I. RECITALS**

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

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

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

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

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

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

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, Ruth Coleman, and the State of California.

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

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

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

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

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

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

28          K.        “Notice” shall mean and refer to the notice described in Section IX.

1 L. “Objection” shall mean and refer to any written objection submitted by any Class  
2 Members described in Section VIII.C.

3 M. “Outdoor Developed Areas Standards” shall mean and refer to the U.S.  
4 Architectural and Transportation Barriers Compliance Board (“Access Board”)  
5 Recommendations for Accessibility Guidelines: The Final Report of the Regulatory Negotiation  
6 Committee on Accessibility Guidelines for Outdoor Developed Areas (September 30, 1999),  
7 available at <http://www.access-board.gov/outdoor/outdoor-rec-rpt.htm>.

8 N. “Park Activity” or “Park Activities” shall mean and refer to all park-sanctioned  
9 regular activities, programs and/or special programs.

10 O. “Parties” shall mean and refer to Defendants, Named Plaintiffs, and Class  
11 Members.

12 P. “Persons with Disabilities” shall mean and refer to persons with disabilities as  
13 defined under the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation  
14 Act of 1973, and/or California Disability Access Laws (including, but not limited to, California  
15 Code §§ 51 and 54, *et seq.*).

16 Q. “Play Areas Standards” shall mean and refer to the Access Board Americans with  
17 Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities – Play Areas Final  
18 Guidelines (October 18, 2000), available at <http://www.access-board.gov/play/finalrule.htm>, and  
19 the Access Board’s *Guide to ADA Accessibility Guidelines for Play Areas* (May 2001), available  
20 at <http://www.access-board.gov/play/guide/intro.htm>.

21 R. “Preliminary Approval” shall mean and refer to the preliminary approval by the  
22 Court of the terms of this Consent Decree which shall occur prior to any Notice being provided  
23 in accordance with Section IX.

24 S. “Released Claims” shall mean and refer to those described in Section XI.

25 T. “Released Parties” shall mean and refer to those described in Section XI.

26 U. “Self-evaluation” shall mean and refer to the Department’s Self-evaluation  
27 required pursuant to Title II of the Americans with Disabilities Act. The Self-evaluation is  
28 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, 2016, 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 other sections of this  
2 Consent Decree, according to the following schedule:

3 1. Level 1 Park Units - The access work at Level 1 park units shall be  
4 completed no later than June 30, 2009.

5 2. Level 2 Park Units - The access work at Level 2 park units shall  
6 commence no later than July 1, 2008 and be completed no later than June 30, 2012.

7 3. Level 3 Park Units - The access work at Level 3 park units shall  
8 commence no later than July 1, 2011 and be completed no later than June 30, 2014.

9 4. Level 4 Park Units - The access work at Level 4 park units shall  
10 commence no later than July 1, 2013 and be completed no later than June 30, 2016.

11 5. Level 1 Trails - The trail access work at Level 1 park units shall be  
12 completed no later than June 30, 2009.

13 6. Level 2 Trails - The trail access work at Level 2 park units shall  
14 commence no later than July 1, 2007 and be completed no later than June 30, 2012.

15 7. Level 3 Trails - The trail access work at Level 3 park units shall  
16 commence no later than July 1, 2011 and be completed no later than June 30, 2015.

17 8. Level 4 Trails - The trail access work at Level 4 park units shall  
18 commence no later than July 1, 2012 and be completed no later than June 30, 2016.

19 **B. Access Standards**

20 The Department has used and will continue to use the following accessibility standards in  
21 developing and implementing the Department's Self-evaluation, Transition Plan, Work Plan, and  
22 Trails Plan: Title 24 of the California Code of Regulations, the Americans with Disabilities Act  
23 Access Guidelines (Appendix A to Part 36 of Title 28 of the Code of Federal Regulations), the  
24 Outdoor Developed Areas Standards, and the Play Areas Standards. In the event of conflict  
25 between any of these applicable standards, the Department will use the standard which applies  
26 and which provides the highest level of access. In conducting barrier removal work during the  
27 Settlement Period, the Department will comply with the above-referenced standards as they are  
28 in effect at the time the work is performed, subject to the exceptions process set forth in Section

1 IV.D. To ensure that the Parties are utilizing the same standards, Class Counsel, the Department,  
2 and the Monitor will promptly notify each other in writing if they believe changes to these  
3 standards have occurred.

