



Comments on Rim of the Valley Study

Sylmar Hang Gliding Association, Inc.

October 13, 2010

Prepared for:

National Park Service
Rim of the Valley Study

Reply to:

Sylmar Hang Gliding Association, Inc.
P.O. Box 922303
Sylmar, California 91392
bod@shga.org

<u>Table of Contents</u>		Page
I.	Introduction	3
II.	Summary	3
III.	Definition of Terms	5
IV	Background Information	7
	a. History of Hang Gliding and Paragliding	7
	b. Federal Regulation of Silent Soaring	8
	c. The National Parks Prohibition of Silent Soaring	8
	d. The Sport and Its Participants	9
V	The Site Preservation Problem	9
	a. Launch Site Criteria	9
	1. Lift	9
	2. Nearby Landing Zone	10
	3. Proximity to Roads	10
	b. Loss of Sites	10
VI	Silent Soaring Has Very Light Impact on Public or Private Lands	11
VII	Liability Protections	12
VIII.	Conclusions	14
Appendix A	California Civil Code Section 846, Recreational Use Immunity	15
Appendix B	Legal Authorities on Recreational Use Immunity	16
Appendix C	USHPA Waiver and Assumption of Risk	17

I. INTRODUCTION

The Sylmar Hang Gliding Association, Inc. (SHGA), a chapter of the United States Hang Gliding and Paragliding Association, Inc. (USHPA), submits its comments on the **Rim of the Valley Study**. These comments are submitted to make a record of the facts relevant to the use of public lands by SHGA and its members relating to:

- the historic use of public lands by hang gliders and paragliders
- the light impact of silent soaring by hang gliders and paragliders,
- the need for preservation of silent soaring sites in the San Gabriel Mountains
- the need to restore lost silent soaring sites in the Santa Monica Mountains
- the danger that NPS Regulations might prohibit silent soaring in the San Gabriels

The Sylmar Hang Gliding Association is one of the oldest and largest silent soaring clubs in the country, representing hundreds of pilots of hang gliders and paragliders, with members including some of the foremost pilots in the world. These comments are those of SHGA alone, but we believe they reflect the concerns of the silent soaring community at large, all soaring pilots, clubs and other associations of hang glider and paraglider pilots. Please visit www.shga.org.

These comments update and amplify our comments made in 2009 with respect to the National Parks Service's **San Gabriel Watershed and Mountains Special Resources Study**. We seek to avert the undesirable possibility that the National Park Service Regulations' blanket prohibition of "unpowered flight" in Title 36 Code of Federal Regulations, Section 2.17(a), might inadvertently put an end to hang gliding and paragliding in the San Gabriel Mountains, an historic and irreplaceable, present day hang gliding and paragliding location. We seek also to restore an historic hang gliding site near Trancas Canyon that was lost to us by the application of Section 2.17(a) when the Santa Monica Mountains National Recreation Area was established.

We are gravely concerned that designating the study area a National Recreation Area will unwittingly outlaw silent soaring there. We oppose any proposal that would bring about that result, and suggest three alternatives that would obviate the problem, while accomplishing the worthwhile objectives of preserving the unique public recreational value of the San Gabriel and Santa Monica Mountains.

II. SUMMARY

The application of National Park Service Regulations to the San Gabriel Mountains would outlaw the sports of hang gliding and paragliding in an area where it has been practiced for nearly four decades. This is because under National Park Service Regulations, Title 36 Code of Federal Regulations, Section 2.17(a),¹

"The following are prohibited-

(1) Operating or using aircraft on lands or waters other than at locations designated pursuant to special regulations.

¹ (All references are to Title 36 Code of Federal Regulations the symbol § means "section.")

In the definitions section, § 1.4, "operating or using aircraft" includes powerless flight.

When the Santa Monica Mountains National Recreation Area was established and the NPS assumed the management of those lands, it applied NPS regulations, including §2.17(a), which prohibits unpowered flight, and effectively expropriated the Trancas Canyon flying site, the last coastal hang gliding site in Los Angeles County.

The hang gliding and paragliding ("silent soaring" or "free flight") community needs to preserve the few remaining sites in California where silent soaring sites have not been gobbled up by real estate development, or lost when the National Park Service has assumed control of lands. Moreover silent soaring should be accommodated in the National Park System as a low-impact, low-visibility recreational use. It should not be treated the same as powered aviation. There is no reasonable land use policy to be served by lumping hang gliders with Lear Jets.

Outside public lands, real estate development in California and nationwide has drastically reduced the number and variety of sites where hang gliding and paragliding have been possible.

Despite a long history of successful silent soaring on public lands, persons unfamiliar with silent soaring confuse it, and its participants with other sports that they deem to be "thrill sports," simply because it involves a measure of risk to its participants. However, silent soaring should never be confused with sports that involve recklessness, create noise and pollution, damage the land, frighten and injure wild life and damage riparian areas, sometimes in a manner that seems careless, immature and inconsiderate of other users.

