

# THIS LAND IS OUR LAND



A Primer on Public  
Land Ownership and  
Opportunities for  
Recreational Access



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Law & policy innovation for the common good.

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“Public space  
is our open-air  
living room,  
our outdoor  
leisure center.”<sup>1</sup>



# Introduction

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*More than one-third of the land in the United States – nearly 900 million acres – is owned by federal, state, and local governments.<sup>2</sup> Public property is a common asset shared by all, yet much of it is unused or underused. This land presents an untapped opportunity to create new public resources for recreation and physical activity, potentially improving the health of people and communities.*

## The Need for Public Recreational Space

There is little question that Americans need more opportunities for physical activity and recreation. Less than half of adults<sup>3</sup> and less than one-third of adolescents<sup>4</sup> meet the physical activity guidelines of 150 minutes a week and an hour a day, respectively.<sup>5</sup> The increasingly sedentary nature of our lives has contributed to a rise in obesity rates and associated medical conditions. Over the last 30 years, obesity and overweight rates have soared in all age groups, particularly among children – more than doubling for preschoolers and more than tripling for children ages 6 to 11 and adolescents ages 12 to 19.<sup>6,7</sup> More than two-thirds of adults<sup>8</sup> and nearly a third of youths<sup>9</sup> are now overweight or obese. The obesity epidemic is striking certain demographic groups harder than others. Significant disparities in both physical activity levels<sup>10</sup> and overweight and obesity rates<sup>11</sup> are seen between racial, ethnic, gender, age, and socio-economic groups.

One way to confront obesity and its associated health impacts is to ensure that communities have sufficient opportunities and resources for physical activity. But not everyone has the same opportunities to be active. Some communities – and some neighborhoods within communities – have more access to recreational space than others. Low-income communities and communities of color consistently have the fewest resources for physical activity.<sup>12</sup> For example, the percentage of teenagers in Los Angeles living within walking distance of a park decreases

as neighborhood rates of poverty, crowding, and unemployment increase.<sup>13</sup> Also, playgrounds in low-income neighborhoods and neighborhoods with higher proportions of African-American residents are often less safe, both in terms of construction and maintenance.<sup>14</sup>

Lack of access to high-quality recreational spaces has measurable effects on physical activity. For example, adults who live within one-half mile of a park are more likely to exercise five or more times a week than those who live farther away.<sup>15</sup> Similarly, children who live near parks and recreational facilities are more active and less likely to be obese than those who live farther away.<sup>16</sup> And children and adults are less active when they live in neighborhoods that are perceived as unsafe<sup>17</sup> or have high levels of social disorder (such as loitering and public drinking).<sup>18</sup>

## The Many Benefits of Recreational Space and Physical Activity

**Health Benefits:** In addition to helping with weight control, physical activity lowers the risk of heart disease, stroke, type 2 diabetes, depression, and some cancers, thereby increasing life expectancy.<sup>19</sup> The mere act of spending time outside in natural settings like parks also lowers blood pressure, cholesterol, and stress levels.<sup>20</sup>

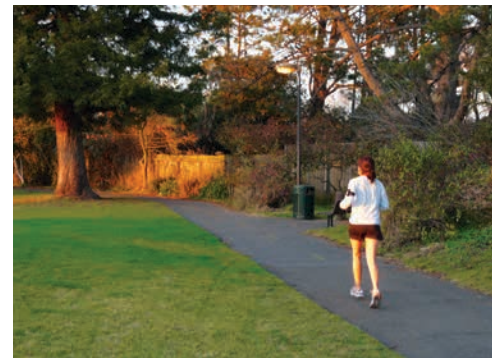
**Social Benefits:** Parks, trails, and other common recreational space can help to create and enhance family and community ties by increasing interaction, by decreasing isolation and crime, and by encouraging volunteerism.<sup>21</sup> Social interaction through physical activity and recreation can also offer opportunities for connections across race, class, and geography.<sup>22</sup>

**Economic Benefits:** Proximity to parks and trails increases property values, which in turn increases property tax revenues.<sup>23</sup> Some recreational facilities, particularly bike trails and greenways, can also generate tourist revenues for communities when they attract out-of-area visitors.<sup>24</sup> One study even found that every dollar spent on walking and biking trails led to three dollars of medical cost savings.<sup>25</sup>

**Education Benefits:** Physical activity is associated with better academic performance, better classroom behavior, better attendance, and fewer disciplinary problems in schoolchildren.<sup>26</sup>

**Environmental Benefits:** Open space and green space have environmental benefits that in turn benefit health, including improved air quality and reduced air temperature.<sup>27</sup> Open space can also play an important role in managing storm water runoff, particularly in urban areas, by providing natural mechanisms of filtration and storage.<sup>28</sup>

By partnering with government agencies at all levels and across all spheres, individuals and communities can play a critical role in helping to make these benefits a reality.



*Not everyone has the same opportunities to be active. People who live near parks and recreational facilities are more likely to exercise regularly.*

# About This Primer

This primer aims to assist individuals and communities in understanding the complexity of public land ownership and some of the related legal and policy issues that may arise when partnering with public entities to create opportunities for physical recreation.

➤ **SECTION 1** Describes the system of public land ownership in the United States, at the federal, state, and local levels, including counties, cities, school districts, and special districts. We give particular attention to local government agencies because they represent a largely untapped resource for expanding access to public property.

➤ **SECTION 2** Explains the common legal mechanisms used to gain access to public property, including easements, leases, licenses, and interagency agreements.

➤ **SECTION 3** Presents a case study from Lafayette, Calif., where a creative arrangement between the city, a local water agency, a nonprofit, and a gardening group resulted in a vibrant community garden on public property.

➤ **SECTION 4** Calls for more equitable access to publicly owned property and outlines some of the tasks required to partner with public agencies in developing and expanding access to recreational spaces.



*Parks and other common recreational space can help to create and enhance family and community ties.*

Armed with in-depth knowledge of some of the key legal and policy issues pertaining to public land ownership and recreational uses, stakeholders should have the ability to transform public property into active public space – whether by creating a sports complex on a former farm managed by a state hospital, converting a naval training center into a vast state park, or transforming a vacant lot into a community garden.

Understanding how different levels of government own and manage land is critical for expanding recreational opportunities on public property.



## SECTION 1

# Public Land Ownership and Opportunities for Access

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*As communities seek to expand opportunities for recreation, government agencies – at the federal, state, and local levels – are critical partners. A basic understanding of how public land ownership works and the types of opportunities that public land may present can help individuals and community groups partner more effectively with public agencies.*

## Federally Owned and Managed Land

The U.S. Constitution and federal laws provide for the management of federal lands. The federal government owns roughly 640 million acres of public land, 28 percent of the 2.27 billion acres of land in the United States<sup>29</sup> Most of these lands are in the West and Alaska.<sup>30</sup> There are three major types of federal lands: public, military, and Indian. Four agencies manage almost all federal public land: the Forest Service, which is within the Department of Agriculture, and the National Park Service, the Bureau of Land Management, and the Fish and Wildlife Service, all within the Department of the Interior.<sup>31</sup> Also, the Department of Defense administers 19 million acres of federal land that is used for military bases, training ranges, and other military purposes.<sup>32</sup>

The United States holds in trust approximately 56.2 million acres for various Indian tribes,<sup>33</sup> mostly in the West and Northwest. The federal government administers approximately 326 land areas that are designated as Indian reservations, including pueblos, villages, missions, etc.<sup>34</sup> The 16 million-acre Navajo Nation Reservation in New Mexico, Arizona, and Utah is the largest of these areas.<sup>35</sup> These lands are controlled by the tribes.



## Existing Recreational Opportunities on Federal Land

Many federally owned public lands are open for camping, hiking, fishing, swimming, boating, and other recreational activities. Twelve federal agencies, including the Forest Service, the National Park Service, the Bureau of Land Management, and the Fish and Wildlife Service, have created a central website ([www.recreation.gov](http://www.recreation.gov)) with information on parks, forests, lakes, museums, and other areas that offer recreational opportunities. The managing agencies receive most of their funding through federal appropriations, but also obtain revenues from user fees, donations, and concessions.

Even federal agencies that do not possess or control major acreage can help local communities increase recreational and health opportunities. The U.S. Department of Agriculture, for example, established the People's Garden Initiative, which challenges its employees to establish People's Gardens at USDA facilities worldwide or help communities create gardens.<sup>36</sup> People's Gardens must benefit the community; be a collaborative effort between volunteers, neighbors, or organizations within a community; and use sustainable gardening practices. As of December 2012, USDA employees have established over 1,800 gardens and donated 3.1 million pounds of produce.<sup>37</sup>

Military lands are controlled by the Department of Defense or by the branch of the military that operates a given base. Many bases provide recreational facilities to members of the military and their families, but allow only limited public access. The Fort Bragg Army Installation in North Carolina, however, extends into six counties, covering 161,000 acres, or 251 square miles,<sup>38</sup> and has several parks and recreation facilities that are open to the public.<sup>39</sup> Because the level of allowed public access to military lands varies widely, it is best to contact the military facility in your community for more information.

Individual Indian tribes control their lands, including who has access. Tribal recreational facilities are open to residents on the reservation, many of whom are not tribal members. Some tribes also open their land and facilities to the public. For example, the Navajo Nation issues permits for hiking and camping on tribal lands through its parks and recreation department.<sup>40</sup> Many other tribes have websites that provide information on hiking and camping on tribal lands.<sup>41</sup>

## Opportunities and Strategies for Increasing Access to Federal Land

Communities have additional opportunities to access federal lands for recreational purposes. For example, federal law authorizes communities to purchase or lease land for recreation. In addition, federal law authorizes the secretary of the interior to enter into interagency agreements to jointly operate and manage parks and recreational facilities.



*Many federally owned lands are open to the public for recreational activities.*

## **Sale or Lease of Federal Land to State and Local Governments and Nonprofit Organizations**

In 1954, Congress enacted the Recreation and Public Purposes Act, allowing the federal Bureau of Land Management to sell or lease federal public lands to state and local governments and to qualified nonprofit organizations for recreational or public purposes.<sup>42</sup> The act applies to all public lands, except lands within national forests, national parks, national monuments, national wildlife refuges, and Indian lands.<sup>43</sup> Typical recreational uses of land sold or leased under the act include historic sites, parks, fairgrounds, and campgrounds, although land sold or leased under the act is also used for public purposes such as schools, fire houses, and hospitals.<sup>44</sup>

The National Park Service also has a program – the Federal Lands to Park Program – to transfer ownership of surplus federal land to state or local government – for public recreational use.<sup>45</sup> Federal surplus land is property owned by the United States that is no longer needed to serve purposes of the federal government. This property may be available from any department of the federal government, and can include former military bases, U.S. Coast Guard stations, and Army Corps of Engineers water control projects. However, transferable federal property does not include national forests and national park lands. The National Park Service conveys the land in return for the benefits derived by its public use.

Only states, counties, municipalities, and similar government entities may acquire land, generally at no cost, through the program.<sup>46</sup> The state or local government must cover the costs of preparing the application, which include (for example) land surveys and site development, and must commit to allocating the funds necessary to properly develop, operate, and maintain the property for public park and recreational use in perpetuity. The acquired land may be dedicated to multiple uses, including hiking and biking trails, urban parks, and playgrounds.

