



Trails Element Technical Background Report

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TRAILS

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I. EXECUTIVE SUMMARY

Marin County residents have long demonstrated a respect for the natural environment and a desire to preserve that environment for the enjoyment of the public. The Marin Countywide Plan adopted in 1973 included a policy to develop a system of bicycle, hiking, and riding trails to connect open space, residential areas, and activity centers. The County adopted a Trails Element in 1984 which identified a network of 533.6 linear miles of trails in the County in a series of policy maps. In 1991, 464 linear miles of the trails network were open to the public, including 26 miles of paved pathways.

Acquisition of public rights-of-way for the trails network is a difficult issue and is addressed in this technical report. Trails are acquired for public use via: 1) gifts of land and easements, 2) prescriptive rights of trail use, 3) purchase, and 4) dedication of trail easements and trails.

Requiring trails dedication prior to issuance of development permits will be more difficult for public agencies since the 1987 Supreme Court decision on *Nollan v. California Coastal Commission*. The court established that there must be a clear "nexus" between an exaction, such as a trail dedication requirement, and the impact that the development will have. The *Nollan* decision requires that dedication requirements for public access directly respond to the type of burden on access created by that development.

Funding for the purchase of trails easements could be generated from foundation sources, State recreation programs and new local taxes. The County Parks, Open Space, and Cultural Commission has appointed an Open Space/Trails Committee which works with the Open Space District staff to review upcoming development applications for potential trails easements. They also actively acquire trail rights through purchase or other means.

Trails development is the responsibility of the public entity accepting a dedicated easement. Often the entity is a public agency other than the County, such as Marin Municipal Water District, Golden Gate National Recreation Area or the State Parks System. Trails cost between \$2.00 and \$8.00 per linear foot to construct, not including the cost of parking, fencing, posting, and other needed amenities.

Although trails design and development are largely a function of the terrain underlying a trail easement, the new trails policies call for protecting the adjacent environment and the rights of adjacent property owners while accommodating a broad range of trail user needs. Specifically, the trails system as a whole should reflect a consideration of the abilities and interests of persons with various physical impairments and the elderly in that at least some trails should be accessible to the handicapped.

Trails maintenance responsibility lies with the public entity accepting a dedicated easement or the underlying property owner if the dedication has not been accepted. Trails sometimes require seasonal closures, repair of amenities such as benches and signs, drainage, the clearing of brush and surface repair. A number of volunteer organizations in the county assist in maintaining trails.

Public and private liability for injuries experienced while on the trail are addressed in several sections of the California Government Code, including Sections 815, 831.2, 831.4, 831.7 and 846. These sections of code set limits on public liability and lay out standards for both public and private immunity from liability so that trails may reasonably be enjoyed by the public.



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II. INTRODUCTION

The public lands in Marin County attract visitors from all over the world. The County recognizes that public open spaces and trails in Marin fulfill an important open space need for both residents and visitors. The trails system connects environmentally important areas of the county, such as bayside, coastal and ridgetop areas, established recreational and open space areas, and even developed urban areas.

The voters of Marin County created the Open Space District in 1972 for the acquisition of open space (see the Environmental Quality Element for details). The 1973 Environmental Quality Element called for the development of a countywide trails system and major trails identified on the conservation map. By 1990, more than 150,000 acres of open space had been preserved in Marin by either local, State or Federal efforts. The trails network discussed in this element is intended to connect these valuable lands to each other and to adjacent communities.

III. RELATIONSHIP TO OTHER GENERAL PLAN ELEMENTS AND DOCUMENTS

The Natural Systems Element's Trails Section is related to other general plan elements and documents.

Built Environment Element

Transportation Section: Requires new development to provide trails or paths for bicyclists and pedestrians.

Community Based Policies and Maps Section: Coordinates open space and trails to connect with those designated in the Larkspur and San Rafael General Plans and the Bay Trail.

Natural Systems Element

Biological Resources Section: Discusses how trails interact with the natural environment and animal habitat.

Open Space Section: Discusses open space preservation. Policies should be consulted whenever a particular trail alignment is being considered.

Socioeconomic Element

Parks and Recreation Section: Provides an inventory of parkland. Policies should be consulted whenever a particular trail alignment is being considered. Generally, proposed trails are extensions of existing trails and provide access to already publicly owned open space.

Trails Maps: Used for planning and securing the trails system. The 23 maps have been included in the Natural Systems Element, Trails Section.

Built Environment Element, Transportation Section: See Table TR-1 for road and trails information.