On the contrary, pilots of hang gliders and paragliders undergo extensive flight and safety training in order to obtain their pilots' licenses. They invest substantial sums of money in training and equipment, and they are generally more mature than most dirt bikers, OHV enthusiasts, snowmobilers, and other users that run their powered vehicles over the land.

The San Gabriel Mountains are one of the few precious remaining sites where silent soaring can be practiced.

We believe that the proper approach is to evaluate the impact of silent soaring on the land and on other National Park users. Because other users are rarely, and barely aware of our presence, we believe our use of public lands should be permitted and welcomed to the same extent as other recreational uses.

Accordingly, the SHGA feels strongly that:

1. The designation “National Recreation Area” is worthwhile and desirable to the purpose of preserving these treasured lands for recreational use for the public.
2. These lands should never be designated “National Recreation Area,” if 36 CFR §2.17(a) would be applied to prohibit silent soaring on those lands.
3. There is no reason why 36 CFR §2.17 (a) is necessary or desirable to prohibit silent soaring in the San Gabriel or Santa Monica Mountains. Any enabling legislation or regulatory changes should exempt silent soaring from that prohibition on these lands.
4. As a general matter, grouping hang gliding and paragliding with a prohibition on powered aviation has no reasonable justification in public land management policy. The NPS regulation should be amended to eliminate the prohibition of “unpowered flight” as applied to hang gliders and paragliders.
5. The blanket nationwide prohibition of “unpowered flight,” set forth in 36 CFR §2.17 is unnecessary and undesirable. The decision whether to permit silent soaring in any individual National Park or National Recreation Area should be a decision committed to the discretion of the administrator of that facility. The regulation should be changed to allow silent soaring except where individual Park administrators decide to restrict it for reasons unique to their particular Park or Recreation Area
6. Individual National Park and National Recreation Area administrators should be informed by a national policy that recognizes that silent soaring has a low impact on the land and that liability concerns have been evaluated at the national level and have been found to be manageable.
7. Silent soaring should be included and fostered among other recreational uses of National Parks and National Recreation Areas.

III. **DEFINITION OF TERMS**

Silent soaring or Free Flight – Means the sports of hang gliding and paragliding. Both are unpowered flight using only air currents to remain aloft. Flight is launched on foot, by the pilot’s running downslope until his speed enables his aircraft to fly. For purposes of these comments, “silent soaring” does not include sailplanes, which are larger, cannot be foot launched, and require powered ascent (usually by a tow plane) and relatively large landing strips. Silent soaring operations are authorized under Part 103 of the Federal Aviation Regulations (FAR), 14 Code of Federal Regulations (CFR) Part 103. The FAR deliberately exempt hang gliders and paragliders from restrictions that apply to powered aircraft, such as pilot certifications and periodic inspections of aircraft. The Federal Aviation Administration has made the informed choice to leave regulation of pilot training and certification of silent

soaring aircraft to the United States Hang Gliding and Paragliding Association, Inc. (USHPA). For decades, self-regulation by the silent soaring community has served as one of the most successful examples of responsible private regulation.

Hang Glider – A wing-shaped or delta-shaped, unpowered aircraft constructed of Dacron fabric and/or mylar stretched over a metal and/or composite (fiberglass or carbon fiber) frame. Although Federal Aviation Regulations (FAR) allow unpowered aircraft weighing up to 155 pounds, hang gliders typically weigh between 50 and 90 pounds. Their wingspan is typically about 30 feet, more or less. The hang glider pilot is suspended (usually head-forward) in a harness beneath the wing, within the triangular control frame, and controls the hang glider by shifting his or her weight forward, backwards and sideways. Unpowered hang gliders should not be confused with “ultralights,” which are hang gliders powered by motors and having landing gear. **Nothing in these comments seeks the approval of any powered flight in National Parks or National Recreation Areas.**

Paraglider - An unpowered aircraft with no rigid frame, resembling a parachute, that utilizes ram-air cells, constructed of Dacron fabric as the aerodynamic body. The pilot is suspended, feet forward in a harness beneath the canopy. The paraglider pilot controls the paraglider by pulling on the suspension lines, called “risers” and on control lines connected to various points on the canopy to alter its shape. Paragliders are functionally different from skydiving parachutes, which are also “ram-air” canopies, but are usually smaller and rectangular, and are generally incapable of soaring (staying aloft on air currents). Paragliding should not be confused with “parasailing,” where a large parachute-like canopy is towed by a power boat. **Nothing in these comments seeks the approval of any powered flight in National Parks or National Recreation Areas.**

Ultralight - Under Federal Aviation Regulations, 14 CFR Part 103, hang gliders and paragliders are included in the term “ultralight aircraft,” which also includes powered hang gliders and powered paragliders. Except where specifically indicated, NOTHING IN THESE COMMENTS is intended to apply to the operation of any powered ultralight aircraft. **These comments apply only to unpowered hang gliders or paragliders, which stay aloft only by air currents.**