Since 1949, through the Federal Lands to Parks Program, approximately 170,000 acres and over 1,600 parcels of federally owned property have been acquired by state and local governments, and subsequently dedicated for public recreational uses.<sup>47</sup> For example, a former naval training center in Pend Oreille, Idaho, was conveyed to the state to form Farragut State Park. The park, comprising 4,000 acres, is home to wildlife, forests, and mountains, and now also features 32 miles of trails, as well as Lake Pend Oreille, where visitors may fish or swim.<sup>48</sup> Likewise, in 1990, the U.S. Army Reserve transferred ownership of its surplus 15-acre Homewood, Ill., site to the Homewood-Flossmoor Park District. This site abutted the already existing Apollo Park, which has grown to include three softball fields, two baseball fields, a walking and bicycle path, two sand volleyball courts, three flag football and soccer fields, a picnic area, and a children's playground. And in 1991, the program transferred a vacant one-half acre federally owned site to the city of Philadelphia for a community garden, unifying the Southwark and Queen Village neighborhoods.<sup>49</sup>

## Interagency Agreements

Communities may also acquire access to federal land for recreational purposes through interagency agreements between the federal government and a state or local government. Federal law allows the secretary of the interior to enter into cooperative management agreements with state and local governments to manage park land.<sup>50</sup> The parties negotiate the scope of access, responsibilities for management of the land, liability issues, and any exchange of funds.

In July 2012, the National Park Service and the City of New York Department of Parks of Recreation agreed to cooperatively manage 10,000 acres of federal and city-owned parks in and around Jamaica Bay to promote visitation, education programs, scientific research, and recreational opportunities.<sup>51</sup> The agencies' cooperative management agreement commits them to work together in establishing the Jamaica Bay area as a great urban park, creating a network of improved recreation spaces, including more camping and boating opportunities, integrated land and water trail systems, and community activity areas.<sup>52</sup>

## State-Owned and Managed Land

States and local governments own approximately 9 percent of the land in the United States.<sup>53</sup> States hold land for various purposes, including highways and roads, parks and forests, wildlife refuges, and institutional uses.<sup>54</sup> Each state's constitution and laws specify which state agency controls and manages various state lands and the purposes for which they may be used.

## Existing Recreational Opportunities on State Land

All states offer recreation through state parks. As of 2007, state parks encompassed nearly 6,600 sites on about 14 million acres of land.<sup>55</sup> Though state parks have, cumulatively, a total acreage that is only 16 percent that of the National Park System, state parks receive between two and three times as many visitors as the National Park System.<sup>56</sup> State park lands are open for camping, hiking, swimming, fishing, and other recreational activities. They generate revenue from user fees (fees for entry, parking, and permits), license fees (boat licenses, for example), special taxes, concessions, state general fund money, and federal or private grant funding.<sup>57</sup>



*In New York City, Jamaica Bay is a successful urban park with a large network on recreational spaces.*

*Secretary Salazar joins Mayor Bloomberg for the signing of the cooperative management agreement for Jamaica Bay.*

## Federal Grant Assistance

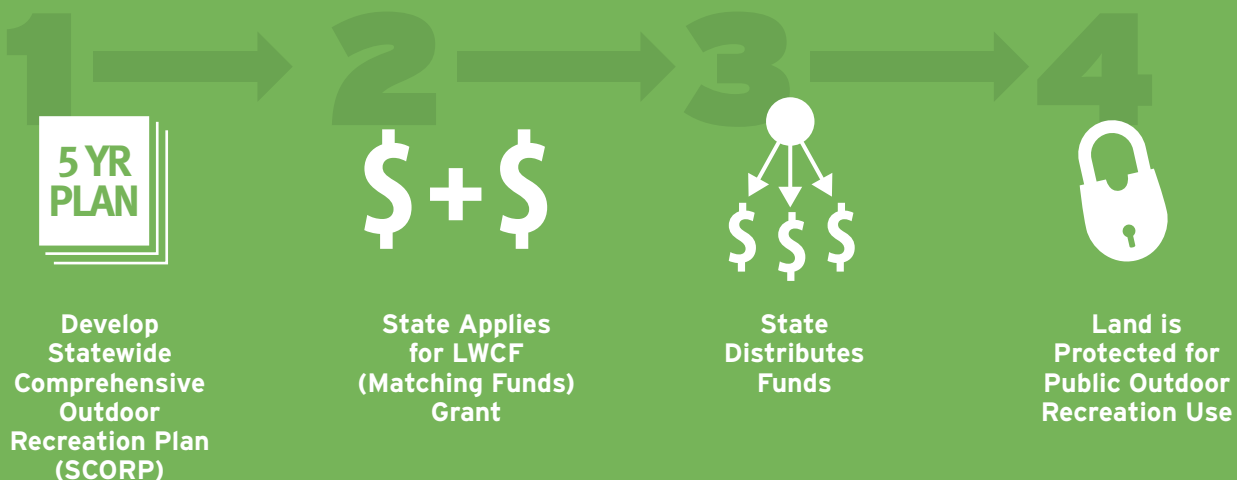
The Land and Water Conservation Fund (“LWCF”) is a federal grants program that provides matching grants to state and local governments to acquire park lands or develop outdoor recreation facilities.<sup>58</sup> The program’s funding comes from proceeds from sales of surplus federal property, motorboat fuel taxes, fees for recreational use of federal lands, and receipts from Outer Continental Shelf mineral leasing.<sup>59</sup>

In order to qualify for LWCF grants, each state must develop a statewide comprehensive outdoor recreation plan (SCORP) that identifies its recreation priorities and opportunities over the next five years. States then apply for LWCF grants that match their SCORP. States distribute the funds according to an open project selection process that uses objective grant selection criteria to ensure that high priority recreation needs identified in the SCORP are met.<sup>60</sup>

A key feature of the LWCF is the protection it provides to the parks and recreation facilities developed through its funding. The program prohibits any property acquired or developed with the assistance of LWCF funding from being converted to anything other than public outdoor recreational uses, without the approval of the Department of the Interior. The secretary of the interior may approve a conversion only if it is consistent with the SCORP and if other recreation properties of at least equal fair market

value and of reasonably equivalent usefulness and location are substituted for the LWCF-funded property.<sup>61</sup> For example, in the 1960s, the city of North Las Vegas used LWCF funds to create a park and golf course in a blighted area. Four decades later, the city had grown to a point where it needed a new fire station for area residents. The city sought to convert a small portion of the park’s picnic area and open space for fire station use. The Department of Interior allowed the parks department to trade property with the fire department in order to establish a new park in a neighborhood with increasing housing density. Thus, the program protects the federal investment, while allowing local governments the flexibility to respond to changing circumstances and community needs.<sup>62</sup>

Since 1965, over \$3.7 billion has been distributed for the acquisition, planning, and development of parks and outdoor recreational facilities in all 50 states, the District of Columbia, and American territories. State and local governments have matched this federal funding, bringing the total LWCF grant investment to \$7.4 billion. Over 10,000 state and local projects have created approximately 2.6 million acres of park land and an additional 29,000 projects have developed outdoor recreational facilities. Locally sponsored projects have received approximately 75 percent of the funds.<sup>63</sup>



## Opportunities and Strategies for Increasing Access to State Land

Communities have additional opportunities to access state lands for recreational purposes. Each state's laws set forth the process for obtaining access to state lands, whether by purchasing or leasing surplus lands or by interagency agreement. Some states, including California, New York, and Tennessee, allow the state to enter into agreements with nonprofit agencies to operate and maintain state park land.<sup>64</sup>

In Minneapolis, for example, the Minneapolis Park and Recreation Board is a special district (see page 15 for a discussion on special districts) governed by an independently elected board that oversees the development and maintenance of the Minneapolis Park System. The board leased state land from the Minnesota Department of Natural Resources to construct a large, top-of-the-line sports facility that includes eight soccer fields, three softball fields, two baseball fields, youth golf, indoor and outdoor tennis courts, and more.<sup>65</sup>

And in Augusta, Maine, the Capital Area Recreation Association (CARA), a nonprofit organization, leases surplus state land, which it has developed into world-class playing areas for baseball, softball, horseshoes, football, soccer, field hockey, basketball, lacrosse, and cross-country running.<sup>66</sup> This land was originally managed as farm land by the Augusta State Hospital (Maine law authorizes the state Bureau of Land to lease surplus land to nonprofit organizations).<sup>67</sup>

## Land Owned by Local Governmental Entities

Under the U.S. Constitution, the formation of and authority granted to local government rest with the states. All states provide for the formation of local governments and determine how much authority may be exercised by each type of local agency.

### Types of Local Governmental Entities

The major types of local governmental entities are counties, municipalities (generally, cities and towns), school districts, and special purpose districts.<sup>68</sup>

#### General Purpose Entities: Counties and Municipalities

The basic forms of local government are counties and municipalities (cities or towns). These are sometimes referred to as general purpose entities because state law gives them authority to carry out a variety of functions to serve their citizens. Many counties and most municipalities have "police power," the ability to regulate private conduct in order to safeguard and advance the public's health, safety, and general welfare.



*Leasing state land to create sports facilities is a great way to increase opportunities for physical activity.*

## Counties

Counties were initially founded as subordinate agencies of state governments. All 50 states, save Rhode Island and Connecticut, have functioning county governments, though Louisiana and Alaska refer to their counties as parishes and boroughs, respectively. Rhode Island and Connecticut have counties, but not county governments.<sup>69</sup> As of 2012, there were 3,031 counties in the United States.<sup>70</sup> Counties are governed by an elected body, often called a board of supervisors or board of commissioners. Many counties also have a county manager or executive, either appointed by the elected board or directly elected by the county's citizens.

Traditionally, counties act as an administrative arm of the state, providing services locally, including property assessments, maintenance of official records and statistics, and the administration of courts, jails, law enforcement, public health, child welfare, and public benefits. Depending on state law, many counties also act as local governments in their own right. These counties, sometimes referred to as "home rule counties," may pass laws and provide services similar to those of cities, including the operation of parks. Sonoma County, Calif., for example, operates a wide variety of parks, including marinas, campgrounds, sports fields, hiking trails, and dog parks.<sup>71</sup>

Many citizens reside both in cities and counties and may be subject to the laws, benefits, and responsibilities (including paying taxes) of both entities. Others live in unincorporated areas of a county, where no city or town has jurisdiction.

In an unincorporated area, only the county provides services to residents. Generally, residents of unincorporated areas have access to fewer government services, including recreational activities, than those who live within municipalities. In California, for example, many unincorporated areas lack the types of investments (recreational or otherwise) that support healthy neighborhoods and healthy residents, thereby fostering inequity between those who live in unincorporated areas and those who do not.<sup>72</sup> These communities often lack basic infrastructure, such as streets and sidewalks and even clean drinking water. In 2011, the California State Legislature passed a bill to "encourage investment in these communities and address the complex legal, financial, and political barriers that contribute to regional inequity and infrastructure deficits within disadvantaged unincorporated communities."<sup>73</sup>

## Municipalities

Cities, towns, and townships are all forms of municipal governments. In contrast to counties, which traditionally act as arms of state government, municipalities are generally independent local governmental entities, operating for the benefit of citizens within their boundaries. All states have units of municipal government, and the laws of each state establish the procedures for forming municipal governments. As of 2012, the United States has 35,886 municipal governments.<sup>74</sup> In addition, there are about 40 consolidated city and county governments, where cities have consolidated functions and services with their surrounding counties.<sup>75</sup>



*Hiking trails in Sonoma County, California, cover a wide variety of park lands.*

State law governs the extent of power exercised by municipal governments. Municipalities are governed by an elected body, often called a city council, and an executive. In larger cities, the executive is usually an elected mayor. In smaller cities, the council may hire a city executive or manager. In some states, the law allocates extensive “home rule” power to cities, allowing cities considerable autonomy. In other states, cities have less independence.

