

DATE: February 28, 2024

TO: Armando Quintero, Director, California State Parks

FROM: Nicola Place and the 25 Owners and Residents on Upper Mount Diablo Scenic Blvd,  
AKA "The Danger Zone"

RE: State Parks Letter February 17, 2023: "Mount Diablo Scenic Boulevard Maintenance"

CC: Tara Lynch, Chief Counsel, California Department of Parks and Recreation, Emma Siverson, Senior Staff Counsel, California Department of Parks Legal Office, April Marson, Chief Administrator, Diablo Range District, Clint Elsholz, District Superintendent (Acting), Diablo Range District, State Senator Steve Glazer, Assemblywoman Rebecca Bauer-Kahan, Contra Costa County Supervisor Candace Andersen, Contra Costa County Sheriff David Livingston, Danville Mayor Karen Stepper, Danville Police Chief Allen Shields, Eric Niles, Head, The Athenian School, Lydia Guitierrez, President, Diablo Ranch Estates, Alan Kalin, President, Mt. Diablo Cyclists, Chief Paige Meyer, San Ramon Valley Fire Protection District, CHP Golden Gate Chief Donald Goodbrand, Dan Borenstein, Editor, East Bay Times, Owners on Lower Mount Diablo Scenic Blvd.

Dear Director Quintero,

This is the family of Maayan Jones, who was killed on upper Mount Diablo Scenic Blvd. in 2019:



On February 17, 2023, California State Parks legal department sent a letter to the owners on Mt. Diablo Scenic Blvd. (Scenic), the private road that serves as the primary access for hundreds of thousands of visitors to Mount Diablo State Park. (Copy of letter follows below.)

A quick refresher: State Parks has held an easement over this road since 1931. Along with this legal right comes the legal responsibility to maintain the road (Civil Code 845), which State Parks did until sometime in the late 1970's. Then suddenly, after over 40 years of being a good neighbor, State Parks STOPPED maintaining the road and has never made any effort to do so since. For nearly 50 years, residents have repeatedly approached State Parks for action, only to receive no response and no action. There have been two fatalities on the upper portion of Scenic as a direct result of the failure to maintain the road. It's not a question of if, but when there will be another fatality if State Parks fails to act.

The State Parks letter, dated February 17, 2023, included the following statements:

1. "State Parks would like to work collaboratively with all adjacent landowners towards an agreement that will result in road improvements that benefit all users."
2. "State Parks proposes reaching out to any of the following neutral parties to assist with negotiating the maintenance agreement: ..." (four names were listed)
3. "To establish good-faith efforts towards collaboration, State Parks is preparing a traffic safety assessment of MDSB to determine what work is needed and what may be required of various parties."

It has been just over one year since the date of the letter and we have not heard a single word back from State Parks, other than to send Public Records Act (PRA) data that we (residents) requested.

Understandably, we have some questions:

1. Does State Parks still intend to negotiate a maintenance agreement with the property owners on Mt. Diablo Scenic Blvd?
2. If yes, what is the expected process and timeline (begin & end) to resolve this long-standing safety and maintenance issue?
3. What evidence do you have of any collaboration with us?
4. Has a neutral arbitrator been selected?
  - a. If yes, what is her/his name and contact information?
  - b. When will she/he start?
5. Has a traffic safety assessment been initiated? If yes, when will we receive a copy?
  - a. The last TWO failed to take into account a number of critical local conditions which invalidated the results.
  - b. Which residents and stakeholders have you spoken to adequately and appropriately inform and guide such an assessment?
6. Given 12 months of silence, what is your evidence that this is a good faith effort?

We look forward to a timely response, within 30 days, not another year of silence.  
Also, please confirm that you have received this message.

Thank you,

Nicola Place and the 25 owners and residents of Upper Mt. Diablo Scenic, AKA The Danger Zone:

Steve and Wendy Moore

Colleen and Winston Cervantes

Jenny and Lloyd Lee

Brian Moore

Becca Makarova

Ivan Makarov

Nancy & Hal Seibert

Laurie Bain

Chris Beeson

Grace and Randy Su

Marti Sketchley

Peter and Myra Hypnar

Emily Kevorkian

Paul and Hannah Craddick

Carol Berendsen

Leslie Forman

Gun Johnson



Sent via Regular Mail

February 17, 2023

Re: Mount Diablo Scenic Boulevard Maintenance

To Whom It May Concern:

The California Department of Parks and Recreation (State Parks) is respectfully requesting your participation in a partnership between State Parks and adjacent landowners to address the long-standing need for a maintenance agreement for Mount Diablo Scenic Boulevard (MDSB). State Parks would like to work collaboratively with all adjacent landowners towards an agreement that will result in road improvements that benefit all users.

State Parks has received complaints about the maintenance of MDSB. However, maintenance of the road is not State Parks' sole responsibility. Because State Parks only has an easement for access to Mount Diablo State Park, it shares maintenance responsibility with all adjacent landowners under California Civil Code section 845, according to proportionate use. In 1992, the Contra Costa County Superior Court issued an order reflecting this shared responsibility in the attached Order For Reference In Lieu Of Trial (*Siders Order*). The Court retains jurisdiction over this matter.

