

Primary Views¹

Harrison Kinnane Smith

From 1846-1848 the United States waged its first war of aggression with a European-descendant nation, the Mexican-American War.² The conflict ended on February 2, 1848, with the signing of the Treaty of Guadalupe Hidalgo, which outlined Mexico's forfeiture of present-day Utah, Nevada, California and parts of Wyoming, Colorado, and New Mexico.³ The treaty required the United States to honor and protect the property interests of Mexican citizens in these territories.

California had been the territory of European nations since 1542, according to the Catholic Church's "Doctrine of Discovery," which granted the kings of Portugal and Spain religious authority to claim lands occupied by non-Christians "upon arrival."⁴ After Mexico gained independence in 1821, the new government redistributed Californian lands held by Franciscan missions and expanded the Spanish *rancho* land grant system by allocating thousands of acres of indigenous land to settlers. Rancho Topanga Malibu Sequit, encompassing present-day Malibu and inhabited by the Indigenous Chumash peoples, was granted in a concession to Jose Bartolome Tapia in 1800.⁵ Rancho San José de Buenos Aires, inhabited by the Indigenous Tongva peoples and including the lands currently occupied by the University of California, Los Angeles, was granted in a concession to Máximo Alanis in 1843.⁶ It was these Mexican *rancho* grants that the U.S. was required by treaty to uphold. However, Mexican records were a "maze of inchoate, incomplete, conditional, inexactly surveyed" claims.⁷ The influx of settlers to California during the Gold Rush presented the United States with the challenge of distinguishing between California's public and private lands, and assimilating the unorganized Mexican recording system into the U.S.'s favored title registry form in order to arbitrate competing land claims made by American squatters and *rancho* titleholders.⁸

California was granted statehood in September of 1850. The following spring, Congress passed the California Land Act of 1851, which created a Board of Land Commissioners to adjudicate claims to Mexican *ranchos*. Claimants were required to file titles with the Commission, which supplemented

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² Madley, Benjamin. *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873*. New Haven: Yale University Press (2016): 146; Colbern, Allan, and S. Karthick Ramakrishnan. "Worst to First: California's Evolution from Regressive to Progressive State Citizenship." *Citizenship Reimagined: A New Framework for State Rights in the United States*, Cambridge: Cambridge University Press, (2020): 205-62.

³ "Treaty of Guadalupe Hidalgo (1848)," National Archives, The U.S. National Archives and Records Administration.

⁴ Quotation from Charles, Mark and Soong-Chan Rah, *Unsettling Truths: The Ongoing, Dehumanizing Legacy of the Doctrine of Discovery*, InterVarsity Press (2019):16.; Park, K-Sue. "The History Wars and Property Law: Conquest and Slavery as Foundational to the Field." *The Yale Law Journal* 131, no. 4 (2021): 1093; Miller, Robert J. *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies*. United Kingdom: OUP Oxford, 2010. p. 2; and Scott, William Henry. "Demythologizing the Papal Bull 'Inter Caetera.'" *Philippine Studies* 35, no. 3 (1987): 348-56. <http://www.jstor.org/stable/42633027>.

⁵ Engstrand, Iris H. W. "California Ranchos: Their Hispanic Heritage." *Southern California Quarterly* 67, no. 3 (1985): 282; and Doyle, Thomas W. et al. *History of Malibu*, Malibu Lagoon Museum.

⁶ "The History of How UCLA Came To Be" *UCLA Alumni Newsletter* (2019); "History of the Rancho San Jose de Buenos Aires Chapter, NSDAR" Rancho San Jose de Buenos Aires Chapter, Daughters of the American Revolution West Los Angeles, California (2024).

⁷ Gates, Paul W. "Adjudication of Spanish-Mexican Land Claims in California." *Huntington Library Quarterly* 21, no. 3, (1958): 216.