### **Limited Purpose Districts: School Districts and Special Purpose Districts**

There are two other categories of local governmental entities: school districts and special districts. They are often referred to as “limited purpose” or “special purpose” entities, because they are created for a specific purpose (or purposes) and the law authorizing their creation gives the districts only the powers necessary to carry out that function (or functions). Unlike counties and cities, which carry out a variety of functions necessary for their citizens, these special districts do not have general powers, nor may they pass general laws to regulate citizens.

#### ***School Districts***

State constitutions and laws authorize the creation of school districts. Generally, school districts are independent governmental entities given the power to create and operate schools for a particular area. School districts are generally governed by a board of trustees, usually either elected by the citizens or appointed by another public official, such as a mayor. As of 2012, there were about 12,884 independent school districts.<sup>76</sup>

#### ***Special Purpose Districts***

Each state’s laws authorize the creation of special purpose districts. Special purpose districts are independent governmental entities formed to carry out a specific purpose or purposes. The U.S. Census, which tracks the number of special districts, defines them as “independent, special-purpose governmental units (other than school district governments), that exist as separate entities with substantial administrative and fiscal independence from general-purpose local governments.”<sup>77</sup> As of 2012, there were about 37,203 special districts in the United States, ranging from 17 in Hawaii to 3,232 in Illinois.<sup>78</sup> The laws authorizing the creation of the special district usually enumerate its purpose and provide it with the specific powers needed to carry out its purpose. Those powers may include the authority to raise revenue (by levying taxes or issuing bonds, for example), enter into contracts, employ staff, purchase equipment and supplies, and undertake other activities to carry out their mission.

Special districts provide specific services that are not supplied by existing general-purpose governments (counties or municipalities). Most perform a single function, but in some instances their enabling legislation allows them to provide several, usually related, types of services. The most common functions for special districts to provide are libraries, drainage and flood control, soil and water conservation, parks and recreation, housing and community development, sewerage, water supply, utilities, cemeteries, solid waste disposal, hospitals and other health-related

### ***Texas Municipal Utility Districts: Dual Purpose Districts***

Texas state law authorizes the creation of municipal water districts to supply water for municipal uses, operate sewage systems, control local storm and flood waters, irrigate land, and navigate coastal and inland waters.<sup>79</sup> In addition, the districts are charged with providing “parks and recreational facilities for the inhabitants in the district.”<sup>80</sup> The state recognized that utility districts can be responsible for flood control and conservation of coastal and inland waterways, while also offering recreational opportunities to residents. The West Central Texas Municipal Water District, for example, provides and maintains recreation facilities at its Hubbard Creek Reservoir, including public boat ramps and swimming, camping, fishing, and picnicking facilities.<sup>81</sup>

functions, highways, and air transportation.<sup>82</sup> Some special districts share the geographical boundaries of a city or county; others may encompass several counties.<sup>83</sup>

Most special districts are governed by a board and a board-appointed manager.<sup>84</sup> In 2007, special districts derived about 39 percent of their revenue from charges and fees, approximately 25 percent from other governments, and roughly 13 percent from taxes that the districts levied.<sup>85</sup>

## Opportunities and Strategies for Increasing Access to Local Public Land

### **Existing Recreational Opportunities on Local Public Land**

Many counties and cities operate parks and recreational programs that offer an array of physical activity opportunities for residents. Urban agriculture also presents often-overlooked opportunities for recreation. To learn more about using public land to grow food, see ChangeLab Solutions' publication "Dig, Eat, & Be Healthy: A Guide to Growing Food on Public Property" at [www.changelabsolutions.org/publications/dig-eat-be-healthy](http://www.changelabsolutions.org/publications/dig-eat-be-healthy).

Further, as discussed in this section, "joint-use" or "shared-use" agreements can be used to open or broaden access to property for the benefit of the larger community. To learn more about these types of agreements, see ChangeLab Solutions' joint use resources at [www.changelabsolutions.org/childhood-obesity/joint-use](http://www.changelabsolutions.org/childhood-obesity/joint-use).

One of the best ways to increase access to public land at the local level – and one of the least utilized – is for counties and municipalities to partner with special districts in their jurisdiction. (See the case study in Section 3.) Though recreational partnerships between federal, state, and local governments are common, it is relatively rare for a local public entity, such as a city, to partner with a special district, such as a utility district.

### **Interagency Agreements with School Districts**

Most school districts have playgrounds, gymnasiums, or playing fields, and some even have additional open space, for students' physical education and recreation. Cities and counties located within the same jurisdiction can work with school districts and enter into "shared use" or "joint use" agreements to make these facilities available to citizens after school hours. (See sidebar "Shared Use or Joint Use?" on page 25.) There is no single method for developing an agreement. Successful ones require much thought, effort, and cooperation to overcome a variety of barriers.

### **Interagency Agreements with Special Districts**

Some special districts also own land that could be used for recreation. Cities, counties, and community groups can work with special districts to make that land available to the public. Before proceeding, however, it is helpful to understand some of the potential legal and policy barriers that may prevent a successful outcome.

### ***Potential Legal Barriers to Accessing Special District Land***

Even if a special district has land available, there may be legal constraints that obstruct the district from allowing recreational use of the property. As described earlier, special districts have limited power. Thus, unlike counties and cities, special districts may not exercise powers or undertake activities that are not expressly authorized by their enabling legislation. So, for example, a water utility district that is not authorized to construct and operate park and recreation facilities may not construct and operate a soccer field. Even if the water utility district has land available and use of the land would not impede its other duties, the district cannot lawfully expend funds to construct and operate a soccer field because state law does not explicitly authorize it to do so.



In addition, in some situations, the use of the land for certain types of recreation might interfere with the express purpose of the district. For example, a water utility district that maintains a reservoir for drinking water could find that allowing boating or swimming in the reservoir interferes with its ability to ensure that the water is suitable for drinking.

### ***Potential Policy and Practical Barriers to Accessing Special District Land***

In addition to legal constraints, community members may face other barriers to accessing district land. The district board or employees may have concerns about costs, or about legal liability in the event of harm to individuals who use the land. They may also lack the staff and/or other resources to undertake recreational projects. In other situations, while land might be available in the short term, long-term construction plans might prevent long-term recreational uses.

### **Interagency Partnerships**

Partnerships between special districts and counties, cities, or, in some cases, nonprofit organizations can often solve legal and practical barriers that might otherwise obstruct recreational access to district-owned land. While a special district may not be able to expend funds to build a hiking trail on its lands, a county or city may have the authority to do so. A special district may enter into an agreement with a city or county or nonprofit organization to construct a trail. The agreement may also outline how entities will work out various issues, such as funding and staffing, risk management, and liability. By partnering, the special district can offer access to the land, while the partners can undertake the activities that the district cannot.

In Harris County, Texas, for example, the Harris County Flood Control District oversees the county's streams, tributaries, and rivers, and is responsible for municipal irrigation and flood control<sup>86</sup> as well as for forest conservation and the drainage and reclamation of the county's overflow land.<sup>87</sup> The district partners with local cities, management and improvement districts, and the Harris County government in providing district-owned land for trails, open space, and recreation.<sup>88</sup> The district has agreements with many entities and "encourages multi-use whenever possible as a smart use of land resources and tax dollars, which promotes community values and an enhanced quality of life."<sup>89</sup>

Similarly, the North Tahoe Public Utility District provides sewage and water services to residents of the northern portion of Lake Tahoe in California.<sup>90</sup> The California law under which the district was formed allows public utilities to construct, own, and operate parks.<sup>91</sup> The district operates its own recreation and parks department, which manages the district's park and recreation facilities. In addition, through interagency agreements, the district operates beaches around the lake that are owned by the State of California, the California Tahoe Conservancy, and Placer County.<sup>92</sup> The district is also partnering with Placer County and the California Tahoe Conservancy to construct a two-mile "shared use trail" located on land owned by the California Tahoe Conservancy and the North Tahoe Public Utility District.<sup>93</sup>



*Cities, counties, and community groups can work with special districts to make trails under utility lines available to the public.*

Parties in all levels of government can employ a range of strategies to increase recreational opportunities on public property. Although a governmental entity's level of engagement will depend on many factors, including (1) the availability of public lands, (2) the legal and policy constraints on use of public lands, (3) the entity's authority under federal, state, or local law, and (4) the capacity and capability of the partners involved, public entities can and should play a significant role in making public lands available for recreational uses.

*Public entities can and should play a significant role in making underutilized public lands available for recreational uses.*



It is important for all partners to understand the structure and types of agreements to make public property available for recreational purposes.



## SECTION 2

# Agreements Memorializing Access to Public Land

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*Community access to publicly owned property is usually governed by an agreement, often in the form of a written contract that has been formally approved by the relevant jurisdiction. In some communities, an informal agreement may be sufficient. For example, a city-run youth baseball league may use the playing fields in the neighboring state park without any written agreement. This use may be an historical practice that is recognized and honored by the both the park and the city. But in most situations, the entities involved will want a formal, written agreement.*

The transfer of property rights (and the type of agreement documenting such transfers) are often confusing and misunderstood. In this section, we explain the basics so individuals and communities can more efficiently work with public agencies to make public property available for recreational purposes. Keep in mind that property and contract laws vary considerably by state and locality. Therefore, we recommend that you consult a lawyer licensed to practice in your state for more information on how to move forward in your community. In most cases, the partnering government agency will select the appropriate legal means to achieve the shared goal, but it is important for all partners to understand the structure and content of common types of agreements.

## The “Bundle of Rights”

Land ownership is often referred to as a “bundle of rights,” or sometimes a “bundle of interests.” A land owner owns not only the land and the trees on the land, but also the rights the legal system gives to those who own land. These can include the right to possess and use the land (now and in the future), the right to transfer possession and use of the land, and the right to exclude others from use and possession of the land.<sup>94</sup> The landowner also has certain duties that come

with ownership, for example, the responsibility to prevent dangerous conditions that might harm neighbors or those who visit the property, pay property taxes, and abide by other laws that affect the land. When a landowner agrees to let another use her/his property, the two parties need to decide which rights and responsibilities related to the property will be divided, for how long, and whether the transfer of those rights will apply only to the two parties or to future owners and users of the land. Perhaps not surprisingly, the legal system has developed an intricate web of laws to help parties make these decisions.

## Property Ownership

Usually, access to property is classified by the nature and duration of the right of access. In some cases, the transfer of rights is permanent and binds future owners of the land, while in others, it is temporary and the rights are more limited.

Ownership of property is the most secure and permanent way to achieve a permanent right of access to property. Property owners have the most complete “bundle of rights,” now and in the future. But buying property is expensive and often impractical, especially in densely populated cities where available land is scarce and where public and private interests often compete for use of the land.