USHPA – United States Hang Gliding and Paragliding Association, Inc., a nonprofit corporation organized under the laws of California, having its principal offices in Colorado Springs, Colorado, is the national association of pilots of hang gliders and paragliders. [Visit www.ushpa.aero] USHPA has chapters across the United States. USHPA has established the standards for training of hang gliding and paragliding pilots and instructors. USHPA publishes a monthly magazine containing articles concerning safety, competition, products reviews, pilot proficiency, individual pilots and their accomplishments, soaring sites, instruction, legal issues, and other subjects of interest to pilots. USHPA maintains a \$2 million liability insurance policy that indemnifies persons (other than pilots) against any personal injuries or property damage caused by hang gliding or paragliding. USHPA requires, as a condition of issuing a license to pilot a paraglider or hang glider, that all pilots execute a waiver, release, assumption of risk, and covenant not to sue with respect to injury to the person

or property of that pilot in connection with hang gliding or paragliding. [Copy attached as Appendix C.]

SHGA – Sylmar Hang Gliding Association, Inc., is a nonprofit corporation organized under the laws of California, a chapter of USHPA, and owner of the Sylmar Flight Park, located at Gridley Street, Sylmar, California. SHGA is one of the oldest and largest associations of hang glider and paraglider pilots and is unique in owning its landing field property. USHPA membership is a prerequisite for flying privileges at the SHGA flight park.

IV. BACKGROUND INFORMATION

a. History

Hang gliding originated in Southern California in the late 1960's. Historically, a large number of sites used for hang gliding have been in public lands, often in National Forests. In 1973, the first United States National Hang Gliding Competition took place in Sylmar, California, in the San Gabriel Mountains in Angeles National Forest, at the Sylmar 1500 launch, a site that has since been lost. The landing site has been lost because of real estate development - Olive View Hospital was built on the property that was used as a landing zone. The use of the launch was lost when the Forest Service closed the access road because of vandalism and crime problems unrelated to hang gliding.

Since the United States Forest Service has never seen the need for any prohibition of silent soaring, it is permitted and practiced in National Forests throughout California and the rest of the country. In the ideal flying conditions of the Inyo National Forest, which include California's Sierra Nevada, "century" flights (100 miles or more) are quite common. Those flights originate at a number of sites in the Sierra Nevada, the Inyo Mountains and the White Mountains. The 1991 United States National Hang Gliding Competition took place in the Inyo National Forest at the Gunter launch in the White Mountains. When that area of the White Mountains was designated a wilderness area by the Omnibus Public Lands Management Act of 2009, representatives of USHPA collaborated with the offices of Senator Barbara Boxer and Representative Buck McKeon and the United States Forest Service to draw the maps of the wilderness in a way that would preserve the historic Gunter and Piute hang glider launches, surrounded by pristine wilderness.

In the past four decades, the sport has grown, and is now represented by the USHPA. Along the way, sport parachutes evolved from hemispherical military-style paratroop canopies, to steerable skydiving chutes, and then into paragliders, frameless canopies capable of soaring, and controllable to pinpoint landings.

During that time, the equipment and pilot training have improved vastly, making the sport far safer than it was in the 1970's and early 1980's, when fatalities were not uncommon. Among other things, the USHPA has an accident reporting system that permits reports of accidents to be analyzed in its monthly magazine "Hang Gliding," so that dangerous locations, conditions, practices, and equipment can be discussed among pilots, and safety thereby improved.

Equipment and skills have improved to the point where the hang gliding distance record was set at 435 miles in 2007. The world paragliding record is 287 miles. There have been several flights from Sylmar, over 100 miles to Palm Springs. Flights between Sylmar and Andy Jackson Air Park in San Bernardino are becoming more and more frequent. To preserve this critical recreational resource for silent soaring, landing areas must be provided and preserved all along the front range of the San Gabriel Mountains.

b. Federal Regulation of Silent Soaring

The Federal Aviation Administration has promulgated a special part of its regulations, 14 CFR, Part 103, for powered and unpowered hang gliders and paragliders, collectively called "ultralight vehicles." Other than issuing those regulations, the FAA has not felt a need to regulate pilot licensing, because the United States Hang Gliding Association has developed programs for training and licensing pilots and instructors that has eliminated the need for any state or federal government regulation in those areas. Thus, silent soaring has always been a singularly successful example of a "self-regulated" activity.

c. The National Park Prohibition of Silent Soaring

Under 36 CFR §2.17(a)² "The following are prohibited-

(1) Operating or using aircraft on lands or waters other than at locations designated pursuant to special regulations.

In the definitions section, § 1.4, "operating or using aircraft" includes powerless flight.

