OFFICE OF THE CITY ATTORNEY/CITY PROSECUTOR
CIVIL DIVISION

March 19, 2018

Associate Justice Lee Smalley Edmons
Associate Justice Anne. H. Egerton
Pro Tem Justice Brian S. Currey
Clerk of Court
Second District Court of Appeal, Division 2
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Re: ***Jonathan Arvizu v. City of Pasadena***
Request for Publication
Second District Case No.: B277951
Superior Court Case No.: BC550929

Dear Honorable Justices of the Second Appellate District, Division 3:

The City of Pasadena and the League of California Cities hereby respectfully request publication of the Court's opinion in *Jonathan Arvizu v. City of Pasadena*, Case No. B277951, pursuant to California Rules of Court, rule 8.1120(a).

The League of California Cities is an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the state. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

The *Arvizu* opinion meets the standards for publication set forth in California Rules of Court, rule 8.1105(c)(2), (3), (5), (6) and (7) because the opinion:

1. Explains and clarifies existing law regarding the Recreational Use (Trail) Immunity set forth in 831.4(b).

2. Expands the definition of a trail and area adjacent to a trail to include man made elements

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that may exist when public entities reclaim formally developed land back into parkland.

3. Addresses an apparent conflict in the law created by *Garcia v. American Golf Corporation* (2017) 11 Cal.App.5th 532, by clarifying when the trail immunity applies in situations where a trail is adjacent to a public-entity-owned revenue generating facility.

4. Involves a legal issue of continuing public interest to public entities that open their property to the public and members of the public who benefit from the use of such public property; and

5. Makes a significant contribution to case law by reviewing the development of statutory and case law concerning the trail immunity.

This opinion uniquely discusses the Legislative purpose behind the trail immunity in the context of heavily populated, urban areas, like Los Angeles County, where public lands are scarce. The opinion identifies the importance of public access to nature for human wellbeing as one of the strong public purposes behind the immunity, particularly in the context of an urban environment. Such discussion clarifies and expands the trail immunity.

In *Arvizu*, the trail was adjacent to a manmade retaining wall, which appellant showed was part of the construction of the State Route 134 Bridge over 60 years earlier. The area is now owned by the City of Pasadena and over time has reverted to a natural state, although remnants of its prior development remain. The opinion's expansion of the trail immunity to trails in urban environments that may not be in pristine natural condition will allow cities to keep such areas open to the public for their enjoyment and use.

The *Arvizu* case further clarifies application of the trial immunity, because it differs from and expands upon *Montenegro v. City of Bradbury* (2013) 215 Cal.App.4th 924, 932 (tree trunk in City Park) and *Amberger-Warren v. City of Piedmont* (2006) 143 Cal.App.4th 1074 (City park adjacent to dog park). Although the trails at issue *in Montenegro* and *Amberger-Warren* were also in urban areas, they were not trails in the traditional sense, like those John Muir described with their attendant beauty and benefits. As described above, the trail at issue in *Arvizu* is a hybrid between the type of trail at issue in *Montenegro* and *Amberger-Warren* and a traditional trail. This reclaimed parkland has the same restorative benefit and mimics nature but may not be completely "natural."

Additionally, the opinion clarifies the application of the trail immunity by answering the question of what using a trail means, since Arvizu argued he was not using the trail at the time of the accident. Using *Montenegro* as support, the opinion concludes that trail immunity does not depend on the nature of Arvizu's brief use of the Arroyo Seco Trail, but instead derives from the uncontested recreational nature of the trail itself. This clarification of the immunity will give guidance on the application of the immunity.

Further, by recognizing that the park was closed at the time of the accident, the opinion adds another factor for courts to consider when analyzing the application of the trail immunity. The opinion makes clear that the fact that a trail is closed to the public when an alleged injury occurs will not affect whether a public entity is entitled to the trail immunity. Thus, the opinion

will encourage public entities to keep these natural areas open to the public, furthering the legislative intent underlying the trail immunity.

Finally, the opinion is significant because it clarifies an apparent conflict in the law, by applying the standard articulated in *Amberger-Warren* that "the trail immunity must extend to claims arising from design of the trail," and distinguishing *Garcia v. American Golf Corporation* (2017) 11 Cal.App.5th 532. In *Garcia*, the Second District Court of Appeal held that the trail immunity did not apply where an alleged dangerous condition on a commercial, revenue-producing golf course exposed persons using an adjacent recreational trail to the risk of being struck by errant golf balls. The decision directly conflicts with *Leyva v. Crockett & Company, Inc.* (2017) 7 Cal.App.5th 1105, 1111, which held that the trail immunity applied where an alleged dangerous condition on a golf course exposed persons using an adjacent recreational trail to the risk of being struck by errant golf balls.

The conflict created by *Garcia* undermines the public purposes supporting the trail immunity, as public entities need clarity and consistency in the law to properly evaluate risk and liability. This is especially true when it comes to recreational paths and trails on public land, whether that land is located in rural or urban areas.

The *Arvizu* opinion identifies the dispositive facts in the *Garcia* court's ruling, noting that the *Garcia* court assumed the City could pay for safety features as well as for insurance, lawyers and potential judgments. The additional clarification that the *Arvizu* opinion provides will give guidance to public entities, which frequently have trails adjacent to all types of revenue generating facilities. A reasonable reading of the *Arvizu* opinion is that the assumption in *Garcia* can be refuted, and a public entity could benefit from trail immunity, if it could show that an adjacent facility is not, in fact, revenue generating.

The *Arvizu* opinion's guidance on the *Garcia* case provides necessary clarity, and would be beneficial to public entities in trying to both manage risk and keep trails open to the public.

For the reasons stated above, the City of Pasadena and the League of California Cities believe the Opinion of this Court should be certified for publication, and requests that this Court order it so.

Very truly yours,

MICHELE BEAL BAGNERIS
City Attorney

ANN SHERWOOD RIDER
Assistant City Attorney

PROOF OF SERVICE

(Code Civ. Proc., §§ 1013a, 2015.5)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within entitled action. My business address is 888 South Figueroa Street, Suite 1960, Los Angeles, California 90017.

On March 19, 2018, I served the foregoing document(s) described as:

LETTER REQUEST FOR PUBLICATION

upon the interested parties in this action by placing the true copies thereof enclosed in sealed envelopes addressed to the following persons:

*****See Attached Service List*****

BY MAIL

__X__ I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

__X__ I am "readily familiar" with the City's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on March 19, 2018, at Pasadena, California.

STATE

__X__ I declare, under penalty of perjury under the laws of the State of California that the above is true and correct.

Jesica Isaac

ATTACHED SERVICE LIST

Honorable Michelle Williams Court, Judge
111 North Hill Street
Los Angeles, California 90012

Supreme Court of California
(Served electronically)

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