In certain circumstances, however, obtaining ownership of property may be the best option for a community. As discussed earlier, the Federal Land to Parks Program allows a city or state to acquire surplus federal land for parks or recreational use at no cost. For example, in the 1970s, the Federal Veteran’s Administration transferred 27 acres of land to the City of Los Angeles, to develop Westwood Park. Westwood Park now contains picnic grounds, a jogging trail, a soccer field, a softball/baseball field, and a recreation facility with an indoor pool, clubroom, and numerous amenities and equipment.<sup>95</sup> Similarly, an abandoned 6.7-acre railway corridor was acquired by Tampa, Fla., in 2002. The corridor is now part of the South Tampa Greenway Project, a recreational trail that is still in development, and will be dedicated for walking, bicycle riding, and in-line skating.<sup>96</sup>

## Easements

An easement is an interest in (or right to use or control) land owned by another person for a specific limited purpose.<sup>97</sup> The most typical type of easement is a “right-of-way,” the right to drive over another’s land to access a public road. Generally, an easement is said to “run with the land” or “run with the title,” which means that the right to use the land continues to exist even when the land is transferred to another person. Because an easement is a limited interest in the use of land, the one who benefits from the easement typically has no additional right to possess, take from, improve, or sell the land.

### ***What about Informal Agreements?***

In some communities, different entities may share resources without a formal agreement. Particularly where arrangements are long-standing, this relationship may work without problems. But, in most situations, formalizing the arrangement will benefit both the agencies and the public.

First, a signed contract provides each party with enforceable rights. Informal agreements are also dependent upon the goodwill of those who make them. When key personnel change, agreements may be abandoned. Further, the process of negotiating and signing a contract provides a vehicle for parties to learn about each other’s expectations and concerns, address those concerns, and ensure that everyone understands and agrees to the terms of the relationship.

The development of the contract allows the parties to better understand their rights and responsibilities so that fewer conflicts arise, and disputes that do occur can be more efficiently solved.

## Conservation Easements

A particular type of easement that is relevant to recreational activity is called a conservation easement. A conservation easement is a permanent public interest in a property, obligating the owner to preserve and protect some feature or features of the property – such as its natural resources, animal habitat, air quality, water quality, historical integrity, scenic beauty, and/or open spaces – and to keep the property available for recreational, agricultural, forest, or open-space uses.<sup>98</sup> These types of easements “run with the land” (or property title), ensuring that the protections remain in place regardless of who may own the land in the future.<sup>99</sup> The easement may be held by a qualified nonprofit entity, such as a land trust, or by a government entity.<sup>100</sup>

Conservation easements are regulated by both federal and state law. They are entered into voluntarily through negotiations between the landowner and the government entity or nonprofit organization holding the easement. They offer benefits to both the public and the landowner. The public benefits from the preservation of the property for outdoor recreation or education, habitat protection, the preservation of open space, and/or historic preservation. And landowners who convey a conservation easement as a charitable gift are eligible for a federal charitable income tax deduction.<sup>101</sup> Some states may also offer financial or other benefits to landowners, such as immunity from tort liability for injuries occurring on the property.<sup>102</sup>

The state of Maine, for example, has used conservation easements to greatly expand property available for recreational use. To date, over 550,000 acres of land have been preserved through the Land for Maine's Future Program,<sup>103</sup> and about half of those acres have been acquired through conservation easements.<sup>104</sup> In total, Maine has expanded six state and regional parks, conserved 36 working farms, and preserved 1,200 miles of waterfront land and 158 miles of recreational trails derived from abandoned rail line corridors.<sup>105</sup>

Some communities have used conservation easements to access property for the purpose of creating community gardens. Troy Gardens, in Madison, Wisc., is an example of a conservation easement, established over property owned by the Madison Area Community Land Trust, to protect land for use as a community garden, among other things.<sup>106</sup>



*A conservation easement requires the owner to preserve and protect some feature of the property and to keep it available for recreational, agricultural, forest, or open-space uses.*

## ***What Is a Contract? What's in a Name?***

**A CONTRACT** is an articulated agreement between two or more persons or entities that creates legally binding obligations on all parties to the agreement.<sup>107</sup>

If one party fails to carry out his or her obligations under the contract, the other party has a remedy. The wronged party may go to court, and if he or she prevails, the court can order the nonperforming party to pay damages (money to compensate for the nonperformance) or to carry out his or her obligations under the contract.

A contract may be verbal or written, but people usually use the term to refer to written agreements. There are many types of contracts and people use a variety of names for them. A grant is a type of contract, as is a lease, a license, a permit, and even the ticket or receipt you receive when parking in a garage. Contracts may memorialize agreements between individuals, businesses, or different governmental entities.

Sometimes government entities use the term “agreement” or “memorandum of understanding” for contracts with other governmental entities. (See ChangeLab Solutions’ fact sheet “Contracts and MOUs: Understanding Key Terms” at [www.changelabsolutions.org/publications/MOU-contracts](http://www.changelabsolutions.org/publications/MOU-contracts).) These agreements may still be contracts, but as a matter of history or practice, government agencies may prefer the term “agreement.” What the document is called is not always as critical as the intent of the parties and the terms of the document that set forth the privileges and obligations of each party.



## Other Ways to Access Land

When community members seek access to publicly owned land for recreational uses, a permanent land transfer is often impractical or impossible. Usually, the community doesn't need to own the land; it just needs to use or access the land. A number of legal vehicles can enable that use or access.

### Lease

A lease is a contract in which the owner (e.g., a public entity) conveys the right to use and occupy the property to another person or entity (e.g., a gardening group), in exchange for something of value — typically rent. The lease can last for the life of one party, a fixed period of time, or until either party decides to terminate the lease.<sup>108</sup> Anyone who has rented an apartment is familiar with the term “lease” and understands that the lessee — the one who leases — has the right to solely occupy and use the property for the duration of the lease. The landlord can terminate the lease if the lessee violates the terms of the lease.

### License or Permit

A license is a contract in which a property owner gives a person or entity permission to engage in a particular act (or series of acts) on the property.<sup>109</sup> A license allows a more limited use of property than does a lease. Under a lease agreement, the lessee usually has the sole right to occupy the land, with the landowner having very limited rights of entry. Under a license agreement, the licensee — the one who holds the license — does not have sole right to occupy the land. The licensee has authorization to enter the land solely for the duration and activities specified by the license.

Anyone who has ever reserved a campground or picnic site is familiar with the term “permit.” A license and a permit are, essentially, the same thing. A permit holder has the temporary right to engage in the activities stated in the permit — such as to camp in a particular place in a park for the length of the permit. The permit allows the permit holder to engage in certain activities, but it doesn't give an exclusive right to occupy the park. The park rangers can enter the land and other campers can walk through and use the site (although the site capacity is generally limited by park rules).

In practice, most permits are forms that the permit holder completes and signs. A government entity usually uses permits as part of a standardized process for authorizing use of its facilities. For example, a Little League may obtain a permit from a city to use the city's fields for its league games or an individual may get a permit for camping in a park.

Licenses usually look more like contracts, with various clauses spelling out the privileges and obligations of both parties. Licenses are often used for longer-term or more specialized agreements.

For example, San Francisco's city recreation and parks department has a license to operate a playground located on the San Francisco Presidio, a former military base that is now a national park.<sup>110</sup> And as described in the case study in Section 3,



*Sports teams may obtain a permit from a city to use the city's fields for their games.*



a license agreement between the East Bay Municipal Utility District (EBMUD), a special district, and the City of Lafayette, along with a sublicense agreement between the City of Lafayette and a local nonprofit, allow a community garden to operate on EBMUD-owned land.

### Interagency Agreements

Another way to increase community access to park or recreational facilities is through an inter-agency agreement between two governmental entities to cooperatively construct or share use of a facility. Joint-use libraries are one of the earliest examples of inter-agency shared facilities. Towns and cities have constructed libraries at public schools and college sites for use by both residents and students. In San Jose, Calif., for example, San Jose State University and the city share use of one library.<sup>11</sup> This intergovernmental cooperation benefits both the entities and the taxpayers. Both groups have access to a new facility, but taxpayers pay for one building instead of two. Generally, the state law authorizing the construction of the facility stipulates specific procedures and funding mechanisms for entering into such arrangements.<sup>12</sup>

Cities and school districts (or other governmental entities) can also share use of already existing facilities. For example, in Seattle, the city parks and recreation department and the school district have pooled their recreational facilities to increase access for both students and city residents.<sup>13</sup> These types of agreements are sometimes referred to as “shared use agreements” or “joint use agreements.” To learn more about these types of agreements, see ChangeLab Solutions’ joint use resources at [www.changelabsolutions.org/childhood-obesity/joint-use](http://www.changelabsolutions.org/childhood-obesity/joint-use).

### *Shared Use or Joint Use?*

The terms “shared use” or “joint use” are more loosely descriptive than specifically defined legal terms like “lease” and “license.” In essence, a shared use or joint use agreement is a type of contract, typically between two governmental entities, that sets forth the rights and obligations of each party regarding shared use of a property or facility.

These arrangements usually rely on the goodwill of the parties to carry out their obligations. And while the arrangements can be legally enforceable, if there is a conflict the parties are more likely to negotiate a compromise or abandon the arrangement than to seek legal recourse. Shared use is a winning strategy because it maximizes the use of publicly funded resources to benefit the community.

“The garden is not so much about the produce; it’s more about community. We wanted a great space where the community can come and enjoy the natural setting of the creek and oaks.”<sup>114</sup>



### SECTION 3

# Case Study: Lafayette Community Garden

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*In less than one year, with the invaluable help of volunteers, a dedicated group of community gardeners transformed a utility maintenance yard covered in poison oak and a “tangle of weeds” into a thriving community garden in Lafayette, Calif.<sup>15</sup>*

## History of the Lafayette Community Garden

After searching a few years for a suitable community garden site, Janet Thomas and the other members of the Lafayette Community Garden (“LCG”) Advisory Group settled on a long rectangular parcel owned by the East Bay Municipal Utility District (a special purpose district known as “EBMUD”), located on a main thoroughfare just outside of downtown Lafayette. This central location made the property ideal for accomplishing one of the group’s primary goals: providing gardening space for Lafayette’s apartment dwellers, most of whom live in the core of the city. Though the site is located on a busy road, the advisory group appreciated that it was surrounded by oak trees and adjacent to a creek. The group judged that they could successfully buffer the spot from the noise and dust of the road by planting native, drought-tolerant plants along the fence.

## The Parties and the Agreements

When first approached about turning the property into a community garden, EBMUD was using the site as a staging area for construction at a nearby reservoir. The site had previously been a parking lot and staging area for other EBMUD projects. EBMUD viewed the site as a key buffer between the road (and the public) and a water filtration plant on the other side of the creek.

EBMUD was open to the idea of developing the property into a community garden, but only so long as it did not interfere with operations at the water filtration plant, and only if EBMUD could deal directly with the city of Lafayette. EBMUD preferred to contract with the city because it was a public entity that it had dealt with in the past and “knew would perform.”

City officials – from the mayor to the city council to the planning department – were very supportive of the idea of the garden, especially because it would give preference to apartment dwellers. However, the city was unwilling to assume the responsibility and potential liability that came with operating or officially sponsoring the project. As Niroop Srivatsa, the city’s planning and building services manager, put it, the challenge for the city was to “figure out how to fit this very worthy task within the functions of the city given our financial constraints.” The city decided it was willing to be a partner on the project, but would need an organized, legal entity, such as a nonprofit organization, to partner with.

