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

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

v.

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

Defendants.

Case No. C-98-04935 CRB

**ORDER GRANTING JOINT MOTION
REQUESTING COURT APPROVAL OF
MODIFICATION OF THE CONSENT
DECREE**

1 On November 7, 2014, at 10:00 a.m., in the United States District Court for the Northern
2 District of California, the Honorable Charles R. Breyer, United States District Judge, presiding,
3 heard and considered the joint motion of Class Plaintiffs Bonnie Tucker, Peter Mendoza,
4 California Council of the Blind, and Californians for Disability Rights (collectively, Class
5 Plaintiffs), and Defendant the State of California, acting by and through the Department of Parks
6 and Recreation (the State), requesting court approval of modifications to the Consent Decree
7 approved by this Court on November 18, 2005. This Court retains jurisdiction over the Consent
8 Decree according to the terms of that Order approving the Consent Decree. Laurence W. Paradis
9 and Kara Janssen, Disability Rights Advocates, appeared on behalf of the Class Plaintiffs.
10 Deputy Attorney General Gary Ostrick, California Department of Justice, appeared on behalf of
11 the State.

12 The Court has read and considered the joint motion of the Class Plaintiffs and the State,
13 the memoranda, declarations, and exhibits submitted by the parties, and heard oral argument.
14 Based on its review, the Court finds that the Class Plaintiffs and the State have met their burden
15 under *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992), and their proposed
16 modifications to the Consent Decree are suitably tailored to the changed circumstances of fact
17 and law that has occurred since the Consent Decree was approved on November 18, 2005. In
18 addition, this Court finds that the proposed modifications advance and support the Consent
19 Decree's purpose of providing increased access for persons with disabilities to the park facilities
20 and trails of the State of California's parks. Accordingly, the Court hereby rules as follows:

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22 1. The Court GRANTS the Joint Motion Requesting Court Approval of Modification
23 of the Consent Decree.

24 2. The Consent Decree shall be amended and modified as follows:

25 A. Section II.M. of the Consent Decree shall state:

26 "Outdoor Developed Areas Standards" shall mean and refer to the U.S. Access
27 Board's Architectural Barriers Act Accessibility Guidelines; Outdoor Developed
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1 Areas, codified at 36 C.F.R. pt. 1191, which is available at [http://www.access-](http://www.access-board.gov/guidelines-and-standards/recreation-facilities/outdoor-developed-areas)
2 board.gov/guidelines-and-standards/recreation-facilities/outdoor-developed-areas.

3 B. Section III of the Consent Decree shall state:

4 This Consent Decree shall become effective on the date of Final Approval.
5 The terms of this Consent Decree shall expire on June 30, 2028, except that
6 Plaintiffs or Defendants may petition the Court for an extension to the
7 extent any of the improvements required under Sections IV.A, IV.K., IV.L,
8 or IV.M.1 will not be completed within the Settlement Period. In deciding
9 a disputed request for an extension, the Court may exercise its discretion,
10 taking into account all relevant information (including whether a new
11 concessionaire is hired or a new park unit is acquired so close to the end of
12 the Settlement Period that extending the Consent Decree is inappropriate).

13 C. The Transition Plan Completion Schedule in Section IV.A. of Consent
14 Decree shall state:

15 The Department shall schedule and complete the access modifications
16 described in its Transition Plan (attached as Exhibit A hereto), including its Work
17 Plan (attached as Exhibit B hereto) and Trails Plan (attached as Exhibit C hereto),
18 and as detailed in other sections of this Consent Decree, according to the following
19 schedule:

20 1. Level 1 Park Units – The access work at Level 1 park units shall be
21 completed no later than June 30, 2016.

22 2. Level 2 Park Units – The access work at Level 2 park units shall
23 commence no later than July 1, 2013 and be completed no later than June 30,
24 2018.

25 3. Level 3 Park Units – The access work at Level 2 park units shall
26 commence no later than July 1, 2016 and be completed no later than June 30,
27 2022.

28 4. Level 4 Park Units – The access work at Level 2 park units shall
commence no later than July 1, 2016 and be completed no later than June 30,
2024.

5. Level 1 Trails – The trail access work at Level 1 park units shall be
completed no later than June 30, 2015.

6. Level 2 Trails – The trail access work at Level 2 park units shall
commence no later than July 1, 2013 and be completed no later than June 30,
2018.

1 7. Level 3 Trails – The trail access work at Level 3 park units shall
2 commence no later than July 1, 2013 and be completed no later than June 30,
2022.

3 8. Level 4 Trails – The trail access work at Level 4 park units shall
4 commence no later than July 1, 2013 and be completed no later than June 30,
2024.

5 9. Improved Access Trails – The trail access work for improved
6 access trails at Level 1-4 park units shall commence no later than July 1, 2018 and
7 be completed no later than June 30, 2028.

8 D. The following section on Improved Access Trails is added to the Consent
9 Decree as Section IV.N.11. and states:

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

14 E. The Acceptable Deviations to the 2013 Outdoor Developed Areas
15 Amendments to the Architectural Barriers Act Accessibility Guidelines, which is
16 designated as Exhibit W to the Consent Decree, is approved by this Court and a copy of it
17 is attached to this Order.

18 F. The following section on Fire and Service Roads is added to the Consent
19 Decree as Section IV.Q.13 and states:

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

- 23 • Space near the trailhead for parking unless an ADA-compliant parking area
is already present, or the road can be reached from an accessible trail or other
24 outdoor recreational access route;
- 25 • Pedestrian access through or around a road gate, unless the fire or service
road can be accessed from an existing accessible trail or outdoor recreational
26 route;
- 27 • Receives regular fire or service road maintenance activity; and
- 28 • Provides visitor experience benefit.

G. Section VI.A.1. of the Consent Decree shall state:

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1. Each fiscal year, the Department shall provide to Class Counsel and the Monitor a detailed Yearly Work List of the access work that it proposes to engage in that fiscal year pursuant to the timeline set forth in the Transition Plan. The Yearly Work List will also include: (a) any new proposed exceptions, pursuant to Section IV.D.2.; (b) any planned new parks and/or new construction (costing over \$500,000), pursuant to Section IV.M.; (c) an assessment of the Department's progress in completing the Transition Plan items for each park level; and (d) any significant developments that may cause delays or problems in timely completion and what efforts the Department has made or plans to make to mitigate the delays.

IT IS SO ORDERED.

DATED: November 5, 2014