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Further references to trails of local significance may be found in city general plans and the community plans for unincorporated portions of the county. Many short trails of local significance may not appear on the Trails Maps but may appear in community plans. Trail policies for specific communities can be found in the San Geronimo Community Plan, the Tamalpais Area Community Plan, and the Inverness Ridge Communities Plan.

Table TR-I. Relationship of Trails Element to other Plans and Elements

Paths/Trails	Elements and Plan Documents
Class I: Bicycle Path (paved, off-roadway)	Marin County Unincorporated Bicycle and Pedestrian Master Plan (2001) Built Environment Element, Transportation Section (2004) Natural Systems Element, Trails Section (2004)
Class II: Bicycle Lane (striped roadway)	Marin County Unincorporated Bicycle and Pedestrian Master Plan (2001) Built Environment Element, Transportation Section (2004)
Class III: Bicycle Route (signed only)	Marin County Unincorporated Bicycle and Pedestrian Master Plan (2001) Built Environment Element, Transportation Section (2004)
Unpaved Trails	Natural Systems Element Trails, Section (2004)

IV. EXISTING CONDITIONS

A. PRESENT STATUS OF TRAILS IN MARIN

The trails in Marin are subject to policies governing the use of trails which are established by the various land management agencies in Marin County such as the Golden Gate National Recreation Area, State Parks, the Marin Municipal Water District and the Marin County Open Space District.

Generally, proposed trails are extensions of existing trails and provide access to existing publicly-owned open space and parks or provide connections between various parks and open space areas. Many of the trails in Marin County were originally constructed by the Marin County Fire Department and serve as fire protection access roads and fire breaks. These fire protection access roads, or fire roads, pass through public and private lands. In the past they were all maintained on an ongoing basis by the Fire Department. Some old logging and ranch roads are also important links in the overall trail network.

In cases where proposed trails pass through private property, property owners vary in their reactions toward the designated use of their land. Some view trails and trail dedications as a development amenity which adds value to a project. Others tolerate or discourage use of the trails and access roads. On private trails throughout the central and western parts of the County where grazing and other agricultural land uses predominate, a number of property owners allow individual or group use of their



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trails on a permission basis. Various equestrian organizations stage annual long distance riding events which require permission from landowners.

B. TRAIL USERS

The following discussion will briefly describe the four predominant trail users of Marin County: hikers, equestrians, bicyclists, and disabled trail users. These types of trail users have been identified by the various land management agencies throughout Marin County which develop and implement trail use policies within their jurisdictions. The following passages do not establish County policy for trail use. They are descriptions of policies established by the land management agencies.

1. Hikers

Hikers represent a large and varied group of users ranging from a hiker or runner who covers from 10 to 20 miles in one day to the hiker who may venture into an open space area for a short stroll and return home within a matter of minutes. Much of the hiking is done by individuals or small groups and some is done in conjunction with organized groups like the Sierra Club, Bay Area Ridge Trail, and other organizations. With the exception of some overnight hiking and camping areas in the Point Reyes National Seashore and GGNRA, most of the hiking on County trails is day use.

2. Equestrians

Equestrian use of the trails in Marin County is quite extensive. Use may be on an individual basis or in organized group trail riding activities. Most equestrian activities take place outdoors, because of the county's mild climate and varied terrain.

Marin has a large number of active riding clubs and commercial equestrian facilities. Many experienced riders make long distance rides on the trails. It is anticipated that equestrian use of the trails will continue at this level for the foreseeable future.

3. Bicyclists

Multi-speed bicycles with narrow tires are popular for recreation and transportation purposes. Road bikes are light and work well on paved surfaces. Some long-distance riders may cover 50 to 100 miles in a day's ride. The Transportation Section details other factors concerning road bikes and their riders.

Mountain bikes, also known as all-terrain bikes or off-road bikes, have grown in popularity over the past several years. Because of their strong construction, low gearing, powerful brakes, and wide high-traction tires, mountain bikes can traverse both paved and unpaved surfaces and a wide variety of terrain. Many mountain bicyclists prefer an unpaved surface.

Mountain bicyclists are major users on unpaved trails throughout the county. During the latter half of the 1980s, most public agencies in Marin prohibited mountain bicycling on narrow, single-track trails. Most public agencies in Marin allow mountain bike users on fire roads.

Shared use and the avoidance of hazards on trails requires sensitivity on the part of three user groups: mountain bicyclists, hikers, and equestrians.