Part 7 of Chapter I contains the "special regulations," that pertain to specific sites. There are special regulations permitting "unpowered flight" at four National Parks or National Recreation Areas in California, as well as at five other sites..

The four California sites are:

Yosemite National Park (§7.16(c))
Point Reyes National Seashore (§7.81(a))
Whiskeytown Unit, Whiskeytown-Shasta-Trinity
National Recreation Area (§7.91(c))
Golden Gate National Recreation Area, §7.97(b))

For all the California sites, the special regulation reads:

Powerlessflight. The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the superintendent, pursuant to the terms and conditions of a permit.

Under the definitions section (§ 1.4) the "superintendent" means the official in charge of a park area or authorized representative thereof

The five sites outside California are:

Blue Ridge Parkway (North Carolina and Virginia) §7.34(c)

² (All references are to Title 36 Code of Federal Regulations the symbol § means "section.")

Lake Mead National Recreation Area (Nevada) § 7.48(b)
Lake Meredith Recreational Area §7.57(d)
Delaware Water Gap §7.7 1 (f)
Appalachian Trail §7.100)

The special regulations for Lake Mead and Lake Meredith allow powerless flight "except in locations designated as closed to this activity." Consequently in those two National Recreation Areas, silent soaring does not require any special designation of location by the park superintendent, but he may prohibit it in specified areas.

d. The Sport of Silent Soaring and Its Participants

Participation in silent soaring requires substantial investments of time, money, and effort. To be licensed by the USHPA, pilots must train under USHPA-certified instructors. Pilot training includes piloting skills, rules of the road, safety, first aid, meteorology, Federal Aviation Regulations, USHPA regulations, aerodynamics and judgment. It includes practice launches and landings at a training hill site, as well as tandem flights with a certified tandem instructor, and supervised flights observed and controlled by an instructor on the ground in communication by radio. The minimum cost of training through proficiency level 2,³ when a pilot may fly unsupervised at limited sites, is presently more than \$1,500.

A beginner's equipment, including glider, harness, altimeter/variometer⁴, air speed indicator, helmet and accessories typically cost a total of about \$3,000. Advanced equipment costs more than twice a beginner's equipment.

Because of the pilot's investment of time and resources, by the time he or she is permitted to fly unsupervised, there is a level of maturity and experience that is not required in other forms of recreation that is practiced in public lands.

V. THE SITE PRESERVATION PROBLEM

Although the sky is vast, the number of sites where silent soaring can be practiced is surprisingly small. In the period 1970 – 2010, real estate development has restricted and eliminated silent soaring at most of the suitable sites, leaving only a few places where silent soaring is possible. No recreational activity has been affected by this encroachment more than hang gliding and paragliding. Here in the "wide-open" West, more and more sites are becoming closed to our use every year because of development. Rapidly diminishing numbers of suitable sites presently require us to travel for hundreds of miles, depending on the weather, to find a place to practice our sport. Within the past month the Lake Elsinore chapter of USHPA lost its landing field to real estate development.

a. Launch Site Criteria

Mother Nature's laws permit foot-launched flight only at a surprisingly limited number of sites.

1. Lift- A launch site must have the potential to produce the lift that supports our gliders. Because they are unpowered, our wings require a hillside launch site that either

³ USHPA issues licenses for hang gliding and paragliding at five proficiency levels:

1 –Beginner, 2 – Novice, 3 – Intermediate, 4 – Advanced, 5 – Master. Hang glider pilots are designated H-1, H-2, etc. and paraglider pilots are designated P-1, P-2 etc.

⁴ Variometer - An instrument that tells altitude and rate of climb or descent.

faces the wind or is heated by the sun. We soar only through the natural lift produced by the wind or thermal (heat- produced) air currents, called "thermals." Unless the site has a strong wind, blowing at right angles into a ridge (which will produce "ridge lift") it must be high enough that thermals develop below the launch site, so that a glider launching can "get on board" a rising thermal. If the glider misses the thermal, it "sinks out," unless it finds another one.

2. Nearby Landing Zone ("LZ")

Even at suitable launch sites, depending on the weather, we are frequently unable to gain any altitude because the lift may be weak or absent that day, at that site. Consequently, every suitable launch site must be close enough to a safe landing zone (LZ) so that it can be reached "on a glide" -- meaning, without any lift. Thus, the distance to an LZ should not exceed five times the difference in elevation between the launch and the LZ. Although most modern gliders have a glide ratio better than 5-to-1, we encounter "sink" (descending air currents) as often as we encounter lift. In Southern California, and particularly on the southern (facing the sun) slopes of the San Gabriel Mountains, real estate development has crowded houses right up to the mountains, eliminating vacant fields or slopes previously used as landing fields. The Lake Elsinore LZ is the latest victim on the altar of real estate development. A safe LZ is one that is fairly open, and large enough so that the trees surrounding it will not create a turbulent "wind shadow" that can make landing dangerous. The safest landing for hang gliders is uphill and upwind, so that the speed over the ground is at a minimum, no faster than we can run with an 80-pound glider on our backs. Paragliders can land in smaller areas.