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

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

13 **D. Exceptions Process**

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

18 2. For any program, service, or activity where the Department believes that meeting  
19 current access standards would result in an undue financial or administrative burden or change  
20 the fundamental nature of the program, service, or activity, the Department will notify the  
21 Monitor and Class Counsel of the proposed exception as part of its Yearly Work List provided  
22 pursuant to Section VI.A.1. The notification shall be in a form acceptable to the Monitor and  
23 shall include the following information: (a) a list of the proposed exceptions; (b) the reason for  
24 each proposed exception; and (c) any proposed equivalent facilitation that the Department will  
25 provide. In the event that the Department identifies a new proposed exception later in the year,  
26 the Department will provide the above notice to the Monitor and Class Counsel with its next  
27 semi-annual report pursuant to Section VI.A.3. The Monitor will, within 30 days of receipt of  
28 notification of a proposed exception, indicate in writing to the Department and Class Counsel

1 whether or not she accepts the Department's proposed exception request, and she may also  
2 provide further comments. Class Counsel may, within 30 days after receipt of the Monitor's  
3 responses, review and comment on the proposed exceptions. Any such comment may include an  
4 objection to the Department's position, seeking compliance with the current access standards for  
5 such disputed exceptions. If there are any disputes as to these proposed exceptions, such dispute  
6 will be resolved through the dispute resolution process of Section VII.

7 **E. Park Activities**

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

13 **F. Currently Accessible Activities**

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

21 **G. Level 1 Parks**

22 There are 37 Level 1 park units listed in the Department's Transition Plan (attached as  
23 Exhibit A). For each Level 1 park unit, the Department will make each Park Activity listed in  
24 the Transition Plan Appendix B, Program Matrix by Level, programmatically accessible utilizing  
25 the legal standards of Section IV.B. and the exceptions process of Section IV.D., if applicable.  
26 In addition, the Department will make all Supporting Facilities for each such listed Park Activity,  
27 where such facilities are provided, programmatically accessible utilizing the legal standards of  
28 Section IV.B. and the exceptions process of Section IV.D.

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

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

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

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

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

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

24           **I.     Level 4 Parks**

25           1.       There are 75 Level 4 park units listed in the Transition Plan. These are the least  
26 visited of the state parks, currently representing only about 4% of the annual visitation. The  
27 Department will make each Park Activity listed in the chart entitled, “Transition Plan Programs,  
28

1 Level 4 Parks”(attached hereto as Exhibit I) programmatically accessible, utilizing the legal  
2 standards of Section IV.B. and the exceptions process of Section IV.D.

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

6 **J. Park Level Changes**

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

13 **K. Locally Operated Parks**

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

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

21 3. Within 30 days of Final Approval, the Department will send a letter in  
22 substantially the same form as Exhibit T (and attaching a copy of the Consent Decree) to each of  
23 the Locally Operated Parks, informing each local entity that it may participate in the Consent  
24 Decree. It is the intent of the Parties to urge the Locally Operated Parks to participate fully in the  
25 Consent Decree on the conditions set forth in this section.

26 4. Each Locally Operated Park may participate in this Consent Decree if it meets the  
27 following conditions:  
28

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

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

20           c.       The Locally Operated Park must also adopt and implement policies and  
21 procedures to ensure program access equivalent to the policies and procedures that have  
22 been adopted by the Department for state park units operated by the Department itself (as  
23 described in the Department’s Transition Plan).

24           d.       The Locally Operated Park must implement its transition plan.