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4. Disabled Trail Users

Disabled trail users may require special design accommodations for sight, hearing and mobility impairments. Disabled trail users may choose walking, horseback riding, or mountain bicycling as their mode of trail transportation, though a significant portion of this group is reliant upon wheelchairs or walking aids.

This user group appreciates opportunities to join in trail experiences with disabled and non-disabled friends and family members. Mobility-impaired trail users, like other individuals, vary with regard to the level of challenge they seek in their trail experiences, though they are much more sensitive to steep gradients, narrow trails, and rough or unstable surfaces than others. Such physical conditions, commonly found in public open spaces, may often preclude the use of public trails by the mobility impaired.

The number of elderly residents in Marin is increasing and, as a consequence, the number of disabled trail users is also expected to increase.

C. TYPES OF TRAILS

Marin County land management agencies have identified the following three types of trails:

Single-track trails: unpaved trails that vary in width and are too narrow for service vehicles. Gradients on these trails are usually varied with some obstructions and line of sight is usually less than 100 feet.

Double-track trails or fire roads: unpaved trails that are wide enough to accommodate fire protection and service vehicles. Many of these trails were originally constructed as fire protection roads.

Class I bicycle paths, paved routes on a right-of-way, which are completely separate from a street and may include an unpaved section for pedestrians and joggers. An example of this type of path is the Tiburon bike path.

D. USES FOR TRAIL TYPES

Each land management agency in Marin County governing use of park and open space lands develops policies regarding uses for trail types within its jurisdiction. Each agency develops policies based upon the physical characteristics of the trails in its jurisdiction, such as slope, width, clearance, line-of-sight, susceptibility to erosion. The agencies also develop safety requirements for trail users. The primary goal of the land management agencies is to provide varied and quality outdoor experiences for a range of trail users and to develop policies which are reflective of environmental and safety constraints, community needs, and the needs of recognized user groups. The County encourages land management agencies to work with representatives of hiking, equestrian, and bicycling groups and with organizations representing persons with disabilities when developing criteria for designating trails for the recognized user groups. Classifications presented in this element are descriptive only and reflect the policies currently in place on most park and open space lands in Marin County. These classifications



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are not intended for use by land management agencies in the future when they formulate trail policies for newly acquired trails. Policy documents for the various land management agencies are listed in the bibliography of this element.

1. Hiking-only Trails

Hiking-only trails provide opportunities to enjoy the intimacy, interpretive experience, and aesthetic qualities in open space areas without distractions from other users. This type of trail can be quite narrow with various obstructions, and it may traverse steep gradients. If a footprint appears alone on the maps, it indicates a hiking-only trail.

In general, hiking trails are located within a 10 foot wide right-of-way. The physical improvements of the hiking trail may vary somewhat; however, a minimum tread width of two to three feet is normally required. On some steep slopes, the tread width may diminish to 12 to 18 inches, but only for short distances. Grades along a hiking trail may vary, although steep grades are tiring for hikers and may create erosion problems. Grades of 10% or less are desirable, but 15%-20% is considered generally acceptable for short distances. Some trails with grades in excess of 20% exist in the County.

Exceptions to the criteria for hiking-only trails include:

Trails that were constructed specifically for hiking that do not have steep gradients and may be paved, such as the trail in Muir Woods; and,

Other trails designated as hiking-only by the governing land management agency such as the Marin Municipal Water District.

These trails are not appropriate for equestrian or bicycle use, due to concerns about quality of experience, safety, susceptibility to erosion and physical constraints such as steep gradients, narrow tread, overhead clearance, and obstructions.

2. Equestrian/Hiking Trails

These trails provide a leisurely horseback riding or hiking experience without distraction from other types of users. Such trails normally include substantial overhead clearance.

Equestrian/hiking trails are unpaved and located within a 10 to 20 foot right-of-way. The developed width of the trail can vary from three to six feet. Gradients for equestrian/hiking trails are similar to those for hiking trails. Publications listed in the technical report detail the physical requirements of these trails.

Exceptions to the criteria for equestrian/hiking trails include:

Trails that were specifically constructed for equestrian/hiking use-only, but may be wide enough to accommodate other users; and,

Other trails designated as equestrian/hiking-only by the governing land management agency.



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Trails in this category are often narrow with steep or winding tread. They are not appropriate for bicycle use because of potential safety problems and diminished quality of experience.