3. Proximity to roads

Finally, hang gliding launch sites are never in pristine, remote areas, because hang gliders weigh 60 – 90 pounds and are 14 -16 feet long when transported -- not something that can be carried very far on a wooded, winding hiking trail. Practically, a hang glider launch site must be within a quarter-mile of a road. The same is true for the LZ. However, paragliders can be carried as a bulky backpack, and can be hiked in to roadless launches and hiked out from roadless LZ's.

b. Loss of Sites

In the past twenty years, most of the sites where hang gliding has been taught or practiced have been lost. In just the last ten years, at least ten sites have been lost in Los Angeles county alone because of real estate development and other causes. No new sites have been established.

Launching from Mount Wilson in the Angeles National Forest, for example, there is only one place where it is permitted to land within a 5:1 glide of the launch, Victory Park in Pasadena, and only on pre-scheduled weekend days when, by paid permit, the Park closes two soccer fields to permit landing. That is only one LZ, unavailable at most times, in the 45 square miles surrounding mile-high Mount Wilson. Several years ago that LZ also was lost, so that Mount Wilson is no longer available as a launch site, even though we hold a special use permit from the U.S. Forest Service.

In the past few years, real estate development has swallowed up the LZ for the historic Lake Elsinore hang gliding site, and development is threatening Andy Jackson Air Park in San Bernardino.

Because sites are so scarce, we believe we must vigorously preserve those few that remain. Since many of the remaining sites are in public lands, we believe it is critical to the very survival of our sport that silent soaring be fostered in our public lands.

VI. **SILENT SOARING HAS VERY LIGHT IMPACT
ON PUBLIC OR PRIVATE LANDS**

Silent soaring is an activity that neither damages the land nor infringes the solitude of those who wish to enjoy a wilderness experience without any awareness of other recreational users.

Silent soaring poses no threat to wildlife. The only wildlife we affect are soaring birds, and our only effect is that we sometimes share rising thermal currents, soaring aloft with them naturally. Where preserves for the breeding of endangered wildlife are present, landing zones are made available away from them.

Silent soaring does not physically degrade the forest as do, to various degrees, hiking, bicycling, off-road motoring, skiing, snowmobiling, fishing and hunting. Our activity truly adheres to the goal, "Leave no trace."

Silent soaring poses no threat to riparian areas. Wet areas absorb the sun's energy and do not produce thermals, as do bare rocks and earth. Consequently soaring pilots generally have little reason to frequent riparian areas.

Silent soaring produces no conflicts with other users. It makes no noise, and emits no exhaust, smoke, dust or vapors of any kind. As a recreational use of public lands, silent soaring has no similarity to noisy, polluting, destructive off-road vehicles, such as snowmobiles, dirt motorcycles and all-terrain vehicles, which are frequently accommodated by administrators of public lands, often at great expense. For example, the recently enacted Omnibus Public Lands Management Act of 2009, despite its name, creates three off-road recreational vehicle areas. We cannot dismiss the possibility that industry lobbying has more to do with those accommodations than sound land use policy.

Not only is the impact light when silent soaring is taking place, but the number of soaring pilots is small, and the times when atmospheric conditions permit soaring are limited. Silent soaring is possible only on days when the atmospheric conditions are right, and then, only during limited times of day. At most sites, the only source of lift is thermal currents. Because thermals do not develop until the sun has heated the ground for a number of hours, it is usually impossible to soar in thermals before about 11:00 a.m. on a summer day, or before 1:00 p.m. in winter. Although expert pilots are those who can stay aloft longer, flights average about an hour. Consequently, there is a very narrow "window" of time when soaring takes place each day, between 11:00 a.m. and sundown, and then only on days that are suitable.

It is possible to soar without thermals at sites where a steady wind blows into a ridge at right angles, producing a wave of lift above the ridge. These are frequently coastal sites on the Pacific Ocean, such as the Trancas Canyon site, which was lost when NPS took over the Santa Monica Mountains National Recreation Area.

Finally, the number of soaring participants is small. SHGA is the largest soaring club in Southern California, with about 200 members, and about 120 who fly regularly. Even at our Kagel Mountain flying site, where we own the LZ, the most heavily used soaring site in California, it is only on weekend days that one can expect to see hang gliders in the air for most of the afternoon, and as always, it depends on the weather.

Even where soaring is present, it is difficult even to see a soaring hang glider or paraglider unless you are looking for it. The 30-foot wingspan of a hang glider 1000 feet above the ground appears about the same length as the last joint of the thumb, held at arm's length. Unless you are looking for a silent soaring craft, (and often when you are) you will not see it. In the air, we are silent and virtually invisible. Each pilot is completely alone, the higher (and farther from the other nature-lovers) the better. In the air, we do not detract from anyone else's enjoyment of nature.