25           e.       The Locally Operated Park must fully assume the Department’s reporting  
26 and monitoring obligations for that Locally Operated Park, as set forth Section VI of this  
27 Consent Decree. The Locally Operated Park must timely provide to the Department a  
28

1 copy of all reports and other documents submitted pursuant to Section VI of this Consent  
2 Decree.

3 5. For those Locally Operated Parks that seek to participate in this Consent Decree,  
4 the Department agrees to use its reasonable best efforts to provide guidance and oversight in  
5 determining the access modifications which will be completed at such Locally Operated Parks,  
6 and will use its reasonable best efforts to confirm actual completion of the access modifications.

7 6. Any Locally Operated Park's costs of compliance (with this Consent Decree or  
8 the underlying standards), including any monitoring or consulting costs of the Monitor, shall be  
9 the Locally Operated Park's expense, not the Department's expense.

10 7. Those Locally Operated Parks which comply fully with the provisions set forth  
11 above will be entitled to the benefits of the releases set forth in Section XI below. However, any  
12 Locally Operated Park that fails to provide a self-evaluation and transition plan within six  
13 months of the Department's mailing of the letter under Section IV.K.3. (or as extended by  
14 written agreement of Class Counsel and the Department) will be deemed to be excluded from  
15 this Consent Decree. In addition, if Class Counsel determines, at any time during the Settlement  
16 Period, that a particular Locally Operated Park has not complied fully with the provisions of  
17 Section IV.K.4., such Locally Operated Park will not thereafter be a part of this Consent Decree  
18 and neither the Department nor the non-Department entity operating the Locally Operated Park  
19 will be entitled to the benefits of the releases set forth in Section XI below. Class Counsel will  
20 notify the Department and the Locally Operated Park promptly after any such determination of  
21 non-compliance. Within 14 days of such notification, the Department or the Locally Operated  
22 Park may request that the Parties and the Locally Operated Park meet and confer regarding any  
23 dispute. Any determination by Class Counsel will not be final until the Parties and the Locally  
24 Operated Park have met and conferred (and, as appropriate, included the Monitor in any such  
25 discussions), which will occur within 30 days, at the latest.

26 **L. Concessions**

27 1. The Parties agree that all concessions and Supporting Facilities will be made  
28 programmatically accessible, as detailed in this Section. The criteria for compliance will be the

1 legal standards of Section IV.B. and the exceptions process of Section IV.D. (except that the  
2 exceptions process of Section IV.D. will not apply to new concessions as described in Section  
3 IV.L.3.). A list of the concessions, including four state park units which are owned by the  
4 Department, but operated by concessions (Asilomar Conference Grounds, Marconi Conference  
5 Center State Historic Park, Lake Valley, and Wassama Round House State Historic Park) is  
6 attached hereto as Exhibit K.

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

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

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

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

25 6. Asilomar Conference Center and the three park units which are currently operated  
26 entirely as concessions (that is, Lake Valley, Marconi, and Wassama Round House) will be  
27 addressed under the Transition Plan in the same manner as the other concessions as discussed  
28 above.



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

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

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

22           **N.     Trails Plan**

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

26           1.     Level 1 Parks – At Level 1 parks that currently have three or more trails  
27 (excluding off-highway vehicle park units that do not have pedestrian trails), the Department will  
28

1 provide at least three accessible trails as follows: (a) one accessible trail will be at least 1.5 miles  
2 long, and (b) two additional accessible trails will be at least .5 miles long.

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

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

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

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

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

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

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

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

27       10.    Cross Slopes - The Department will make its best efforts to minimize cross slopes  
28 at culverts on accessible trails.