3. Combined Use Trails

These trails provide an opportunity for joint use by mountain bicyclists, hikers, and equestrians. Shared use requires cooperation and sensitivity on the part of all users. This type of trail is indicated by a hoof print and circle symbol on a trail map.

Combined use trails offer substantial overhead clearance and a tread width (generally 6 to 12 feet) sufficient to safely accommodate multiple trail users. For the most part, these trails do not exceed moderately steep gradients. These trails often serve as fire protection roads, although some of trails are specifically designed for combined use.

Exceptions to the criteria for combined use trails include:

- Trails that were constructed specifically for all three types of users but may not be wide enough for fire protection vehicles.

- Trails that are designated as appropriate for hikers, equestrians, and bicyclists by the governing land management agency.

- Trails that may be designated for specific user group combinations.

4. Paved Paths

Paved paths are multi-use trails. Equestrian use is generally not compatible with this type of trail, unless an unpaved area of sufficient width is provided along the side of the road. Plans and projects for paved countywide bike paths are reviewed by the Bikeways Committee, staffed by the County Department of Public Works.

Eight feet is the minimum paved width of the Class I type paved path. Typically the path has a paved surface eight to ten feet wide and jogging or hiking areas along the shoulders. Where more than modest use is anticipated, a 10-foot paved section should be constructed. In addition to the paved section, the trail should include an unpaved 18 inch pedestrian/jogging path on either side. An ideal improved section of 13 feet can be accommodated within a 20 foot right-of-way on level surfaces. However, an additional right-of-way width may be necessary when slopes, buffers, or other improvements are taken into consideration.

The Marin County Bicycle and Pedestrian Master Plan was adopted in June 2000 which replaced the 1975 Bicycle Plan for Marin. It includes recommendations regarding safety improvements and alignments of paved bike paths and bicycle routes along roadways, referred to as either Class I, II, or III bicycle paths. Recommendations regarding Class I bicycle paths are also included in the Trails Element because Class I paths are open to pedestrians as well as bicyclists. The Trails Element also indicates where bicycles may be used on unpaved routes. The circle symbol appearing alone on a trail map indicates a Class I type of multi-use path.



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5. Trail Access For Persons With Disabilities

Many trails lend themselves to use by persons with disabilities. Multi-purpose pathways which accommodate pedestrians and bicycle riders are ideal for barrier-free access and should be planned accordingly. In most cases, existing gradients and curb cuts designed for cyclists offer satisfactory wheelchair access. Barriers placed at entrances to pathways for prohibiting entry by motorized vehicles must be designed to accommodate wheelchairs, unless such use would be unsafe or cause severe management problems or environmental impact.

In accordance with State and Federal ADA accessibility policies for recreational facilities, the county's trails should be designed whenever possible in consideration of the abilities and interests of a diverse population, including persons with disabilities and the elderly. A sensitively designed trail must have a continuous "path of travel," meaning no breaks or interruptions in the route such as streams, impassable barriers or gates.

The trail should have a solid, slip resistant surface, and a continuous, unobstructed route of no more than 5% in slope. The cross-slope (side-to-side grade) should be no more than 2% to prevent tipping over and falls. Other important features include: safe, level, and accessible parking; accessible drinking fountains, toilets, phones; and trail information at the trailhead.

The County needs a map showing accessible trails and describing their characteristics. Currently, the County does not have a good map of accessible trails, although some portions of existing trails may already be accessible. Consideration should be given to produce this type of map.

E. PROPOSED TRAILS TO CONNECT THE BAY AREA

I. The Bay Area Ridge Trail

The San Francisco Bay Area Ridge Trail is a regional trail project proposed by the Bay Area Ridge Trail Council (BARTC), a private non-profit organization of individuals, park partners, recreational and community groups. The proposed 450-500 mile Ridge Trail will ultimately follow the ridges and hills that circle the Bay through nine Bay Area counties. The trail will connect over 75 parks and public open spaces, including those owned and managed by Federal, State, regional, and local jurisdictions, as well as private land trusts such as the Ridge Trail Council.

The Ridge Trail will provide recreational opportunities and dramatic vistas for hikers, equestrians and bicyclists. Many segments of the trail are now complete. The target date for completion of 300 miles is 2005, and 400 miles is expected to be completed by 2010.

To the greatest extent possible, the Ridge Trail has used existing County trails and rights-of-way. When trail connections necessitate use of private lands, private landowners have been approached to discuss voluntary dedication of public easement or land. In Marin County, the Ridge Trail goes through existing public lands or along alignments indicated on the Trails Plan maps adopted by the County in 1984.