The *Siders Order* required an arbitrator to "join into this action all property owners who abut or use the roadway, and all other parties who may benefit from the easement and have a responsibility to contribute to the maintenance of the roadway." An arbitrator was never pursued, but the maintenance issues persist. State Parks is initiating this process with the goal of resolving this long-standing issue. State Parks believes your property qualifies you as a party with responsibility to contribute to the maintenance of the roadway.

State Parks proposes reaching out to any of the following neutral parties to assist with negotiating the maintenance agreement:

1. Sarah Burke – (415) 307-9740; <http://burkeadr.com>
2. Joel P. Franciosa – (510) 272-5103; <http://jpfmediation.com>
3. Kathryn N. Richter – (925) 376-1500; <http://www.richteradr.com>
4. Hon. Marshall Whitley (Ret.) – (415) 772-0900;  
<http://adrservices.com/neutrals/whitley-marshall>

If you would like to recommend a different neutral third-party, please let us know as soon as possible. The parties may share the cost of the neutral party according to the agreed-upon proportionate use.

Please return pages 2 and 3 of this letter by **March 30, 2023**, with your information, your attorney's contact information if applicable, and your preference on a neutral third-party. You may e-mail your response to Olivia Chiu, Staff Counsel, at [Olivia.Chiu@parks.ca.gov](mailto:Olivia.Chiu@parks.ca.gov), or you may mail your response to the following address:

Olivia Chiu  
California State Parks – Legal Office  
P.O. Box 942896  
Sacramento, CA 94296

To establish good-faith efforts towards collaboration, State Parks is preparing a traffic safety assessment of MDSB to determine what work is needed and what may be required of various parties. Additionally, State Parks may start repairing some of the bigger safety concerns on MDSB that it can address immediately. By performing this work, State Parks does not waive any rights or defenses it may have related to MDSB.

Thank you for your participation. If you have any questions, please contact me at [Emma.Siverson@parks.ca.gov](mailto:Emma.Siverson@parks.ca.gov), with a copy to [Olivia.Chiu@parks.ca.gov](mailto:Olivia.Chiu@parks.ca.gov), or (916) 653-9905.

Sincerely,



Emma Siverson  
Senior Staff Counsel

Enclosures

cc (email only): Clint Elsholz, Acting Diablo Range District Superintendent

**Property Owner**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

**Attorney**

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

**Third Party Neutral**

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

1 HAL F. SEIBERT  
2 Attorney At Law  
3 1200 Concord Ave., Ste. 260  
4 Concord, CA 94520  
5 (510) 945-1991  
6  
7 Attorney for Plaintiff

FILED  
CONTRA COSTA COUNTY  
MAR 17 1 12 PM '92  
CO CLERK  
BY *M. Buda*  
DEPUTY

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA

10 BARRY SIDERS,  
11 Plaintiff, NO. 282534  
12 vs. ORDER FOR REFERENCE  
13 STATE OF CALIFORNIA, IN LIEU OF TRIAL  
14 Defendants.

15 The above captioned matter was duly called for Court trial in  
16 department 2X of the above entitled court on June 14, 1991. The  
17 court having read the trial briefs of both parties, and hearing  
18 preliminary statements, stipulations and admissions, the court  
19 finds that the only two issues presented are (1) whether the  
20 State's use of the easement over the roadway in question  
21 constitutes a public nuisance, and (2) the extent to which the  
22 parties, or non parties, must share in the expense of maintaining  
23 the easement over the roadway.

24 IT IS HEREBY ORDERED ADJUDGED AND DECREED AS FOLLOWS:

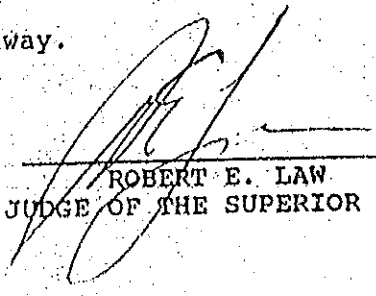
25 1. To the extent the State's right of way over Mt. Diablo  
26 Scenic Blvd, Contra Costa County, California, is a "public

1 easement" it cannot as a matter of law be deemed a nuisance.

2 2. Under Civil Code §845 the State of California has a duty to  
3 maintain the roadway easement in proportion to its use. Pursuant  
4 to CCP §639 the court shall refer this matter to an arbitrator in  
5 order to determine how to proportion the cost of maintaining the  
6 roadway amongst those using the roadway. The arbitrator is ordered  
7 to join into this action all property owners who abut or use the  
8 roadway, and all other parties who may benefit from the easement  
9 and have a responsibility to contribute to the maintenance of the  
10 roadway. After hearing from all such parties, the arbitrator is to  
11 make a recommendation to this court as to a formula to be used to  
12 determine the proportion of cost of maintenance to each party,  
13 property owner, or other person or entity.

14 3. The current parties to this action shall agree upon a  
15 neutral arbitrator. The cost of the arbitrator shall be borne by  
16 all parties in proportion to the ultimate finding of each party's  
17 responsibility to maintain the roadway.

18  
19 Dated: June 14, 1991.  
20 Presented for signature  
21 and signed 3/17/92

  
ROBERT E. LAW  
JUDGE OF THE SUPERIOR COURT

22 Approved as to Form:  
23  
24 \_\_\_\_\_  
25 Anne Jennings,  
26 Deputy Attorney General  
27 Attorney for State of California  
28