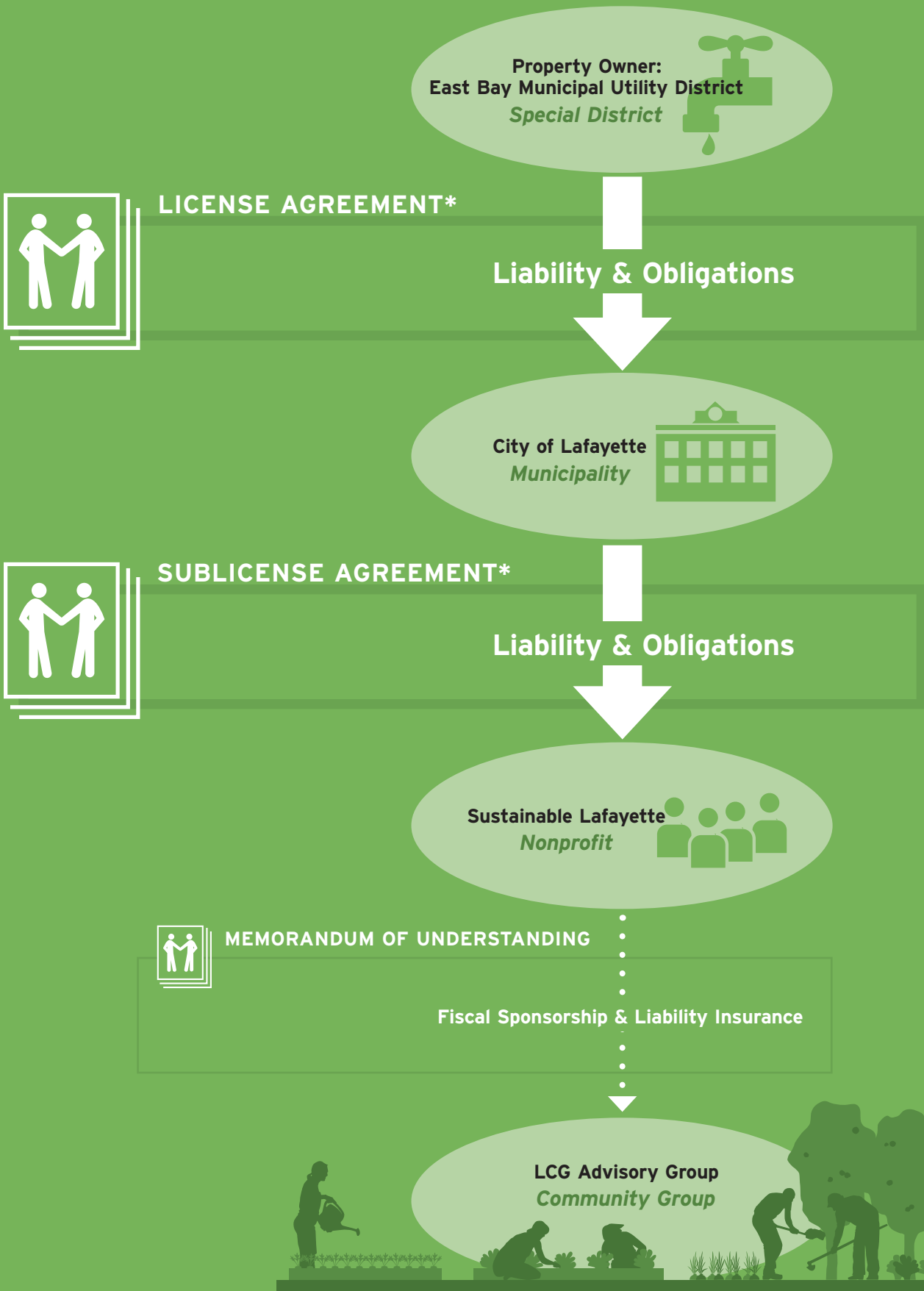
The LCG Advisory Group was not ready to form its own nonprofit entity, but many in the group were also active in Sustainable Lafayette, a local nonprofit that facilitates the activities of a network of residents and organizations committed to making their community more sustainable. The city was comfortable partnering with Sustainable Lafayette, in part because the organization had already successfully established a farmers’ market in the city on property owned by a regional transit district. Because the community garden fit well within its mission, Sustainable Lafayette agreed to treat the LCG as its own “direct project,” acting as fiscal sponsor and providing the required insurance.

The ensuing negotiations resulted in a set of written agreements between EBMUD, the City of Lafayette, Sustainable Lafayette, and the LCG Advisory Group. Not every project that makes use of public property for community recreational purposes will require such complex multi-party agreements. In other cases, a special district may be willing and able to contract directly with a nonprofit, or the city may simply be willing to sponsor a project. That said, the LCG is an example of building upon existing relationships and agreements to creatively address the needs and concerns of everyone involved.



*The Lafayette Community Garden, located just outside of downtown Lafayette on special district property, provides gardening space for community members.*

# Meeting the Needs of Multiple Stakeholders



\*See the Appendix on page 39 to review the agreements.

## License Agreement between EBMUD and the City of Lafayette

EBMUD negotiated directly with the city of Lafayette, which in turn handled communications with the LCG Advisory Group. The city of Lafayette and EBMUD had existing license agreements in place related to EBMUD-owned property in other parts of the city. They used these existing license agreements as a template for a new license pertaining to the LCG site. Because EBMUD needed (and still needs) ongoing access to the property for operations at the nearby filtration plant, a license agreement was more appropriate than a lease, which would have given exclusive rights of use and occupation to the LCG Advisory Group.

Under the terms of the license agreement, the city generally agrees to assume the legal risk in the event of property damage or injury. Specifically, the city agrees to:

1. take on the obligations and liabilities of the garden
2. indemnify EBMUD (that is, take on the obligation to pay for any loss or damage that might be associated with the garden)
3. pay an annual \$2,000 license fee
4. provide liability insurance

Importantly, the agreement also allows the city to transfer these obligations to Sustainable Lafayette through a sublicense agreement.

## Sublicense Agreement between the City of Lafayette and Sustainable Lafayette

Because the city agreed to act only as the “middleman” between EBMUD and the LCG Advisory Group, the city and Sustainable Lafayette entered into a sublicense agreement. The sublicense repeats most of the terms found in the license and, most importantly, transfers the liability and obligations taken on by the city in the license agreement to Sustainable Lafayette.

## Memorandum of Understanding between Sustainable Lafayette and the LCG Group

Sustainable Lafayette and the LCG Advisory Group also entered into a memorandum of understanding (“MOU”) outlining the roles and obligations of each group with respect to the garden. The MOU designates the LCG as a “direct project” of Sustainable Lafayette, thus qualifying it for liability insurance and fiscal sponsorship. The LCG Advisory Group gives 7 percent of any funds it raises to Sustainable Lafayette, to cover the costs associated with sponsorship and insurance.

### ***EBMUD's Powers as a Special District***

EBMUD is a special purpose district organized under California's Municipal Utility District Act.<sup>16</sup> Its primary purpose is to provide water and sewage treatment services to the residents of Alameda and Contra Costa Counties. As a special district, EBMUD's powers and activities are limited by state law. EBMUD's power under California law to directly operate public recreational facilities is limited to facilities at its reservoirs,<sup>17</sup> which does not include the LCG site. However, California law grants municipal utility districts broad authority to enter into contracts, including contracts for the use of their property.<sup>18</sup> As discussed in Section 1, not all special districts have this kind of authority under state law.

# Special Considerations of the Site

In planning the garden and negotiating the agreements, the parties had to take certain considerations of the site into account.

## Tenure

EBMUD has future plans to build two major pipelines through the site. The timing of the pipeline project is not set in stone, but construction will start some time in the next five to eight years. For this reason, the license agreement is for five years, and EBMUD took great pains to emphasize to the advisory group and to the city that the LCG will be a temporary project, at least at its current location. The advisory group hopes that it will be able to remain on the current site for longer than five years – and would not have gone forward with the site for a shorter period of time – but has nonetheless taken the short-term nature of the current arrangement into account when making improvements.

## Creekside Location

The garden is next to a local creek. As property owner, EBMUD has certain legal obligations to prevent any contamination of the creek. If any contamination of the creek occurs, EBMUD faces large fines, especially if fish breeding is disrupted. Because of concerns over contamination of the creek, EBMUD considered requiring special pollution insurance, the cost of which would have been prohibitive for the LCG Advisory Group. However, EBMUD’s risk managers eventually decided that the special insurance was not necessary because the risk of creek contamination from the organic garden was extremely remote. Just to be safe, garden members keep straw wattle placed all along the base of the creekside fence line.

*Negotiating the agreements required considerable planning by all parties involved: the city, special district, nonprofit, and community group.*



## Community Connections

Much of the quick success of the LCG can be attributed to the generous support of the larger community. Volunteers, including church and youth groups, cleared the lot and built a temporary deer fence, tool shed, greenhouse, compost structure, and raised beds. In the future, local youth plan to build picnic tables, benches, and a nature path as Eagle Scout service projects. Individuals and local businesses have also donated time, services, and supplies. A local contractor provided the labor, equipment, and materials for the curb cut of the new driveway into the parking area. A local landscaping supply store gives the LCG Advisory Group a generous discount. A local plumber donated the labor required to install a drip irrigation system. A nearby community college donated the plant starts left over from its annual plant sale, which accounted for most of the garden's first-year plantings. A ceramics artist crafted nature-themed tiles for sale at an Earth Day event and donated the proceeds. This outpouring of support is in many ways a testament to the community's respect and admiration for Janet Thomas, the LCG project director, and her husband, both retired high school teachers and long-term residents with deep roots in the community.

### ***And There's More ... Creating the Aqueduct Right-of-Way Trail***

The LCG is on a portion of a much larger parcel of land owned by EBMUD that runs through Lafayette's downtown core and is known as the Aqueduct Right-of-Way ("ROW"). The city has long wanted to develop a pedestrian and bike path along the ROW that will eventually connect to a planned larger regional trail network!<sup>19</sup>

The city has been working with EBMUD, and other public entities with property adjacent to the ROW, including CalTrans (the State Department of Transportation, which manages the state's highways) and Bay Area Rapid Transit (a special purpose transit district) to make the plan a reality. Any development of the trail will require agreements with all of these entities. A feasibility plan was recently completed<sup>120</sup> and the city is actively looking for funds for construction and maintenance.

It is likely that the project will develop in segments as funding becomes available. The city anticipates that the first segments will be constructed as part of private development projects planned for sites adjacent to the ROW.



Publicly owned property is an untapped resource for communities that seek to increase opportunities for physical activity.



## SECTION 4

# Next Steps: Accessing Public Property for Recreational Activity

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*Greater and more equitable access to publicly owned recreational space is critical to increasing opportunities for physical activity and ultimately reducing obesity rates. Efforts to acquire and develop additional recreational facilities should focus on neighborhoods and population groups that currently have the fewest opportunities to engage in physical recreation.*

*A health impact assessment (HIA) analyzes the potential health effects of a policy, project, or decision. The HIA process identifies unintended impacts of a proposed project and shows how different segments of a population could be affected. Given the complexities and broad range of issues involved with turning public property into active recreational space, an HIA can be an effective tool for balanced and well-informed decision making.*

For some communities, a health impact assessment can be an effective way to determine which neighborhoods have the greatest need for recreational space. Using data collected from a statewide comprehensive outdoor recreation plan (see page 12) may also be helpful. Regardless of the method used, the impact of any potential land used for recreational activities should be assessed to avoid unintended negative consequences on surrounding communities.