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2. San Francisco Bay Trail

The Association of Bay Area Governments (ABAG) was directed by the State Legislature to prepare and adopt a plan and implementation program for a continuous recreational hiking and bicycle trail around the perimeter of the San Francisco and San Pablo Bays.

Under the authority of SB 100 (Lockyer), the plan must include a specific route which relates to existing park and recreational facilities and links existing and proposed public transportation facilities. The Environmental Impact Report for the Bay Trail was certified in June, 1989, and the final plan was adopted in July, 1989.

In Marin County, the Bay Trail follows some alignments already in public use, like Paradise Drive in Tiburon and Point San Pedro Road in San Rafael. However, a portion of the trail between the Marin Civic Center and Route 37 in Novato uses the Northwestern Pacific Railroad right-of-way.

ABAG expects to complete most of the Bay Trail by 2013.

3. State Coastal Trail

The California Coastal Conservancy has revised Plans for a multiuse Coastal Trail running the length of Marin County and the State. Preliminary plans have been completed and should be incorporated into the County trail Plan maps as well as the local Coastal Plan. Efforts in the past by the Coastal Commission, Coastal Conservancy and other resource agencies have provided some secured right of way for this trail. In addition remnants of the old California Riding and Hiking trail also should be secured by the Conservancy if they are pertinent to implementing this trail. The nonprofit Coastwalk's efforts have contributed to the reintroduction of this trail which is of Statewide significance.

V. TRAILS ACQUISITIONS

The Marin County Trails Committee has identified over 200 miles of trails proposed for Marin County. These trails may be significant as recreational resources or may serve as important links for existing recreational facilities.

Trails are acquired for public use via: 1) gifts of land and easements, 2) prescriptive rights of trail use, 3) purchase, and 4) dedication of trail easements and trails.

A. GIFTS OF LAND AND EASEMENT

The acceptance of gifts of trails and trail rights-of-way is a viable means of preserving trails for public use. Individual owners may find it to their advantage to offer a gift of a trail that is currently being used by the public. The advantages may include, but not be limited to: income tax benefits for the donor, elimination of maintenance of the trail by the original owner, added security on the trail by increased or new patrolling by the accepting public agency, shift of legal liability to the accepting public agency, as well as the opportunity for philanthropy to benefit the community.



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Gifts of trails and trail rights-of-way to a responsible agency, like the Open Space District, are viable means of preserving trails for public use. Along with the philanthropic reward, property owners donating trail to a public agency may realize benefits, including: income tax benefits; relinquishment of legal liability and maintenance responsibilities; and trail security provided by the accepting agency.

B. DEDICATION OF TRAIL EASEMENTS AND TRAILS

County and city subdivision ordinances have legal authority to require easement dedications. The Supreme Court decision, *Nollan v. California Coastal Commission*, requires a direct nexus between the requirement of an exaction (i.e. an easement) and the impact of a development. The *Nollan* decision requires that dedication requirements for public access directly correspond with the type of burden on access created by development.

During the development permitting process, the County Community Development Agency and/or Open Space District may request dedication of a public easement for a trail. In many cases, the benefits gained through dedication offer sufficient incentive to encourage voluntary dedication.

Once the easement is secured through negotiation, the developer makes a formal offering of the easement. The easement is recorded on an addendum to the final map and in a separate written legal description. The property owner retains ownership and title to the land. The public is simply allowed use of the land for a trail. An easement offered for dedication is intended to run with the land in perpetuity.

Possible County responses to the offer of dedication are:

Consent to recordation of the easement. In this case, an easement is recorded as a legal description with the County Recorder. The easement does not disappear unless someone petitions to vacate it.

Rejection of the dedication. In this case, the easement is reserved as a legitimate right of the public, yet is not accepted by a public entity for trail development, maintenance, and liability. The offer of dedication may be subject to acceptance at a later date.

Acceptance of the dedication. In this case, responsibility for trail development, maintenance, and liability is accepted by a receiving entity. The receiving entity may be a jurisdiction, service district, or non-profit organization such as The Nature Conservancy. The assignment of the receiving entity should be made at the time of dedication.

Although dedication of trails and trail easements has been an important method of preserving trails within Marin County, public purchase of land has provided most trails.

C. PRESCRIPTIVE RIGHTS OF TRAILS USE

Trail preservation by prescriptive right is a method that has been utilized in the past and could be effectively utilized in the future. This method has been used successfully in local communities such as Tiburon. The law provides that, in certain cases, when public access across private property has been



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unimpeded by the land owners for a period of five or more years, the public may have gained a permanent right of access to this trail without express consent of the owner.