⁸ Gates, "Adjudication," 216; Aguilar-Robledo, Miguel. "Contested Terrain: The Rise and Decline of Surveying in New Spain, 1500-1800." *Journal of Latin American Geography* 8, no. 2 (2009): 23-47.

vague Mexican deeds with reports from American surveyors.⁹ Land claims of Mexican and Spanish origin not brought before the Commission during the two year limitation period following passage of the Land Act defaulted to the status of public land.¹⁰ In 1853, Congress created a U.S. Surveyor General position for California alongside an affiliate land office, which worked to systematize land records in the state.¹¹

When Mexican titles were upheld by the Land Commissioners and federal courts, the rulings expanded the property rights of the titleholders. In a series of 1850s rulings, the Supreme Court allowed owners to subdivide and sell their plots, and in 1859, the California Supreme Court affirmed the mineral rights of landholders whose titles originated in Mexican *ranchos* — all powers withheld under the Mexican legal system.¹²

Maps provided by government surveyors to the Board of Land Commissioners were essential in the gradual verification of poorly-recorded Mexican claims; just as the Board of Land Commissioners' rulings on claims to private land allowed government surveyors to create increasingly accurate maps outlining the state's public lands.¹³ After the two-year claims window closed, all Mexican and Spanish titles that were not brought before the Commission became public land.¹⁴ Once the government identified public tracts, the U.S. Surveyor General was authorized to offer this land to squatters or sell it at auction.¹⁵

One of the California government's primary projects in the 1850s was to develop and populate the state with American citizens whom it could regulate and tax. Regulation required an understanding of who owned what (as articulated in title registries) and where (as determined by survey). The government accomplished this in part through "preemption" and the auction of public lands.

The doctrine of preemption allowed squatters who settled on and "improved" unsurveyed land to purchase plots at significantly discounted rates before they were offered in public auction. Preemption's few conditions required squatters to perform an informal survey of the land, which was then assimilated into the state's records. The improvement requirement of preemption and survey requirement for all unsurveyed land sales ensured that the state's distribution of titles to squatters increased its proportion of economically productive land while expanding local title registries and their associated tax bases.

⁹ Engstrand, Iris H. W. "California Ranchos: Their Hispanic Heritage." *Southern California Quarterly* 67, no. 3 (1985): 282; and Doyle, Thomas W. et al. *History of Malibu*, Malibu Lagoon Museum.

¹⁰ Flushman, Bruce S. and Joe Barbieri. "Aboriginal Title: The Special Case of California" *McGeorge Law Review* 17, no. 2 (1985): 428.

¹¹ Park, K-Sue. "Property and Sovereignty in America" 1504; Zinn, Howard. *A People's History of the United States*. United Kingdom: HarperCollins, (2010): 54; *Statutes at Large: 32nd Congress Session 2 Ch. 145* Washington, D.C.: Law Library of Congress (1853) 244.

¹² Gates, "Adjudication," 227; *Mining Company v. Boggs*, 70 U.S. 304 (1865).

¹³ The challenge of surveying the expansive plots outlined in Mexican *ranchos* inspired technological innovations in the field of surveying. In the 1850s, private surveyor and writer William Schmolz developed a new surveyor's transit with the explicit purpose of outlining Mexican land grants. He patented the which he patented in 1881. Schmolz, William. *Solar Reflector for Surveying Instruments Patent No. 246,424*, United States Patent Office August 30, 1881; *Turning the Horizon*, Michigan Society of Professional Surveyors Foundation, 1, Vol. 2, Fall 2003.

¹⁴ An 1886 ruling in the California Supreme Court extended this limitation to Indigenous land claims, effectively expropriating the land and making it available for private acquisition by squatters through "preemption." Flushman, Bruce S. and Joe Barbieri. "Aboriginal Title," 428, 431.

¹⁵ *Statutes at Large: 32nd Congress Session 2 Ch. 145* Washington, D.C.: Law Library of Congress (1853): 244.

The acquisition and populating of California by American settlers, investors, and capitalists both catalyzed and was facilitated by what is now known as the California Genocide. Between 1846 and 1873 Indigenous communities in California were reduced by 80%.¹⁶ In addition to materially expanding the lands available for settlement through violence, U.S. military and militia campaigns also facilitated legal strategies of displacement. Public acknowledgment of the mass killing of Native people served to foment popular support among non-Indians for displacement through legal means, which was accepted as the only alternative to outright extermination.¹⁷ Among Indigenous people, subjection to continued de jure and extra-judicial enslavement and targeted killings incentivized participation in any agreement that might secure legal protections. Negotiations between 1851 and 1853 ultimately secured Indian forfeiture of approximately one third of the entire state of California in return for U.S. Congress' allocation of roughly 0.125% of the state for Indian reservations.¹⁸

In the years immediately following the U.S.'s accession of California, organized racial violence, private and government surveyors, the Board of Land Commissioners, and state-appointed treaty negotiators transitioned California from sparsely-populated territory of ambiguous claims and legally vacant land into a uniform system defined by titles bestowing near-total property rights to landowners.¹⁹

. . .

