

To: Members of the Ad Hoc River Committee

Ed P. Reyes, Chair

Tom LaBonge, Vice Chair

Jose Huizar, Member

CC: City Clerk:

From: Department of Recreation and Parks

Date: February 25, 2013

Re: **Los Angeles River Recreational Zone Pilot Program**

**Objective:** To authorize and execute a temporary program to allow public recreational use of the Elysian Valley portion of the Los Angeles River (LA River), including a pilot boating program, from May 27<sup>th</sup> (Memorial Day) to September 2<sup>nd</sup> (Labor Day) 2013. The pilot recreational zone program (Program) will be implemented in accordance with the rights of the Public Trust Doctrine of the California Public Lands Commission<sup>1</sup> by the Mountains Recreation and Conservation Authority (MRCA) in partnership with the City and County of Los Angeles and United States Army Corps of Engineers (USACE). The Program will result in the clear identification of the pilot zone area, including posting/public notification of pertinent use regulations and Program oversight/monitoring. The goal of the Program is to provide expanded opportunities for safe public access to recreation within a designated stretch of the LA River, consistent with the goals and past actions of the partner agencies in pursuing LA River revitalization.

**Background:** The Los Angeles City Council (Council) adopted a motion on October 17, 2008 that requested policy recommendations regarding how to provide expanded public access to the LA River (Council File 07-1342-S5) in response to an increasing community demand for safe and lawful access to the river and acknowledging the historic and ongoing activities that were already taking place within the river. A pilot non-motorized boating program was initiated in the Sepulveda Basin stretch of the river in August 2011, which was made possible via the United States Environmental Protection Agency (USEPA) decision that declared the LA River a traditionally-navigable waterway in 2010. The Council's Ad Hoc River Committee adopted a motion in August 2011 requesting

---

<sup>1</sup> The United States Supreme Court issued its landmark opinion on the nature of a state's title to its tide and submerged lands nearly 110 years ago, and although courts have reviewed tidelands trust issues many times since then, the basic premise of the trust remains fundamentally unchanged. The Court said then that a state's title to its tide and submerged lands is different from that to the lands it holds for sale. "It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing" free from obstruction or interference from private parties. [Illinois Central R.R. Co. v Illinois (1892) 146 U.S. 387, 452] In other words, the public trust is an affirmation of the duty of the state to protect the people's common heritage of tide and submerged lands for their common use. [National Audubon Society v. Superior Court (1983) 33 Cal.3d 419, 441] Cited here from the California State Lands Commission (pp. 2-3 of [http://www.slc.ca.gov/policy\\_statements/public\\_trust/public\\_trust\\_doctrine.pdf](http://www.slc.ca.gov/policy_statements/public_trust/public_trust_doctrine.pdf)). See also: [http://www.slc.ca.gov/Misc\\_Pages/Public\\_Trust/Public\\_Trust.pdf](http://www.slc.ca.gov/Misc_Pages/Public_Trust/Public_Trust.pdf).

recommendations on the establishment of recreation zones within the LA River (Attachment 2: Council File 11-1403). This motion directed City staff to evaluate the feasibility of providing seasonal public access to the river in certain areas and to propose recommendations for implementation of those activities.

On August 28, 2012, Governor Brown signed Senate Bill 1201, which amended the Los Angeles Flood Control Act *“to provide for public use of navigable waterways under the district’s control that are suitable for recreational and educational purposes, when these purposes are not inconsistent with the use thereof by the district for flood control and water conservation.”* Subsequent to this, meetings were held with City, County, USACE, and MRCA staff which developed the subject proposal for implementation of the Program in the LA River’s Glendale Narrows.

The City is the largest landowner in the Program area and possesses rights to the river’s water; the County’s Flood Control District holds an easement in the project area for flood control purposes<sup>2</sup>; the MRCA owns real property and manages park property along the river in the Program area; and the USACE provides flood control operations and maintenance services in the area. Each of these parties has expressed support for the Program.