Hikers and lovers of the outdoors who have seen us (and we meet many in the area of Mt. Whitney, in the Inyo National Forest, where soaring, camping, fishing and hiking happily coexist) uniformly tell us that their reaction to seeing us floating far above is a sense of wonder what it must be like to enjoy nature in that way. We literally soar with the birds -- tiny swifts fly in thermal updrafts because the thermals pick up insects from the ground. Red-tailed hawks, Coopers hawks, eagles and other raptors use thermals to go aloft for the hunt. Turkey vultures and condors soar with us as we share their thermals.

Our gliders do not touch the earth. We silently enjoy the wonder of the land from a distance, up there where you can see a lot of it! Like listening to a murmuring stream in the silence of the forest, soaring is a mystical experience that we seek to preserve for ourselves and make available to anyone who has ever thought, "I wonder what it would be like to fly with the birds?" We enjoy our remoteness from other forest users and do not make other users aware of our presence. In Yosemite National Park, however, it is fun to fly near enough to be seen by the rock climbers on the face of El Capitan, and exchange waves, "Hello."

Naturally, soaring participants use roads to bring their gliders to launch sites. Many soaring participants have 4-wheel drive vehicles, which are less destructive to forest roads than 2-wheel drive vehicles, off-road vehicles (ORV's), motorcycles, or even bicycles. However, since paragliders weigh less than 40 pounds, paraglider pilots frequently hike their equipment to launch sites, and consequently do not require roads. After launch, however, there is obviously no impact on the land, and there is virtually no awareness of silent soaring by other users of the forest until we land in a field somewhere near a road.

VII. **LIABILITY PROTECTIONS**

In California and many other states, government and private landowners are protected in several ways against any liability for any injuries to persons or damage to property that may be caused by silent soaring. They are protected from any liability to participants by specific provisions of state law which protect landowners from liability to persons who are permitted to use land for recreational purposes, as well as by releases of liability that are signed by all participants. In addition, landowners and bystanders are protected against any injury to

themselves or their property by \$2 million in insurance, carried by the United States Hang Gliding and Paragliding Association.

State Recreational Use Immunity Legislation

Silent soaring poses no liability risk to the government land management agencies for several reasons. First, the laws of many states, (for example California Civil Code § 846)⁵ expressly immunizes any landowner (including government entities) from any liability to a person who is allowed to use the landowner's property at no cost, for recreational purposes. The California statute expressly and specifically includes hang gliding. The policy of those statutes is to encourage landowners to permit the use of their land for recreational purposes, by shielding them from the normal "premises" liability of landowners, so long as they are not requiring payment of money for the recreational use of their land. Thus, all landowners, including Federal Agency landowners, are protected from any suit by a silent soaring pilot for any injury or property damage that may occur because he or she is permitted to use federally owned land for the purpose of hang gliding. Judicial decisions have specifically applied the protections of Section 846 to a federal land manager, the U.S. Forest Service.⁶

Secondly, every person holding a pilot rating from the United States Hang Gliding Association has executed an assumption of risk and waiver and release of claims that releases anyone from any liability to the pilot for any injury or claim of any kind relating to hang gliding.⁷ That waiver contains a covenant not to sue, and an attorney fee provision, requiring any pilot who does sue to pay the attorney fees of the party he sues. That release and waiver expressly protects, among others,

(d) The United States of America and each of the city(ies), town(s), county(ies), State(s) and/or other political subdivisions or governmental agencies within whose jurisdictions **Pilot** launches, flies and/or lands.

Finally, the United States Hang Gliding Association carries a \$2 million insurance policy for any claim of personal injury or property damage caused by hang gliding or paragliding. This insurance indemnifies a landowner whose crops, fences or structures that might be damaged, or a person injured, or personal property, such as a car damaged in any manner relating to hang gliding or paragliding.

⁵ See Appendix A

⁶ Hannon v. U.S., 801 F.Supp. 323 (E.D. Cal. 1992). A fuller legal brief of this issue is attached as Appendix B

⁷ The USHPA waiver and assumption of risk, attached as Appendix C, is available at on the USHPA website.
http://www.ushpa.aero/forms/Form_Membership_Application_with_Waiver.pdf

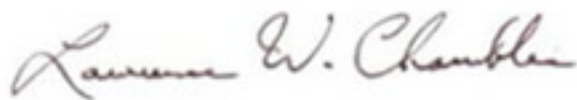
VIII. CONCLUSIONS

Silent soaring is a historical recreational use of the San Gabriel and Santa Monica Mountains that has a very light impact, and which is virtually imperceptible to other users. This use should not be prohibited, but should be fostered by the same policy that encourages other outdoor recreational uses of National Parks and National Recreation Areas, and to the same extent.