D. PURCHASE

Purchase of trail easements and trails is desirable in cases where, because of timing or other reasons, other methods are not practical. The Marin County Open Space District and Bay Area Ridge Trail Council actively pursue fee purchase of trail rights.

VI. ACQUISITION ISSUES

Since the acquisition of trails through the use of dedications may be limited in the future by the Nollan decision, the facts of this case and its ramifications for future planning are presented below.

A. NOLLAN V. CALIFORNIA COASTAL COMMISSION

The State has broad powers to regulate land for the health, safety, and general welfare of its populace. In so regulating, the State must establish that the regulation: 1) advances a legitimate State interest; 2) furthers the State interest which it was designed to serve; and 3) allows for a reasonable, beneficial use of the land.

James and Marilyn Nollan contested a requirement to permit public access across the sand beach between their seawall and the high tide line in order to obtain a permit to enlarge their beachfront home. The Nollans contended that the required donation of a public right-of-way constituted a taking of private property for public use without just compensation, a governmental act forbidden by the Constitution. The Coastal Commission asserted that the proposed structure reduced visual access to the beach from the coastal highway. The right-of-way requirement was a mitigation measure, a substitution of physical access for the loss of visual access.

California courts have held that the dedication of real property as a condition to the receipt of a development permit is a valid exercise of governmental authority where the dedication has been reasonably related to lessening the adverse impacts of development. In *Nollan v. California Coastal Commission*, the Supreme Court reaffirmed the broad scope of governmental authority to regulate land use, but articulated a much stricter requirement for a nexus between the impact of that development and the dedication required to alleviate that impact.

Assuming the legitimacy of the State's interest and the retention of economic viability of the property with the dedication requirement, the Court ruled in favor of the Nollans. The court found that the condition placed on development failed to further the State interest advanced as justification for the condition. It dismissed the substitution of physical access for visual access as merely a play on words. The requirement of a direct relationship, a "nexus" between the land use regulation and the State interest, was underscored. The Court affirmed the validity of dedications, which specifically address the burden created by a particular project.



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The Nollan decision requires that dedication requirements for public access directly respond to a type of burden on access created by that development. In his article "Property Rights in the Supreme Court", Joseph Sax says that had the Coastal Commission "predicated its regulation on a showing of long standing public use, and some evidence that development was deterring that use, a regulation or exaction designed to mitigate that effect would likely have been upheld" (Sax, 1987).

In Marin County, "prescriptive rights" may be argued as a basis for requiring dedications on popular trails, which have been used over the years by the public. On those properties where the public has long enjoyed a path across the land, development which impedes that path of travel may be required to dedicate an easement as a remedy for the impact of the development.

In the future, dedications will need to be carefully established in order to meet the rigorous scrutiny of the Nollan decision. However, this decision should not deter the pursuit of dedications. "Even a valid governmental purpose and public benefit may not be enough to obtain a dedication unless the County or other public entity is willing to purchase the easement. It is clear that the U. S. Supreme Court will inspect an exaction more closely to ensure that certain individuals alone are not forced to bear public burdens which, in fairness and justice, should be borne by the public as a whole" (Armstrong v. U. S. (1960) 354 U. S. 40, 49, and Nollan v. Coastal Commission).

B. FUNDING FOR TRAILS ACQUISITIONS

Since the Nollan decision tightened the rules under which dedications may be required as a condition of development, the County should explore funding possibilities for the acquisition of trails. Such possibilities include the utilization of State Bond Funds and Foundation grants to help finance these purchases.

C. COORDINATION OF TRAIL ACQUISITIONS

An 11-member Open Space and Trails Committee oversees trails planning for Marin County. This standing committee of the County Parks, Open Space and Cultural Commission meets monthly. The committee reviews upcoming development projects with the purpose of obtaining trails dedications, planning trails that connect publicly-owned lands, and making recommendations for development and implementation of the Trails Element policies.

The Planning Department and Open Space District are responsible for comprehensive trails planning. The county prepares the Trails Element and Trails Section Map Series. The Open Space District implements the Element and manages the trails. District staff and the Trails Committee review development permits for potential acquisition of trails designated in the Map Series.

Trails of local significance may not necessarily be represented in the Trails Element Map Series. These trails are often short, but offer local trail users with a multipurpose alternative to paved public roads. When proposed development threatens to remove these shorter trails, the County encourages local groups to preserve the trails.