1           **O. Maintenance of Access Features**

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

6           **P. Miscellaneous Departmental Access Policies**

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

- 16           1.       Accessibility & Historic Properties Policy - Attached as Exhibit L;  
17           2.       Accessible Campsites Policy - Attached as Exhibit M;  
18           3.       Sign Language Interpreter Policy - Attached as Exhibit N;  
19           4.       Accessibility and Publications Policy - Attached as Exhibit O;  
20           5.       Complaint Policy - Attached as Exhibit P. The Department will maintain a link

21 on the Department's website allowing for park users to make comments and complaints. This  
22 link will be maintained on the Accessibility Section's home page. The Department will forward  
23 any complaints received (with redaction of personal identification information) to the Monitor as  
24 part of the Department's monitoring reports pursuant to Section VI.A.

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

27           **Q. Miscellaneous Provisions**

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

21           2.     Website – The Accessibility Section of the Department’s website as well as the  
22 link on the Department’s home page to the Accessibility Section will be maintained.

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

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

26           a.     Many park units allow for advance reservations, either by phone or via the  
27 internet up to seven months prior to date of arrival. Designated accessible campsites  
28 and/or cabins are identified for the person interested in making a reservation. Anyone

1 attempting to reserve an accessible campsite and/or cabin must claim to have a disability.  
2 The Department requires that its accessible campsites and/or cabins be reserved  
3 exclusively for persons with disabilities. In order to preserve the use of accessible sites  
4 by visitors with disabilities, the Department will begin to require that individuals  
5 reserving those sites possess and display a disabled person parking placard or license  
6 plates issued by the California Department of Motor Vehicles (or a similar agency of  
7 another state). Upon arrival at the park, visitors must display the disabled person parking  
8 placard or the vehicle must have disabled person license plates, and the person to whom  
9 the placard or plates are assigned must occupy the campsite. Accessible campsites  
10 available by advance reservation will be held for people with disabilities until 5:00 p.m.  
11 each day. If an accessible campsite is not filled by 5:00 p.m. each day, that campsite may  
12 also be provided first-come-first-served to a person without a disability for one night  
13 only; this process repeats each day.

14 b. At other park units, the campsites may not be reserved in advance. At  
15 these park units, the accessible campsites are held for persons with disabilities (with a  
16 disabled person parking placard or a vehicle with a disabled person license plate) on a  
17 first-come-first-served basis until 5 p.m. each day. If an accessible campsite is not filled  
18 by 5:00 p.m. each day, that campsite may also be provided first-come-first-served to a  
19 person without a disability for one night only; this process repeats each day.

20 c. Information regarding the Department's camping reservations policies  
21 affecting access will be posted on the Department's website. Information concerning the  
22 above-described reservation policies will be included. In addition, the website will  
23 recommend that persons with disabilities should always call the individual park unit in  
24 advance for the most current access and reservation information.

25 d. The Department will maintain and update the above campsite reservation  
26 policies, and will notify Class Counsel in writing of any update and/or revision. If  
27 revisions are made which Class Counsel contends reduce the level of access set forth in  
28 this Consent Decree, Class Counsel may object that the revisions reduce the level of

1 access set forth in the Consent Decree, and may initiate the dispute resolution process of  
2 Section VII. Any such objection shall be made in writing and within 60 days of receipt  
3 of those revisions.

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

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

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

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

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

20 10. Portable Toilets – If a portable toilet is available that meets the standards set forth  
21 in Section IV.B. and is reasonably functional, when the Department purchases portable toilets  
22 that are meant to be accessible, it will only purchase these fully accessible portable toilets. The  
23 Parties agree that the portable toilet Satellite Freedom 2 (with the 68 gallon tank) fully meets the  
24 standards set forth in Section IV.B. and is reasonably functional. In meeting the applicable  
25 requirements for the number of accessible portable toilets at particular locations, the Department  
26 may utilize portable toilets that it already owns that meet the federal Americans with Disabilities  
27 Act Access Guidelines but may not fully meet Title 24 of the Code of California Regulations.

28 11. Kitchens – When the Department replaces appliances and/or equipment in

1 kitchens open for public use, it shall install appliances and/or equipment that have access  
2 features, including tactile signage and controls, that enable users with mobility, vision, and  
3 hearing impairments to independently and safely use such appliances and/or equipment, to the  
4 extent they are available on the market or can be readily modified at a reasonable expense.