In the event that National Park Service Regulations become effective in the San Gabriel Mountains, the prohibition on silent soaring should never go into effect there.

Moreover, the National Park Service should reevaluate and amend 36 Code of Federal Regulations, Section 2.17(a) to exempt silent soaring from the prohibition on “aviation.”

Respectfully submitted:

A handwritten signature in dark ink, reading "Lawrence W. Chamblee". The signature is written in a cursive, flowing style.

Lawrence W. Chamblee
Government Liaison Officer
Sylmar Hang Gliding Association, Inc.

Please reply to: bodandfriends@shga.com

Appendix A

California Civil Code

§ 846 Use of property for recreational purposes

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A “recreational purpose,” as used in this section , includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, **sport parachuting**, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, **hang gliding**, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby

- (a) extend any assurance that the premises are safe for such purpose, or
- (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or
- c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists

- (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or
- (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or
- (c) to any persons who are expressly invited rather than merely permitted to come on the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

[Emphasis added.]

Appendix B

Legal Authorities On Recreational Use Immunity

Federal agencies sued under the Tort Claims Act enjoy the benefits of state recreational use statutes, such as California Civil Code Section 846. The Federal District Court in Sacramento, which has jurisdiction over Inyo County, has specifically ruled that the United States Forest Service for the Inyo National Forest cannot be sued for personal injuries because of the recreational use immunity prescribed by Section 846. Hannon v. U.S. 801 F.Supp. 323 (E.D. Cal. 1992)

All other federal courts that have considered state “recreational use immunity” statutes have reached the same result, shielding the federal agency from liability. Cagle v. U.S., 937 F.2d 1073 (6th Cir. 1991) [Tennessee]; Maldonado v. U.S., 893 F.2d 267 (10th Cir. 1990 [New Mexico]; Woods v. U.S., 909 F.Supp. 437 (W.D. La. 1995), *affd.* 84 F.3d 432 [Louisiana, U.S.F.S.]; McClain v. U.S., 445 F.Supp. 770 (D. Or. 1978) [Oregon]; Covington v. U.S., 902 F.Supp. 1207 (D. Haw. 1995) [Hawaii]

Many of those decisions find the Federal government shielded even though state agencies would not be. See, e.g., Woods v. U.S. In the Hannon case, the Forest Service was shielded under the Civil Code Section 846, even though some California courts had held that “public entities” were not protected. This is because the Federal Tort Claims Act makes the United States liable for negligence in the same manner and to the same extent as a private individual would be in similar circumstances. The Court stated specifically, “Since California Civil Code Section 846 doubtless applies to private persons, so it must also apply to the United States in this case.” Hannon, 801 F.Supp., at p. 326.

Appendix C (This document can be viewed at
http://www.usHPA.aero/forms/Form_Membership_Application_with_Waiver.pdf)

RELEASE, WAIVER AND ASSUMPTION OF RISK AGREEMENT

In consideration of the benefits to be derived from membership in the USHPA, _____ (**Pilot**) (and the parent or legal guardian of **Pilot**, if **Pilot** is a minor), for themselves, their personal representatives, heirs, executors, next of kin, spouses, minor children and assigns, do agree as follows:

A. DEFINITIONS - The following definitions apply to terms used in this Agreement:

1. **"PARTICIPATION IN THE SPORT"** means launching (and/or assisting another in launching), flying (whether as pilot in command or otherwise) and/or landing (including, but not limited to, crashing) a hang glider or paraglider.
2. **"SPORTS INJURIES"** means **personal injury, bodily injury, death, property damage and/or any other personal or financial injury** sustained by **Pilot** as a result of **Pilot's PARTICIPATION IN THE SPORT** and/or as a result of the administration of any USHPA programs (for example: the Pilot Proficiency System). If **Pilot** is under 18 years of age, the term **"SPORTS INJURIES"** means **personal injury, bodily injury, death, property damage and/or any other personal or financial injury** sustained by **Pilot** as well as **personal injury, bodily injury, death, property damage and/or any other personal or financial injury** sustained by **Pilot's** parents or legal guardians, as a result of **Pilot's PARTICIPATION IN THE SPORT** and/or as a result of the administration of any USHPA programs.
3. **"RELEASED PARTIES"** means the following, including their owners, officers, directors, agents, spouses, employees, officials (elected or otherwise), members, independent contractors, sub-contractors, lessors and lessees:
 - a) The United States Hang Gliding and Paragliding Association, a California Non-profit Corporation (USHPA);
 - b) Each of the person(s) sponsoring and/or participating in the administration of **Pilot's** proficiency rating(s);
 - c) Each of the hang gliding and/or paragliding organizations which are chapters of the USHPA;
 - d) The United States Of America and each of the city(ies), town(s), county(ies), State(s) and/or other political subdivisions or governmental agencies within whose jurisdictions **Pilot** launches, flies and/or lands;
 - e) Each of the property owners on or over whose property **Pilot** may launch, fly and/or land;
 - f) All persons involved, in any manner, in the sports of hang gliding and/or paragliding at the site(s) where **Pilot PARTICIPATES IN THE SPORT**. "All persons involved" includes, but is not limited to, spectators, hang glider and/or paraglider pilots, powered ultralight pilots, assistants,

drivers, instructors, observers, and owners of hang gliding and/or paragliding equipment; and

g) All other persons lawfully present at the site(s) during **Pilot's PARTICIPATION IN THE SPORT**.