On March 12, 2012, the City of Malibu passed Ordinance No. 361, adding "Chapter 17.45: Citywide View Preservation and Restoration" to the city's municipal code. The law allows homeowners to formally register 180° photographic documentation of "primary views" from a fixed point 60 inches above the ground, within or 10 feet outside of their residence. Three months later, on June 1, 2012, Malibu implemented its "Story Pole Policy," which requires the erection of poles and orange netting to outline proposed construction prior to city approval. Together, the two codes allow primary view records to serve as a reference for the city in its regulation of view obstructions by buildings on adjacent lots, in perpetuity.²⁰ When determining whether view obstructions are "significant," Malibu planners are required to consider "the extent to which the primary view contributes to the economic value and/or enjoyment of the claimant's property."²¹

By ensuring that "economically valuable" views are guaranteed in perpetuity, registering a primary view can be understood to increase the total value of the property. Ironically, this increase in property value is largely illegible to the LA County government, which determines the property taxes of each parcel in the county — assessors are limited by law to a maximum increase of 2% per year, unless the titleholder changes or the property undergoes new construction.

¹⁶ Pincett, Stephanie S. *Transforming California: A Political History of Land Use and Development*. United States: Johns Hopkins University Press, (2003) 2; Madley, 3, 6, 10, 12.

¹⁷ In 1851 and 1852, 119 tribes signed treaties forfeiting the majority of their lands in exchange for protection, supplies, and the creation of federal reservations. These treaties were ultimately rejected by the California legislature, which deemed the concession of 7.5% of state land to reservations too great a concession. Madley, 164-168.