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

25       **R. Year One List**

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

1 **V. MONITOR**

2 To assist in ensuring compliance with this Consent Decree, the Department has hired  
3 and/or will hire, consistent with State contracting requirements, a person or firm with substantial  
4 experience in evaluating and/or assisting public entities in evaluating the accessibility of  
5 programs, services, activities and facilities under Title II of the Americans with Disabilities Act  
6 (the "Monitor"). The Monitor shall be a person or firm acceptable to Class Counsel and the  
7 Department. The firm hired as a facilitator under Court's Order for Stay (filed June 22, 1999),  
8 Moore Iacofano Goltsman Inc., shall be acceptable to the Parties. If the Parties are unable to  
9 agree on a Monitor, the Parties shall seek mediation or the assistance of the Court in a settlement  
10 conference. If the Parties still are unable to agree on the selection of a Monitor, they shall tender  
11 the issue to the Court and the Court shall determine the appropriate means of selection of a  
12 Monitor consistent with this Consent Decree.

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

14 **A. Reports**

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

16 1. Each fiscal year, the Department shall provide to Class Counsel and the Monitor a  
17 detailed Yearly Work List of the access work that it proposes to engage in that fiscal year  
18 pursuant to the fourteen year timeline set forth in the Transition Plan. The Yearly Work List will  
19 also include: (a) any new proposed exceptions, pursuant to Section IV.D.2., and (b) any planned  
20 new parks and/or new construction (costing over \$500,000), pursuant to Section IV.M.

21 2. The Monitor will review the Yearly Work List and within 30 days of receipt of  
22 the Yearly Work List will provide comments to the Parties concerning: (a) its conformance with  
23 the Parties' written agreements, and (b) its representing reasonable and consistent annual  
24 progress towards achieving the access improvements detailed in the Transition Plan and Trails  
25 Plan as set forth in the schedule pursuant to Section IV.A.

26 3. The Department shall provide to Class Counsel and the Monitor semi-annual  
27 written reports of access work performed. The semi-annual report will also include: (a) any new  
28 proposed exception; (b) any new proposed Park Level changes, pursuant to Section IV.J; (c) any



1 new parks and/or new construction (costing over \$500,000), pursuant to Section IV.M.; (d) any  
2 new complaints received regarding the maintenance of access features done pursuant to Section  
3 IV.O.; and (e) any access complaints received by the Department pursuant to Section IV.P.5.

4 4. The Monitor shall review the semi-annual reports and perform spot-checks of 5%  
5 of the access improvement projects reported in the semi-annual reports to confirm the accuracy  
6 and comprehensiveness of the reports. The Monitor shall provide the Parties with semi-annual  
7 reports as to the results of the spot-checks.

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

11 6. The Department will make its reasonable best efforts to make these reports  
12 available in alternate formats upon request.

13 **B. Monitoring**

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

20 **VII. DISPUTE RESOLUTION**

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

23 **A. Notice**

24 Step One: The Party which wishes to initiate the dispute resolution process shall notify  
25 the other Parties in writing of the nature of the dispute. Such notification shall include a  
26 reasonable explanation of the legal and factual bases for the Party's position, so that it can be  
27 understood and investigated. If another Party believes this explanation is insufficient, that  
28

1 Party's remedy is to request a fuller explanation, not contest the triggering of the dispute  
2 resolution process.

3 **B. Meet and Confer**

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

11 **C. Mediation**

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

14 **D. Submission to Court**

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

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

18 Reasonable fees and costs incurred under this section may be claimed and recovered by  
19 the prevailing party pursuant to the standard set forth in *Christianberg Garment Co. v. EEOC*,  
20 434 U.S. 412 (1978).