B. I FOREVER RELEASE AND DISCHARGE the RELEASED PARTIES FROM ANY AND ALL LIABILITIES, CLAIMS, DEMANDS, OR CAUSES OF ACTION THAT I MAY HEREAFTER HAVE FOR SPORTS INJURIES, HOWEVER CAUSED, EVEN IF CAUSED IN WHOLE OR IN PART BY THE ACTION, INACTION OR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE OF ANY OF THE RELEASED PARTIES, TO THE FULLEST EXTENT ALLOWED BY LAW.

C. I WILL NOT SUE OR MAKE A CLAIM against any of the **RELEASED PARTIES** for loss or damage on account of **SPORTS INJURIES**.

If I violate this agreement by filing such a suit or making such a claim, I will pay all attorneys' fees and costs of the **RELEASED PARTIES**.

D. I AGREE THAT this **AGREEMENT** shall be governed by and construed in accordance with the laws of the State of California. All disputes and matters whatsoever concerning **SPORTS INJURIES** (sic) or otherwise arising under, in connection with or incident to this Agreement shall be litigated, if at all, in and before a Court located in the State of California, U.S.A. to the exclusion of the Courts of any other State or Country.

E. SEVERABILITY. If any part, article, paragraph, sentence or clause of this Agreement is not enforceable, the affected provision shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law, and the remainder of the Agreement shall continue in full force and effect.

F. CONSTRUCTION. This agreement shall apply to any and all **SPORTS INJURIES** occurring at any time after the execution of this agreement. This agreement is in addition to and is not intended to replace any other agreements related to liability for **SPORTS INJURIES** that **Pilot** (or **Pilot's** parents or legal guardians) may have signed, either in the past or in the future. To the extent that there is any conflict between such agreements, **Pilot** (and **Pilot's** parents or legal guardians) intends to be subject to the agreement that provides the most expansive release of claims and assumption of risk allowed by law.

G. I REPRESENT THAT Pilot is at least 18 years of age, or, that I am the parent or legal guardian of **Pilot** and am making this agreement on behalf of myself and **Pilot**. If I am the parent or legal guardian of **Pilot**, **I AGREE TO INDEMNIFY AND REIMBURSE** the **RELEASED PARTIES** for their defense and indemnity from any claim or liability in the event that **Pilot** suffers **SPORTS INJURIES** as a result of **Pilot's PARTICIPATION IN THE SPORT**, even if caused in whole or in part by the action, inaction or negligence (whether active or passive) of any of the **RELEASED PARTIES**, to the fullest extent allowed by law.

G. I VOLUNTARILY ASSUME ALL RISKS, KNOWN AND UNKNOWN, OF SPORTS INJURIES, HOWEVER CAUSED, EVEN IF CAUSED IN WHOLE OR IN PART BY THE ACTION, INACTION, OR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE) OF THE RELEASED PARTIES, TO THE FULLEST EXTENT ALLOWED BY LAW.

I ACKNOWLEDGE THAT I HAVE READ THIS AGREEMENT, FULLY UNDERSTAND THE POTENTIAL DANGERS OF ENGAGING IN HANG GLIDING AND/OR PARAGLIDING, AND THAT ACTION, INACTION OR NEGLIGENCE OF OTHERS CAN INCREASE THOSE DANGERS. I UNDERSTAND AND AGREE THAT THIS DOCUMENT IS LEGALLY BINDING AND WILL PRECLUDE ME FROM RECOVERING MONETARY DAMAGES FROM THE ABOVE LISTED ENTITIES AND /OR INDIVIDUALS, WHETHER SPECIFICALLY NAMED OR NOT, FOR PERSONAL INJURY, BODILY INJURY, PROPERTY DAMAGE, WRONGFUL DEATH, OR ANY OTHER PERSONAL OR FINANCIAL INJURY SUSTAINED BY PILOT IN CONNECTION WITH HANG GLIDING/PARAGLIDING.

WARNING: BY SIGNING, YOU ARE WAIVING SIGNIFICANT LEGAL RIGHTS. DO NOT SIGN WITHOUT READING!

_____/_____/_____
Pilot's signature *Date* *Print Pilot's Name*

_____/_____/_____
Signature of Pilot's Parent or legal Guardian if Pilot under 18 years of age *Date* *Pilot's USHPA Number*

MMR 062708