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VII. TRAILS DEVELOPMENT

A. RESPONSIBILITY

The responsibility for trails development lies with the property owner or the public entity accepting a dedicated easement.

B. COST

The cost of developing a trail is dependent upon several factors; trail type, slope, soil condition, the method of trail construction, materials used, etc. A 1988 survey of the Golden Gate National Recreation Area, Open Space District, California State Parks, the Marin Conservation Corps, and Trail Center to obtain information on trail construction currently the construction cost for a four-foot wide hiking trail constructed with a backhoe tractor by a skilled crew to be \$2.00 to \$2.50 per linear foot. Use of a hand crew, such as the Marin Conservation Corps, cost between \$4.00 and \$8.00 per linear foot. Some agencies have trailmaking machines, which lowers the cost of construction to less than \$2.00 per linear foot.

C. TRAIL ACCESSIBILITY

Access to trails involves several factors, including parking, maps and literature, and continued access of trails for historic users.

Some trails, primarily those of greatest countywide significance, are developed with parking facilities and/or other amenities at trailheads. Trails used primarily by neighborhoods tend to have little or no parking. Availability of parking may be affected by the desires of local community, policies of the County or cities, or objectives of the land agency managing the trail. In areas where the popularity of public lands and trails causes parking congestion and neighborhood difficulties, local jurisdictions may institute parking restrictions. These restrictions reduce the local problem, but limit the ability of the wider public to reach public trails. For this reason, the County must be vigilant in preventing open space and trails from becoming private amenities at public expense.

Individuals can learn about the availability of public trails by obtaining literature and maps prepared by the managing agencies. Other maps and information can be found in guidebooks prepared by private sources. Trails that do not meet agency standards or are not legally open to the public may intentionally be excluded from these maps although they are regularly used by the public.

Some trails used by the public begin or continue onto private lands, which are subject to closure at the discretion of the landowner. Closure of privately owned trails long used by the public can create strong feelings of animosity between landowners and the historic trail users. In many cases, public land agencies may take action to guarantee public access to historic trails, including a request for trail easements dedicated during the development process, negotiation for the purchase of a trail easement, or pursuit of a prescriptive rights court case.



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In some cases, historic trails on private land may be frequently used by particular user groups before the trail is acquired by a public agency. Depending on the agency's trail use policies, historic users may be precluded from further use of the trail when policies prohibit such use. Although the trail may become legally public where it was once private, a user group may view application of such trail use policies as an infringement upon its historic right of use. For this reason, the County encourages trails designation and design to give full consideration to the historic users of a newly acquired trail.

VIII. TRAILS MAINTENANCE

A . RESPONSIBILITY

The maintenance of trails requires seasonal closures when appropriate, user group management, repair of amenities like benches and signs, trail drainage, brush clearing, and surface repair. The responsibility for trail maintenance rests with the property owner or the public entity accepting an easement dedication.

B. RESOURCES

Maintenance work may be contracted out on a private basis or secured through a volunteer organizational effort. Organizations which may participate in trail construction and maintenance include the Marin Conservation Corps, the Tamalpais Conservation Club, the Sierra Club, equestrian groups, cycling groups, Boy Scouts and Girl Scouts, or neighborhood and community groups.

IX. LIABILITY

The existing trails policy refers to preserving "trails for public use with due consideration of liability exposure of property owners adjacent to the trail." This reference oversimplifies the true complexity of the liability issue which, in practice, defied such a simplistic approach. The following section discusses briefly the liability protection both public entities and private individuals have under primarily California law.

A. CALIFORNIA LAW

A number of statutes have been enacted by the legislature to address the various conditions under which liability may be established and those conditions under which liability is limited to both public entities and private individuals. However, the statutes are vague, and the subtle nuances of the case law require detailed review.



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B. PUBLIC LIABILITY

California Government Code Section 815 established the immunity government has from being sued while carrying out public policy. However, the Federal Tort Claims Act provides the framework for bringing just such suits against the government.

California Government Code Section 835 holds public entities liable for dangerous conditions on their property if the conditions create a reasonably foreseeable risk of injury. The public entity must be negligent in either: 1) creating the condition; or, 2) taking action to correct the condition (once notice is given) to establish the basis for a lawsuit.

The legislative committee comment on the statute goes even further to state that: "Even if the elements stated in the statute are established, a public entity may avoid liability if it shows that it acted reasonably in the light of the practicability and cost of pursuing alternative courses of action available to it."