21 **F. Timing of Dispute Resolution**

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

27 **VIII. APPROVAL AND CLASS CERTIFICATION**

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

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

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

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

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

9 **B. Joint Approval Action**

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

13 **C. Objections**

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

17 **D. Fairness Hearing**

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

23 **E. Final Approval**

24 The Consent Decree will take effect upon Final Approval.

25 **IX. NOTICE TO THE CLASS**

26 The Department shall provide Notice to the Class, and shall bear the costs of such Notice.  
27 Notice shall be distributed by the Department as follows:  
28

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

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

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

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

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

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

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

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

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

23 **XI.      RELEASES**

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

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

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

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

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

## 24 **XII. ATTORNEYS' FEES AND COSTS**

25 Upon Final Approval, Class Counsel will file a motion for reasonable attorneys' fees and  
26 costs to be decided by the United States District Court for the Northern District of California  
27 (with any applicable rights to appeal). Class Counsel will seek an award of fees and costs in the  
28 amount of \$697,651.80 for work through March 1, 2005. Class Counsel will also seek a separate  
award of fees and costs for work performed after March 1, 2005. Defendants reserve their right

1 to oppose said motion, except that Defendants hereby stipulate that in any such motion for  
2 reasonable fees and costs that Plaintiffs will be considered the prevailing parties for purposes of  
3 fee and cost claims.

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

### 12 **XIII. FURTHER RELIEF**

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

### 17 **XIV. MEDIA**

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

### 22 **XV. DISMISSAL OF COMPLAINT**

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

### 28 **XVI. GENERAL PROVISIONS**

1           **A. Conditions**

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

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

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

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

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

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

13           **B. Non-Determination**

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

20           **C. Entire Agreement**

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

28           **D. Notices to Parties**

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

4 For Named Plaintiffs, Class, and Class Counsel:

5 Stephen Tollafield  
6 Disability Rights Advocates  
7 449 15th Street, Suite 303  
8 Oakland, CA 94612  
9 Telephone: (510) 451-8644  
10 Facsimile: (510) 451-8511

11 For Defendants:

12 Caryn L. Craig  
13 Deputy Attorney General  
14 California Attorney General's Office  
15 1300 I Street, P.O. Box 944255  
16 Sacramento, CA 95814  
17 Telephone: (916) 445-8188  
18 Facsimile: (916) 327-2319

19 and

20 Linda Canar  
21 Manager, Accessibility Section  
22 Department of Parks and Recreation  
23 One Capital Mall  
24 Sacramento, CA 95814  
25 Telephone: (916) 445-4144  
26 Facsimile: (916) 445-8966

27 **E. Authority**

28 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**



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

4 **G. Successors**

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

7 **H. Severability**

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

12 **I. Counterparts**

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

18 DATED:

19  
20 \_\_\_\_\_  
BONNIE TUCKER

21 DATED:

22  
23   
24 \_\_\_\_\_  
PETER MENDOZA

25 DATED: 6-22-05

CALIFORNIA COUNCIL OF THE BLIND

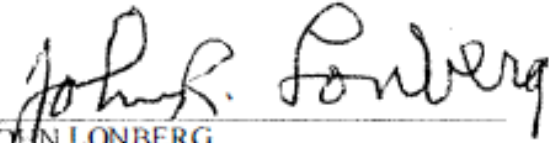
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JEFF TOM

DISABILITY RIGHTS ADVOCATES  
449 Fifteenth Street, Suite 303  
Oakland, California 94612  
(510) 451-8644

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DATED: 6/21/05

CALIFORNIANS FOR DISABILITY RIGHTS

  
JOHN LONBERG

DATED: 6/20/05

STATE OF CALIFORNIA DEPARTMENT OF  
PARKS AND RECREATION

  
RUTH COLEMAN  
Director

APPROVED AS TO FORM:


DISABILITY RIGHTS ADVOCATES

DATED: 6/24/05

By:   
LAURENCE PARADIS  
Attorneys for Plaintiffs

DATED: 6/21/05

BILL LOCKYER  
Attorney General of the State of California

  
CARYN L. CRAIG  
Deputy Attorney General  
Attorneys for Defendants

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