USACE has concluded that, as long as the boating program is seasonal (avoids the season of high flows), does not interfere with operations and maintenance of the LACDA (LA County Drainage Area) project in general, and that the boating program respects flow conditions, safety concerns around bridges and infrastructure, environmental considerations, other users, trash and debris, and future implementation of their LA River Ecosystem Restoration Feasibility Study, and that boating program elements are communicated effectively with users, that the agency does not have an objection to non-motorized boating in the area.

Both government- and privately-owned river properties are now subject to the Public Trust Doctrine below the river’s Ordinary High Water Mark (OHWM) due to the designation of the river as a traditionally-navigable waterway. Public Trust Doctrine activities include the right to travel, fish, and boat below the OHWM, assuming lawful entry into the zone, and subject to reasonable public safety and resource protection regulations. The Public Trust Doctrine activities permitted within the Program area will not interfere with the flood control mission of the County Flood Control District or USACE. No physical improvements or alterations to the flood control facilities within the Program area will occur.

Traditional park activities not included in the Public Trust Doctrine will be governed by easements over the real property owned by various parties. Current regulatory authority, permit regulations and procedures for non-protected activities (river clean-ups as an example) will remain in effect. Additionally, there are existing public ownerships that

---

<sup>2</sup>Posted signage within the Program area in the vicinity of Steelhead Park describes the non-exclusive flood control easement for the properties as follows: “...Los Angeles County Flood Control District shall and by this judgment does take and acquire an easement in, over and across said parcels of land for the purpose of widening and deepening the Los Angeles River channel, and for the construction and maintenance thereon of levees and appurtenant structures to confine and control the flood and storm waters of the Los Angeles River...” (Book16930, page 303, October 18, 1939).

provide legal public access into the river below the OHWM adjacent to Marsh Park and Steelhead Park.

**Overview:** As indicated above, the Program will begin on Memorial Day (May 27<sup>th</sup>) and end on Labor Day (September 2<sup>nd</sup>) 2013 and will allow daily public access to the Program area from sunrise until sunset.

The Program will designate a 2.5 mile stretch of the river below the OHWM from Rattlesnake Park (west bank) to Egret Park (west bank). Non-motorized boating will be a featured activity within the Program area, with the establishment of a self-directed boating course, subject to USACE restrictions.

Parking for post-boat trip vehicles will be established near Arroyo Seco Confluence Park, which has excellent parking capacity. No County property will need to be utilized above the OHWM for the boating program. Comprehensive signage will be posted at each location and additional main river entrances to provide wayfinding and safety information on the zone and river uses.

**Activities:** In addition to non-motorized boating, specific allowable uses under the Public Trust Doctrine will include fishing, bird watching, and traveling/hiking/walking. Relatively small permitted events (organized gatherings, such as tours or performances) may be allowed in specific areas, as deemed appropriate. Group and fee-based uses will be governed by the MRCA ordinance.

Activities that involve habitat destruction, such as smoking, littering/dumping, weapons discharge, or the use of motorized vehicles, will be prohibited. Bicycling will be restricted to existing, designated bike paths located outside the boundaries of the Program area.

If additional funding becomes available, permitted events, such as structured boating programs and special use days (fishing days or school days) may be accommodated. These additional permitted uses would be administered consistent with prevailing public agency regulations at other public recreation areas.

**Administration/Enforcement:** The MRCA, with its mandate to preserve, protect and maintain open space parklands in the LA area, will perform the lead role in administering the proposed Program (Attachment 5: MRCA Ordinance). The MRCA will provide ranger, maintenance, and administrative resources. The City's public safety personnel will continue to provide police and fire protection services. The California Department of Fish and Game will focus enforcement efforts on fishing regulation. The MRCA Park Ordinance will be amended to reflect the park regulations identified in Attachment 3 [Policies and Regulations] and will be enforceable within the Program area by any California Peace Officer. Additionally, State codes related to water activities will be posted and enforced.