A defense such as "comparative negligence" or "assumption of risk," may also be used to avoid liability under this statute. Under such a defense, the government may claim that a plaintiff has acted negligently or to have knowingly and freely assumed a risk which resulted in injury.

There are three California Government Code sections which address the issue of public liability on lands used for recreational purposes:

1. California Government Code Section 831.2 states: "Neither a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach."

In his analysis of Section 831.2, Van Alstyne says, "The scope of immunity is not entirely clear; the act does not provide a precise standard for determining when, as the result of developmental activity, public property in its natural state ceases to be unimproved. However, it appears that some form of physical change in the condition of the property at the location of the injury, which justifies the conclusion that the public entity is responsible for reasonable risk management in that area, may be required to preclude application of the immunity" (Van Alstyne, 1985).

2. California Government Code 831.4 states:

A public entity, public employee, or grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of: (1) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a ... public street. (b) Any trail used for the above purposes. (c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition of



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the paved trail, walkway, path or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any paved pathway or road.

The legislative committee comment under Section 831.2 states that this section and Section 831.4 continue to extend an existing policy adopted by the Legislature in former Government Code Section 54002. "It is desirable to permit the members of the public to use public property in its natural condition and to provide trails for hikers and riders and roads for campers into the primitive regions of the State. But the burden and expense of defending claims for injuries would probably cause many public entities to close such areas to public use. In view of the limited funds available for the acquisition and improvement of property for recreational purposes, it is not unreasonable to expect persons who voluntarily use unimproved public property in its natural condition to assume the risk of injuries arising therefrom as a part of the price to be paid for benefits received."

3. California Government Code Section 831.7 sets limits on public liability to "any person who participates in hazardous recreational activity...who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself..." The definition of hazardous recreational activities includes animal riding and bicycle racing, activities which may occur along trails.

C. PRIVATE LIABILITY

Protection for the private property owner who dedicates an easement for the enjoyment of the public is afforded by California Civil Code Section 846. It states that an owner of any estate in real property owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose, excepting willful or malicious failure to guard against or warn of dangerous conditions.

D. MARIN COUNTY EXPERIENCE

According to the County Counsel's office, no trails related cases have gone to court in the past few years. A number of bike-trail related cases have been brought against the County, resulting in substantial legal efforts and exposure.

E. REFERENCING LIABILITY WITHIN THE TRAIL ELEMENTS

The subject of liability will be omitted from the Trails Element for the following reasons:

- 1) As this report indicates, liability is a complex issue. cursory summations for inclusion within a planning document belie this complexity and thus are not appropriate.
- 2) Omitting liability discussions from Plan Elements is common practice. One can easily imagine the liability issues attendant to the Transportation and Environmental Hazards elements, yet



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the subject is not typically discussed in these State-mandated elements. Therefore, there should be consistency in the treatment of liability issues in such optional elements as the Trails Element.

- 3) The liability reference may in of itself be provocative and thus undermine the spirit and intent of the Trails Element.



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GLOSSARY

Bicyclist	Includes bicyclists on Motocross (BMX), touring, and mountain bikes.
Class I Path	Off-roadway paved bicycle path.
Class II Path	Adjacent to roadway paved bicycle path.
Class III Path	Signed only paved bicycle path.
Disabled Trail User mobility impairments.	A person requiring special accommodations for sight, hearing and
Double-track trail	Unpaved trail, 8 to 10 feet wide.
Equestrian	Includes casual, group, competitive, and endurance riders and equestrian with disabilities.
Hiker	Includes runners, joggers, casual hikers, backpackers, interpretive hikers and hikers with disabilities.
Line-of-sight	The maximum visible distance between two trail users.
Path	Paved surface for bicycles, joggers and pedestrians.
Right-of-way	Corridor within which the trail is constructed.
Single-track trail	An unpaved trail two to six feet wide with gradients as high as 20% or more in some places.
Tread	Usable width of the trail.
Trail	An unpaved route.
Trailhead	Trail connection to paved roadways.



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BIBLIOGRAPHY AND PERSONS CONSULTED

Bibliography

Marin County Community Development Agency. The Marin Countywide Plan Trails Element, adopted January 1994.

Marin County Community Development Agency. The Marin Countywide Plan Trails Element Technical Report #1: Acquisition, Development, Maintenance, and Design.

Persons Consulted

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Table TR-1. Relationship of Trails Element to other Plans and Elements.....	3
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