Publicly owned property is a rich, largely untapped resource for creative and resourceful communities that seek to increase opportunities for recreational physical activity. Equipped with a thorough understanding of the legal and policy framework governing public property ownership and the types of agreements that can facilitate access to public property, communities can take the necessary steps to make recreation on public property a reality. Whether it is trails, bike paths, greenbelts, playgrounds, sports fields, or gardens, these facilities need to be accessible and open to all in order to have the strongest and most positive impact.<sup>121</sup>

Below are the essential tasks required to partner with public agencies in developing and expanding access to recreational activity.

## Locate Potential Property

- ▶ Identify the public agencies in your area, including any special districts, that own unused or underutilized property.
  - Do any of the agencies maintain publicly available inventories of potentially available property?
  - If not, is there an opportunity to partner with a public agency to inventory potential property?
- ▶ Work with the public entity to identify all unused or underutilized property that you might wish to access for recreational activity.

## Investigate the Property

- ▶ Who owns the property?
- ▶ Who is responsible for maintaining and managing the property?
- ▶ Are there legal barriers to using the property?
  - Does the zoning designation allow for recreation?
  - For special district property, is the district authorized to use the land in the proposed way?
- ▶ Are there practical barriers to using the property?
  - Is the site suitable for access by all population groups, including those with physical limitations, families, the elderly, children, etc.?
  - Is there public access to the site (or is it surrounded by private property with no public ingress and egress)?
  - Is the site suitable for the proposed use?
  - Is the site currently in use? How so?
  - Who are the current and future users of the site?
  - What structures currently occupy the site?
  - Are there safety considerations/concerns with the site (i.e., equipment in disrepair, poor lighting, criminal activity, etc.)?
  - How does one access the site? Public transit? Private vehicle? Walking/ bicycling?
- ▶ Is the site available for long-term use, or only for a shorter term?

## Build Coalitions

- ▶ Meet with staff members of the public agency that owns the property (public health, planning, parks and recreation, public safety, etc.).
- ▶ Meet with public officials (board members, city council members, etc.) who have decision-making power over the property.
- ▶ Identify community partners (community-based organizations, parks and outdoors groups, recreation groups, youth organizations, merchants, residents) to build alliances.
- ▶ Engage and collaborate with community members and affected parties to assess the impact of the proposed use.

## Prepare Your Proposal

- ▶ Is the initial proposed idea still viable and economical in light of the above-mentioned steps?
- ▶ If yes, work with stakeholders to reach an agreement on key issues such as liability, indemnity, costs, fees, security, access, and maintenance.
- ▶ If no, revisit the proposal details and make any necessary changes.

## Stay Involved – From Proposal to Approval

- ▶ Provide research and models to staff and officials.
- ▶ Attend public meetings and voice support for the project.
- ▶ Fundraise and provide volunteer hours.
- ▶ Work with your coalitions to generate community and local business support for the project.

## Keep the Momentum

- ▶ Big projects take time – don't be discouraged!
- ▶ Sometimes projects require in-depth financial, environmental, or other types of analyses.
- ▶ Sometimes projects require multiple public meetings and approvals.

## Sustain Progress

- ▶ Keep track of when any agreements or approvals expire or need to be renewed.
- ▶ Support continuation of project(s) by gathering useful data, taking surveys, etc.



## APPENDIX

# Lafayette Community Garden Agreements

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*For your reference, we have included copies of the license and sublicense agreements between the various partners involved with the creation of the Lafayette Community Garden. These documents provide real-world examples of provisions that are commonly found in agreements between local public entities and nonprofit organizations. ChangeLab Solutions has a variety of resources to help understand and work through agreements with public entities. To learn more, visit our website at [www.changelabsolutions.org](http://www.changelabsolutions.org).*

# License Agreement

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), made and entered into as of the 27<sup>th</sup> day of February, 2012, by and between EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation organized and existing under the laws of the State of California, hereinafter called Licensor, and CITY OF LAFAYETTE, hereinafter called Licensee.

### WITNESSETH:

THAT Licensor, for a good and sufficient consideration as hereinafter specified, and in further consideration of the faithful performance by the Licensee of each and all of the covenants, agreements and conditions herein contained, does hereby give to Licensee a license for a period of five (5) years beginning on March 13, 2012 and ending on March 12, 2017 ("Term"), for community gardens uses and related educational events and workshops related to sustainable gardening practices upon the property of Licensor in the County of Contra Costa, State of California, as shown on Exhibit "A" ("Property") attached hereto and made part hereof.

This License is given by Licensor and accepted by Licensee upon the following terms and conditions:

1. **CONSIDERATION:** In consideration for the rights herein granted, Licensee shall pay to Licensor an annual license fee upon execution of this Agreement and yearly thereafter on the anniversary date of the Agreement. The annual license fee shall be \$2,000 the first year of this Agreement. Effective on the anniversary date in 2013, and for each one-year period thereafter during the Term, the annual license fee will be adjusted upward or downward in the same percentage that the Consumer Price Index (CPI) average for all Urban Consumers in the San Francisco-Oakland, California area has increased or decreased since publication of said CPI for the month of February. The license fee for each adjusted annual payment period becomes the base license fee for computing subsequent adjustments.
2. **TITLE:** Licensee hereby acknowledges the title of the Licensor in and to the real Property and agrees not to assail or to resist said title during the Term. Any and all rights granted or implied by this License shall be subordinate to the Licensor's use of the Property.
3. **INTERFERENCE WITH ONGOING OPERATIONS:** Licensee further agrees that its use of and all work upon or in connection with the Property shall at no time and in no way whatever interfere with the operations of Licensor, and that the construction, reconstruction, operation, maintenance, repair and use of said community garden and all work in connection therewith, together with the operation and supervision of said community garden, shall at all times be performed by Licensee to the reasonable satisfaction of Licensor. Licensee acknowledges and agrees that Licensor shall have the right to temporarily suspend or limit the use of Property by Licensee during such periods of time as Licensor determines that such suspension or limitation is necessary in the interest of public safety or for the construction, operation or maintenance of any Licensor facility, existing or planned. Should such suspension

# License Agreement

## LICENSE

or limitation be necessary, Licensor shall provide Licensee thirty (30) days prior written notice except in cases of emergency as declared by Licensor. During such time of suspension, Licensor shall make a good faith effort to provide Licensee access to the community garden for the sole purpose of conducting basic maintenance and watering of plants unless public safety would otherwise preclude such access. Upon completion of any work by Licensor within the Property, Licensor shall not be liable for the restoration of any facilities or improvements installed by Licensee. Licensee acknowledges and agrees that in the event, Licensor reasonably requires some permanent use of the Property for the construction, operation and maintenance of any Licensor facility which, by the nature thereof, precludes Licensee's use of the Property, Licensor may, upon ninety (90) days' prior written notice, revoke this License as to the area reasonably required for such permanent use. **Licensee further agrees to have Sustainable Lafayette provide a written acknowledgement of the revocation provisions by the commencement date of this License.**

4. **USE:** Licensee further agrees that the Property shall be used for non-profit community garden purposes only and for no other purpose whatsoever. In its operations on the Property, Licensee shall not discriminate against any person because of race, creed, color, sex or national origin.

5. **USAGE FEES:** Licensee agrees that said community garden uses on the Property shall be operated without profit to Licensee; however, Licensee may charge any reasonable fee deemed proper or necessary to recover the costs of the operation, maintenance and supervision of said community gardens and its appurtenant facilities and equipment; provided, however, that any such fee shall be uniform in its operation as to all persons allowed to use said community gardens.

6. **IMPROVEMENTS:** Licensor reserves the right to approve any changes to the Property and Licensee agrees not to construct or place any improvements or commence with any plantings upon the Property without first obtaining written consent from Licensor, which shall not be unreasonably withheld, conditioned, or delayed. Licensee shall submit detailed plans to Licensor for Licensor's review and approval. Licensee further agrees to maintain in safe operating condition the community garden facilities which may be constructed on the Property and to provide adequate supervision over said community garden uses all at the expense of Licensee. No permanent structure shall be placed, installed or constructed on the Property by the Licensee.

7. **OPERATIONAL COSTS:** Any fencing signs or guard patrols determined by Licensee to be necessary for protection of the community garden users on the Property will be installed at the expense of Licensee. Licensee further agrees to pay for all water, power, telephone, or other utilities or services required or used in connection with the operation of said community gardens and to pay the costs of any extensions required to provide same. Licensee acknowledges that Licensor will NOT provide water, power, telephone or other utilities or services to the Property from its neighboring treatment plant facility.



# License Agreement

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8. **MAINTENANCE:** Licensee hereby agrees at its expense promptly to provide and maintain all necessary sanitary facilities; said sanitary facilities and the plans therefore to be first approved in writing by Licensors, and to keep Property at all times in a clean, safe and sanitary condition free from waste and to permit no accumulation of waste waters, rubbish or garbage thereon, all to the reasonable satisfaction of Licensors. For the purposes of this License, manure, compost, and compost piles for community garden purposes do not constitute "waste".

9. **INDEMNITY:** Licensee expressly agrees to indemnify, defend and hold harmless Licensors, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of Licensee's operation or performance under this License, including discharges (planned or unplanned) into the adjacent Lafayette creek. It is understood and agreed that Licensee shall indemnify and hold harmless Licensors, its directors, officers and employees from any injury to the public and to individuals using the community gardens except to the extent such injuries are caused by Licensors' gross negligence or willful misconduct.

Licensee shall be responsible to Licensors for any damage to the Property and assumes all risk of damage to any property of Licensee or any property under the control or custody of Licensee while upon the Property or in proximity thereto, caused by or contributed to in any way by the operation, maintenance, repair or use of the Licensors' facilities or improvements, if any. Licensee further agrees to indemnify and hold harmless Licensors from any damage or loss to Licensors' facilities, if any directly or indirectly contributed to or caused by Licensee's operation or performance under this License. Licensee is responsible to report any discharges (planned or unplanned) into the adjacent Lafayette creek to Licensors and to all applicable regulatory agencies.

10. **INSURANCE:** Licensee shall take out and maintain during the term of this License all the insurance required by this section and shall submit certificates ("Certificates") for review and approval by Licensors. The Certificates shall be on the forms provided by Licensors. Acceptance of the Certificates shall not relieve Licensee of any of the insurance requirements, nor decrease the liability of Licensee. Licensors reserves the right to require Licensee to provide insurance policies for review by Licensors. In lieu of evidence of any insurance, Licensors will accept a Self-Insuring Certificate from the State of California.

10.1 **Worker's Compensation Insurance:** Licensee shall maintain Worker's Compensation and Employer's Liability Insurance during the term of this License for all of its employees on said community gardens. Such insurance shall be endorsed to provide that the insurance company or companies waive any right of subrogation against Licensors which might arise by reason of any payment under the policy or policies. In lieu of evidence of Worker's Compensation Insurance, Licensors will accept a Self-Insuring Certificate from the State of California. In the event of such self insurance by Licensee, Licensee agrees to waive any right of

# License Agreement

## LICENSE

subrogation against Licensor which might arise by reason of any payment under Licensee's self insurance program. Licensee shall require any contractor to provide it with evidence of Worker's Compensation and Employer's Liability Insurance, all in strict compliance with California State Laws.