The LA Conservation Corps' LA River Corps currently perform oversight and maintenance services in the area from Monday through Saturday and are trained to initiate response from various enforcement agencies. Local nonprofit Urban Semillas will work with the various public agencies to establish water quality testing in the proposed area and Friends

of the Los Angeles River (FoLAR) will support the Program with informational walks and outreach to their 6,000 plus member social media contacts.

**Education/Liability Management:** Durable signage will be erected to detail permitted/prohibited activities and to educate the public regarding Program use policies. The purpose of this signage is to clearly identify the Program area, educate the public with clear and consistent use policies, provide emergency and maintenance information, and to reduce liability through public notification. Posting of applicable statutes will enable enforcement by a variety of agencies, including any State-designated Peace Officer (Attachment 3: Policies and Regulations). The declarative signage will be posted throughout the zone.<sup>3</sup>

**Flood Control Safety:** The general public will be required to exit the Program area boundaries when a National Weather Service *flood watch* or *warning* has been issued for the Los Angeles River watershed (upstream water sources). While general use boating will be customarily directed to specific entry and exit points, in an emergency, boaters will be permitted to exit throughout the Program area as necessary.

**User Fees:** The implementation plan currently calls for free access to the Program area for individual users engaging in non-structured activity. As practiced in MRCA-managed areas elsewhere, customary special use fees, which in addition to providing cost recovery for the MRCA or other operating agencies, will serve to identify and hold organized and fee-based groups accountable. These groups must satisfy MRCA insurance requirements and will indemnify all public agencies within the Program area.

### **List of Attachments**

Attachment 1	RAP Non Objection Letter
Attachment 2	LA City Council File No.11-1403
Attachment 3	Policies and Regulations
Attachment 4	Liability
Attachment 5	MRCA Ordinance

---

<sup>3</sup> Per State law, immunity based on GC 831.7 is as follows:(a) Neither a public entity nor a public employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property or persons arising out of that hazardous recreational activity. (b) As used in this section, "hazardous recreational activity" means a recreational activity conducted on property of a public entity that creates a substantial, as distinguished from a minor, trivial, or insignificant, risk of injury to a participant or a spectator (Attachment 5: Liability Language).

**Attachment 1: RAP Non Objection Letter**

**Attachment 2: LA City Council File No.11-1403**

### **Attachment 3: Liability**

#### MRCA Ordinance 2.1—Posted Condition of Use (proposed)

No person shall enter within the Los Angeles River Park Recreational Zone when a National Weather Service *flood, small stream or thunderstorm watch or warning* has been issued

#### Fish and Game Regulations

[fishing will be permitted]

#### Harbors and Navigation Code

HNC 658.3(a) and CCR 6565.5(a)—Personal Flotation Device (PFD) use

HNC 660 and 651(v)—non-motorized boating

#### Penal Code

PC 409.5—emergency closing of an area

## **Attachment 4: Policies and Regulations**

### **(Pilot Recreation Area) Regulations for Posting in Channel:**

1. Do use only during designated period of Memorial Day through Labor Day
2. Do use between sunrise and sunset only
3. Do exit upon notification that hazardous conditions exist (flood watch or warning)
4. Do use a steerable, non-motorized boat only
  - Do launch and remove boats only at a designated river adjacent facility (unless emergency conditions occur)
  - Do walk, hike, run, birdwatch, photograph
  - Do fish within designated areas only following Fish and Game regulations
  - Do not use bicycles or motorized vehicles within the river banks
  - Do not litter, dump waste or trash
  - Do not destroy, alter or remove river habitat
  - Do not start fires, including use of barbecues or fire pits
  - Do not operate machinery including generators, heaters or pumps
  - Prohibited Articles and Activities
    - Alcohol
    - Weapons
    - Dogs or pets
    - Glass containers
    - Smoking
    - Nudity
    - Soliciting
    - Swimming



- **Attachment 5: MRCA Ordinance**