10.2 **Public Liability Insurance:** Licensee will take out and maintain during the term of this License Comprehensive Automobile and Commercial General Liability Insurance that provides protection from claims which may arise from operations or performance under this License. Licensee shall require any contractor to provide it with evidence of the same liability insurance coverage. The amount of insurance shall be not less than \$1,000,000 for Single Limit Coverage applying to Bodily and Personal Injury Liability and Property Damage.

10.3 **Endorsements:** The following endorsements must be indicated on the certificate:

- a. Licensor, its Directors, officers and employees are named as Additional Insureds in the policy as to any operations performed under this License;
- b. The coverage is primary and non-contributory to any other insurance carried by Licensor;
- c. The policy(ies) cover(s) contractual liability;
- d. The policy(ies) is (are) written on an occurrence basis;
- e. The policy(ies) cover(s) Licensor's real property in the Licensee's care, custody and control;
- f. The policy(ies) cover(s) personal injury (libel, slander, unlawful entry and eviction) liability;
- g. The policy(ies) cover(s) products and completed operations;
- h. A policy to cover use of owned, *non-owned*, and *hired* automobiles and equipment;
- i. The policy(ies) shall not be canceled nor reduced unless 30 days' written notice is given to Licensor.

10.4 **Failure of Coverage:** Failure, inability or refusal of Licensee to take out and maintain during the entire term of terms of this License any or all of the insurance as foresaid shall at the option of Licensor constitute an immediate breach of this License.

# License Agreement

## LICENSE

10.5 **Revisions of Insurance:** As circumstances change during the life of this License, Licensor may from time to time request, and Licensee agree to provide, reasonable revisions in the foregoing insurance requirements sufficient in to provide adequate protection for both Licensor and Licensee.

11. **SUBORDINATION:** All rights herein given are subject to all existing rights, right of way, reservations and easement by whomsoever held in and to the said real property hereinabove described.

12. **ASSIGNMENT:** Neither this License nor any rights hereunder shall be transferred or assigned by the Licensee, voluntarily or involuntarily, without first obtaining the written consent of Licensor. Upon any such transfer or assignment without Licensor's written consent, Licensor may at its option terminate and end this License and all rights of the Licensee hereunder. Subject to the foregoing provision, the agreement shall be binding upon the successors and assigns of the respective parties hereto.

13. **REVOCATION:** Upon abandonment of all or a portion of the community garden facilities or upon failure by Licensee to perform any of the covenants, agreements or conditions herein contained ("Default"), Licensor will give notice to Licensee indicating Licensee's Default. Defaults would include such failures as but not be limited to: the non-payment of the annual license fee, the non-authorized use of the Property, non-compliance of the maintenance conditions of the Property, and the failure to provide the required insurance coverage. Upon Licensee's receipt of the Default notice, Licensee shall have thirty (30) days to cure such Default. If Licensee fails to cure or commence cure within thirty (30) days, Licensor may revoke the License granted in the Agreement upon giving sixty (60) days' prior written notice to Licensee of Licensor's intention to do so and upon expiration of said sixty (60) day period all rights herein given shall immediately cease and terminate and this Agreement shall terminate. Upon any termination or revocation of this Agreement or of any of the rights of Licensee hereunder, Licensee agrees to promptly remove all of its property and equipment from the Property and to restore the Property as nearly as possible to the condition it was in prior to the commencement of its use by Licensee, with the exception of the parking lot area, which can remain in the condition at the time of termination. .

14. **RENEWAL:** Upon expiration of the TERM of this License, it is the sole discretion of the Licensor that the License can be renewed for a yet to be determined amount of time.

15. **NOTICES:** All notices given under this Agreement shall be in writing and shall be transmitted wither by personal delivery, a reputable overnight courier which keeps receipts of delivery (such as Federal Express), or through the facilities of the United States Post Office (postage prepaid, certified mail, return receipt requested). Any such notices shall be effective upon delivery. Notices of the respective parties shall be sent to the following addresses unless written notice of a change of address has been previously given pursuant hereto:

# License Agreement

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## LICENSE

To Licensee: City of Lafayette  
3675 Mt. Diablo Blvd., Suite 210  
Lafayette, CA 94549  
Attention : City Manager

To Licensor: East Bay Municipal Utility District  
375 11<sup>th</sup> Street  
Oakland, CA 94607  
Attention: Manager of Real Estate Services

16. **ATTORNEY'S FEES:** In the event either party to this License shall bring suit to compel performance of or to recover for breach of any covenant, agreement or condition herein contained in this License, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit.

17. **ACKNOWLEDGEMENT:** Licensee shall install signs acknowledging Licensor's cooperation in providing the Property for a community garden. Licensee shall also install any appropriate informational signage and regulations governing the use of the Property.

18. **ANNUAL REPORT:** Licensee agrees to provide Licensor with an annual report listing activities including construction, reconstruction, maintenance, removal and all work completed by Licensee on the Property during the previous 12-month period. Annual report will be due to Licensor on or before December 31 of each year this License is in effect.

19. **ENTIRE AGREEMENT:** It is understood that this agreement contains the entire agreement between the parties hereto and all prior understandings or agreements, oral or written, of whatsoever nature regarding the License hereby given or the said real property are superseded by this agreement and are hereby abrogated and nullified.

# Sublicense Agreement

## REVOCABLE SUBLICENSE

This REVOCABLE SUBLICENSE AGREEMENT ("Agreement") made and entered into this 27th day of February, 2012 ("Effective Date") by and between the CITY OF LAFAYETTE, a California municipal corporation, ("Licensee") and SUSTAINABLE LAFAYETTE ("Sublicensee"), a nonprofit 501(c)(3) organization which is the fiscal sponsor of the Lafayette Community Garden and Outdoor Learning Center. The parties may, from time to time, be referenced as "Party," individually, and collectively as "Parties."

## RECITALS

WHEREAS, Licensee entered into that certain License Agreement dated March 13, 2012 ("License"), with East Bay Municipal Utility District ("Licensor"), attached hereto as Exhibit "A" and incorporated herein by reference, in order for Licensor to grant Licensee a license for a period of five (5) years beginning on March 13, 2012, and ending on March 12, 2017, to install and operate a community garden upon real property owned by the Licensor generally located at the intersection of Mt. Diablo Blvd. and El Nido Ranch Road, APN 252-060-003, in the City of Lafayette, County of Contra Costa, State of California ("Property"); and further described in Exhibit B ("Property");

WHEREAS, Sublicensee desires to install and operate the community garden on the Property; and

WHEREAS, for the general benefit of the public, Licensee desires to grant such responsibilities to Sublicensee.

NOW, THEREFORE, the Parties agree as follows:

### **1. Grant of Sublicense**

1.1 Licensee, for good and valuable consideration does hereby give, subject to all the terms and conditions listed below, a revocable sublicense to install and maintain a community garden on the Property. Prior to any and all initial community garden installation work or modification thereof, performed by Sublicensee on any portion of the Property, Sublicensee shall submit detailed plans to Licensee and shall not proceed with such work without prior written consent of Licensee and upon the fulfillment of certain requirements set forth in paragraph 1.2, and the provision of verification of insurance coverage as required in Section 8, all to be approved, denied, or conditionally approved in the Licensee's sole and absolute discretion. All costs for landscaping installation, maintenance and operation shall be the responsibility of Sublicensee. Sublicensee shall maintain the Property as specified in Exhibit "B," attached to this Agreement and incorporated herein by reference, for the duration of the Sublicense. Maintenance responsibilities may be further defined should the City approve any community garden plans.

# Sublicense Agreement

1.2 Sublicensee shall receive Licensee's written approval, in Licensee's sole and absolute discretion, of the following requirements prior to any and all initial community garden installation work or modification thereof: (1) a fiscal sponsor; (2) a detailed fundraising plan, the total amount to be raised, the amount collected and the amount remaining; and (3) a detailed funding plan for annual maintenance of the community garden.

1.3 Sublicensee agrees that its use of and all work upon or in connection with the Property shall at no time and in no way whatever interfere with the operations of Licensor, and that the construction, reconstruction, operation, maintenance, repair and use of said community garden and all work in connection therewith, together with the operation and supervision of said community garden, shall at all times be performed by Sublicensee to the reasonable satisfaction of Licensee and Licensor. Sublicensee acknowledges and agrees that Licensor shall have the right to temporarily suspend or limit the use of Property by Sublicensee during such periods of time as Licensor determines that such suspension or limitation is necessary in the interest of public safety or for the construction, operation or maintenance of any Licensor facility, existing or planned. Should such suspension or limitation be necessary, Licensee shall provide Sub licensee thirty (30) days prior written notice except in cases of emergency as declared by Licensor. During such time of suspension, Licensor shall make a good faith effort to provide Licensee and Sublicensee access to the community garden for the sole purpose of conducting basic maintenance and watering of plants unless public safety would otherwise preclude such access. Upon completion of any work by Licensor within the Property, Licensor and Licensee shall not be liable for the restoration of any facilities or improvements installed by Sublicensee. Sublicensee acknowledges and agrees that in the event Licensor reasonably requires some permanent use of the Property for the construction, operation and maintenance of any Licensor facility which, by the nature thereof, precludes Sublicensee's use of the Property, Licensee may, upon ninety (90) days' prior written notice, revoke this Agreement as to the area reasonably required for such permanent use. **Sublicensee further agrees to provide Licensee and Licensor a written acknowledgement of this Section 1.3 and Section 7 by the commencement date of the License from Sustainable Lafayette, Inc., a California non-profit corporation.**

## 2. License Terms Incorporated

Parties acknowledge and agree that the terms of the License entered into by Licensee and Licensor shall have full force and remain in effect and are hereby incorporated into this Agreement. Sublicensee acknowledges that it has read the License and agrees to its terms, and shall perform and abide by all obligations, covenants, or conditions required of the Licensee in the License.

## 3. Effective Date

The Effective Date, first hereinabove written, shall be the same date that the License is executed by the Licensor and Licensee.

# Sublicense Agreement

## 4. Term

The term of this Agreement shall begin on March 1, 2012, and shall expire five (5) years later on February 28, 2017, or upon the expiration or early termination of the License, whichever comes first, unless earlier terminated as provided in this Agreement. The term of this Agreement may be extended by written notice to Sublicensee in the sole and absolute discretion of the Licensee so long as the License is still in effect, for a period of time not expiring after the expiration date of the License.

## 5. Annual Fee

5.1 Sublicensee shall pay Licensor as compensation for this Agreement a Base License Fee of Two Thousand Dollars (\$2,000.00) per annum. The Annual License Fee shall be due and payable upon the execution of this Agreement and yearly thereafter on the anniversary of the Effective Date for as long as this Agreement is in effect.

5.2 Effective on the anniversary of the Effective Date in 2013, and for each one-year period thereafter during the term of this Agreement, the Annual License Fee will be adjusted upward or downward in the same percentage that the Consumer Price Index ("CPI") average for all Urban Consumers in the San Francisco-Oakland, California area has increased or decreased since publication of said CPI for the month of February. The Annual License Fee for each adjusted annual payment period becomes the Annual License Fee for computing subsequent adjustments.

5.3 Licensor agrees to invoice Sublicensee each year prior to the anniversary of the Effective Date.

## 6. Maintenance

Sublicensee hereby agrees at its expense promptly to provide and maintain all necessary sanitary facilities; said sanitary facilities and the plans therefore to be first approved in writing by Licensee and Licensor, and to keep Property at all times in a clean, safe and sanitary condition free from waste and to permit no accumulation of waste waters, rubbish or garbage thereon, all to the reasonable satisfaction of Licensee and Licensor. For the purposes of this License, manure, compost, and compost piles for community garden purposes do not constitute "waste".

## 7. Termination

Upon abandonment of all or a portion of the community garden facilities or upon failure by Sublicensee to perform any of the covenants, agreements or conditions herein contained ("Default"), Licensee will give notice to Sublicensee indicating Sublicensee's Default. Defaults include such failures including, but not be limited to the following: the non-payment of the Annual License Fee, the non-authorized use of the Property, non-compliance of the maintenance conditions of the Property, and the failure to provide the required insurance

# Sublicense Agreement

coverage. Upon Sublicensee's receipt of the Default notice, Sublicensee shall have thirty (30) days to cure such Default. If Sublicensee fails to cure or commence cure within thirty (30) days, Licensee may revoke the sublicense granted in this Agreement upon giving sixty (60) days' prior written notice to Sublicensee of Licensee's intention to do so and, upon expiration of said sixty (60) day period, all rights herein given shall immediately cease and terminate and this Agreement shall terminate. Upon any termination or revocation of this Agreement or of any of the rights of Sublicensee hereunder, Sublicensee agrees to promptly remove all of its property and equipment from the Property and to restore the Property as nearly as possible to the condition it was in prior to the commencement of its use by Sublicensee, with the exception of the parking lot area, which can remain in the condition it is in at the time of termination.

## 8. Insurance

Sublicensee shall take out and maintain during the term of this Agreement all the insurance required by this section and shall submit certificates ("Certificates") for review and approval by Licensee and Licensor, including the Certificate for General Liability Insurance, which is attached to this Agreement as Exhibit "C" and incorporated herein by reference, and the Certificate for Worker's Compensation Insurance, which is attached to this Agreement as Exhibit "D" and incorporated herein by reference. The Certificates shall be on the forms provided by Licensee or Licensor. Acceptance of the Certificates shall not relieve Sublicensee of any of the insurance requirements, nor decrease the liability of Sublicensee. Licensee reserves the right to require Sublicensee to provide insurance policies for review by Licensee or Licensor. In lieu of evidence of any insurance, Licensee will accept a Self-Insuring Certificate from the State of California.

8.1 Worker's Compensation Insurance. Sublicensee shall maintain Worker's Compensation and Employer's Liability Insurance during the term of this Agreement for all of its employees on the Property. Such insurance shall be endorsed to provide that the insurance company or companies waive any right of subrogation against Licensee or Licensor which might arise by reason of any payment under the policy or policies. In lieu of evidence of Worker's Compensation Insurance, Licensee will accept a Self-Insuring Certificate from the State of California. In the event of such self insurance by Sublicensee, Sublicensee agrees to waive any right of subrogation against Licensee and Licensor which might arise by reason of any payment under Sublicensee's self insurance program. Sublicensee shall require any contractor to provide it with evidence of Worker's Compensation and Employer's Liability Insurance, all in strict compliance with California State Laws.

8.2 Public Liability Insurance. Sublicensee will take out and maintain during the term of this Agreement Comprehensive Automobile and Commercial General Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. Sublicensee shall require any contractor to provide it with evidence of the same liability insurance coverages. The amount of insurance shall be not less than \$1,000,000 for Single Limit Coverage applying to Bodily and Personal Injury Liability and Property Damage.



# Sublicense Agreement

8.3 Endorsements. The following endorsements must be indicated on the certificate:

8.3.1 Licensee, Licensor, and their directors, officers and employees are named as Additional Insureds in the policy as to any operations performed under this Agreement;

8.3.2 The coverage is primary and non-contributory to any other insurance carried by Licensee or Licensor;

8.3.3 The policy(ies) cover(s) contractual liability;

8.3.4 The policy(ies) is (are) written on an occurrence basis;

8.3.5 The policy(ies) cover(s) Licensor's real property in the Sublicensee's care, custody and control;

8.3.6 The policy(ies) cover(s) personal injury (libel, slander, unlawful entry and eviction) liability;

8.3.7 The policy(ies) cover(s) products and completed operations;

8.3.8 A policy to cover use of owned, *non-owned*, and *hired* automobiles and equipment;

8.3.9 The policy(ies) shall not be canceled nor reduced unless thirty (30) days' written notice is given to Licensee and Licensor.

8.4 Failure of Coverage. Failure, inability or refusal of Sublicensee to take out and maintain during the entire term of terms of this Agreement any or all of the insurance as foresaid shall at the option of Licensee constitute an immediate breach of this Agreement.

8.5 Revisions of Insurance. As circumstances change during the life of this Agreement, Licensee may, from time to time, request, and Sublicensee agrees to provide, reasonable revisions in the foregoing insurance requirements sufficient in to provide adequate protection for Licensor, Licensee and Sublicensee.

## 9. Indemnity

Sublicensee expressly agrees to indemnify, defend and hold harmless Licensee and Licensor, their directors, officers, and employees, from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of Sublicensee's operation or performance under this Agreement, including discharges (planned or unplanned) into the adjacent Lafayette creek. It is understood and agreed that Sublicensee shall indemnify and hold harmless Licensee and Licensor, their directors, officers and employees, from any injury to the public and to individuals using the community gardens

# Sublicense Agreement

except to the extent such injuries are caused by Licensee or Licensor's gross negligence or willful misconduct.

Sublicensee shall be responsible to Licensee and Licensor for any damage to the demised premises and assumes all risk of damage to any property of Sublicensee or any property under the control or custody of Sublicensee while upon the demised premises or in proximity thereto, caused by or contributed to in any way by the operation, maintenance, repair or use of the Licensee or Licensor's facilities or improvements, if any. Sublicensee further agrees to indemnify and hold harmless Licensee and Licensor from any damage or loss to Licensee or Licensor's facilities, if any directly or indirectly contributed to or caused by Sublicensee's operation or performance under this Agreement. Sublicensee is responsible to report any discharges (planned or unplanned) into the adjacent Lafayette creek to Licensee and Licensor and to all applicable regulatory agencies.

## 10. Subordination

All rights herein given are subject to all existing rights, rights of way, reservations and easements by whomsoever held in and to the Property.

## 11. Annual Report

Sublicensee agrees to provide Licensee and Licensor with an annual report listing activities including construction, reconstruction, maintenance, removal and all work completed by Sublicensee on the Property during the previous twelve (12)-month period. The annual report shall be due to Licensee and Licensor on or before December 31 of each year this Agreement is in effect.

## 12. Miscellaneous Terms

12.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties. No waiver of any term or condition of this Agreement shall be deemed a continuing waiver hereof. Except as otherwise provided herein, Sublicensee shall not assign, or transfer its interest in this Agreement or any part thereof without the prior written consent of the Licensee. Any such assignment shall, at the option of the Licensee, immediately void this Agreement.

12.2 Amendments. Any alternations, variations, modifications, or waivers of provisions of the Agreement, unless specifically allowed in the Agreement shall be valid only when they have been reduced to writing, duly signed and approved by authorized representatives of both Parties as an amendment to this Agreement. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.

12.3 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement,

# Sublicense Agreement

the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

12.4 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

12.5 Time is of the Essence. Time is of the essence for each and every provision of this Agreement.

12.6 Waiver. The waiver by Licensee of the performance of any covenant, condition, requirement or provision of this Agreement at any time shall not invalidate this Agreement nor shall it be considered a waiver by the Licensee of the same at a later time or of any other covenant, condition, requirement or provision.

12.7 Governing Law; Venue. The interpretation and enforcement of this Agreement shall be governed by the law of the State of California, the state in which this Agreement was signed. Venue shall be in a court of competent jurisdiction located in Contra Costa County.

12.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.9 Captions. The headings or captions contained in this Agreement are for identification purposes only and shall have no effect upon the construction or interpretation of this Agreement.

12.10 Ambiguities. The Parties have each carefully reviewed this Agreement and have agreed to each term of this Agreement. No ambiguity shall be presumed to be construed against either Party.

12.11 Notices. All notices given under this Agreement shall be in writing and shall be transmitted wither by personal delivery, a reputable overnight courier which keeps receipts of delivery (such as Federal Express), or through the facilities of the United States Post Office (postage prepaid, certified mail, return receipt requested). Any such notices shall be effective upon delivery. Notices of the respective Parties shall be sent to the following addresses unless written notice of a change of address has been previously given pursuant hereto:

Licensee:	City of Lafayette 3675 Mt. Diablo Blvd., Suite 210 Lafayette, California 94549 Attn: City Manager
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# Sublicense Agreement

Sublicensee: Sustainable Lafayette  
625 Lucas Drive  
Lafayette, CA 94549  
Attn: Steve Richard

Lafayette Community Garden & Outdoor Learning  
Center  
3206 Palomares Avenue  
Lafayette, California 94549  
Attn: Janet Thomas

12.12 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

[Signatures on the following page]



# Endnotes

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- 1 CABE Space. *The Value of Public Space: How High Quality Parks and Public Spaces Create Economic, Social and Environmental Value*. Commission for Architecture and the Built Environment. 2004. [www.cabe.org.uk/files/the-value-of-public-space.pdf](http://www.cabe.org.uk/files/the-value-of-public-space.pdf)
  - 2 Lubowski et al. *Major Uses of Land in the United States, 2002*. USDA, Economic Research Service, Economic Information Bulletin No. 14, May 2005, p. v. [www.ers.usda.gov/publications/eib-economic-information-bulletin/eib14.aspx](http://www.ers.usda.gov/publications/eib-economic-information-bulletin/eib14.aspx)
  - 3 Centers for Disease Control and Prevention. *Facts about Physical Activity*. [www.cdc.gov/physicalactivity/data/facts.html](http://www.cdc.gov/physicalactivity/data/facts.html)
  - 4 Centers for Disease Control and Prevention. *Physical Activity and the Health of Young People*. [www.cdc.gov/healthyyouth/physicalactivity/facts.htm](http://www.cdc.gov/healthyyouth/physicalactivity/facts.htm)
  - 5 President's Council on Sports, Fitness, and Nutrition. *Physical Activity Guidelines for Americans*. [www.fitness.gov/be-active/physical-activity-guidelines-for-americans](http://www.fitness.gov/be-active/physical-activity-guidelines-for-americans)
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- 120 *Feasibility and Options Study of a Pedestrian and Bicycle Pathway along the EBMUD Aqueduct Right of Way*. Alta Planning + Design, 2012. [www.ci.lafayette.ca.us/index.asp?Type=B\\_BASIC&SEC={ABF93012-ACA6-4850-9E74-CC019ACC2780}&DE={380D0F05-8D98-4C53-AB3F-045D8695910D}](http://www.ci.lafayette.ca.us/index.asp?Type=B_BASIC&SEC={ABF93012-ACA6-4850-9E74-CC019ACC2780}&DE={380D0F05-8D98-4C53-AB3F-045D8695910D})
- 121 These facilities should also be well lit, well designed, and well maintained, and have amenities like toilets and drinking water. See, e.g., Frumkin H. "Healthy Places: Exploring the Evidence." *American Journal of Public Health*, 93(9): 1452-1456, 2003. [www.ncbi.nlm.nih.gov/pmc/articles/PMC1447992](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447992)

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