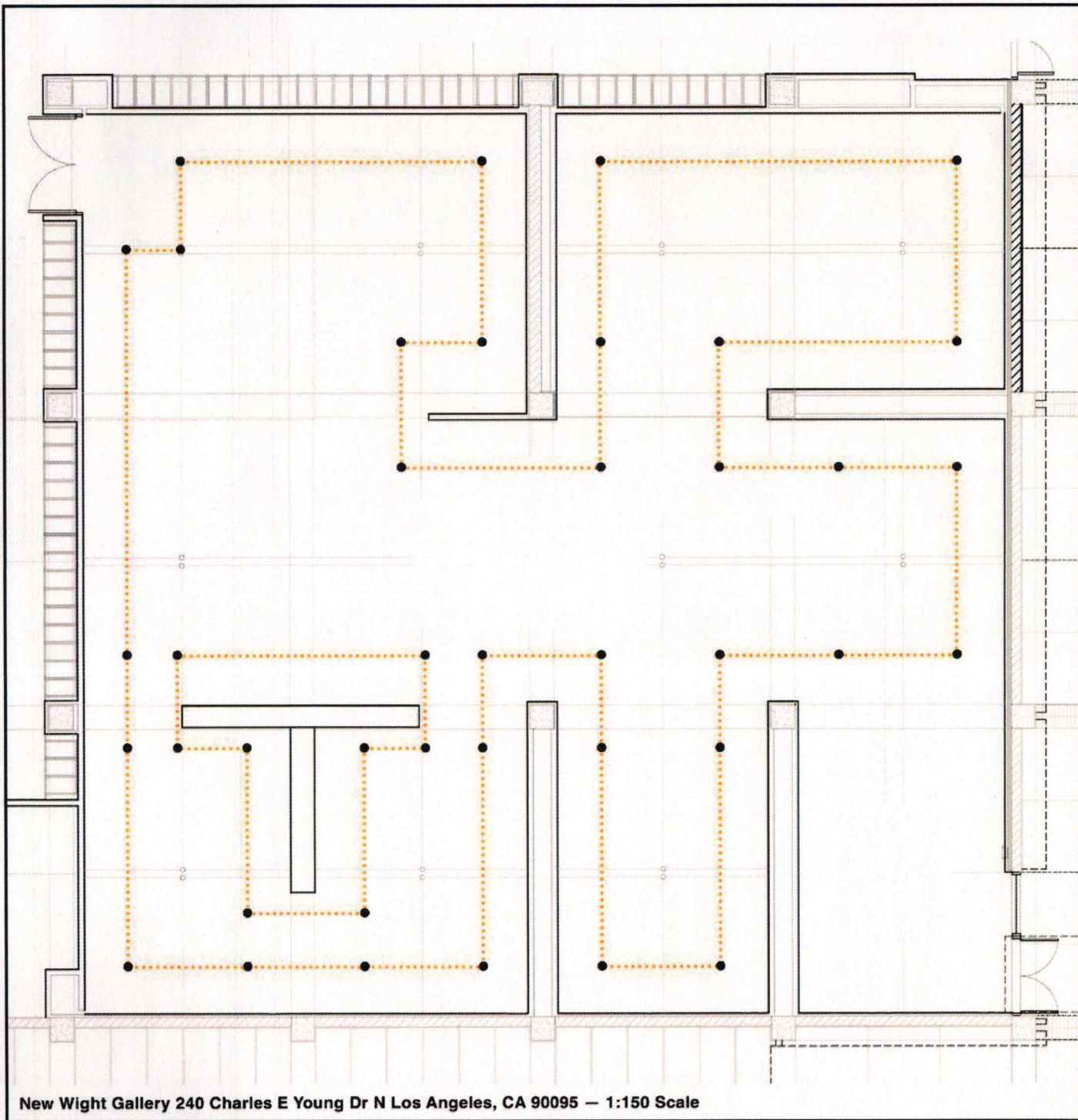
¹⁸ Madley, 168-171

¹⁹ Gates, "Adjudication," 216.

²⁰ Whereas similar view protection codes can be used to regulate foliage in Laguna Beach and Rancho Palos Verdes, primary views in Malibu are set apart by their ability to restrict the construction of *buildings* on adjacent plots in addition to foliage.

²¹ Malibu Municipal Code § 17.45.040(E)

California's 19th century expropriation and privatization through land survey established visual documentation as central in the American project of property expansion and accumulation. Malibu's use of visual documentation to simultaneously reinforce property values and expand regulatory power beyond the bounds of the registrant's plot constitutes a homologous formation in which the traces of settler colonial strategies of expansion and dispossession are legible.



New Wight Gallery 240 Charles E Young Dr N Los Angeles, CA 90095 — 1:150 Scale

Story Pole Plan

New Wight Gallery
240 Charles E Young Dr N
Los Angeles, CA 90095

All Story Poles

Pole Elevation: 195.38
Existing Grade: 181.63
Pole Height: 13.75

Date: 4/17/2025

12" Orange Mesh

STORY POLE PLAN:

All provided "PE" heights are top of pole elevations. The existing grade "EG" elevations and pole heights "PH" on this plan are estimated.

CERTIFICATION:

This plan is provisional and is pending certification by a licensed surveyor.

STORY POLE MARKINGS:

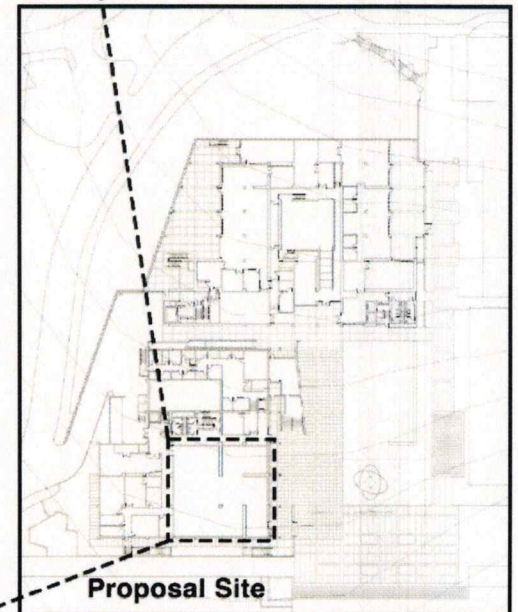
The top one foot of the story poles shall be painted with a clearly visible black paint. Markings shall also be made at 18 feet above finished or natural grade, whichever results in a lower building height, and at one foot increments above 18 feet. Bright orange construction mesh approximately one foot in width shall be placed connecting poles to show all proposed roof and ridgelines.

STORY POLE SAFETY:

All story poles shall be placed to ensure the health, safety and general welfare of the public. If at any time the story poles become unsafe, they shall be repaired and reset immediately. The story poles shall be removed immediately if determined by the City to be a public safety risk.

WAIVER OF RISK:

The applicant must sign and submit a waiver absolving the City of any liability associated with construction of, or damage by the story poles. This waiver will be provided by the case planner and shall be copied on the story pole plan. The applicant shall not install the story poles until the waiver form is submitted to the City.



Proposal Site

Story Poles (Proposal for New Wight Gallery)

Hardware, lumber, paint, safety fencing, story pole plan

Dimensions variable

2025

According to the regulations of California Coastal Region, all building projects in the City of Malibu are required to install "story poles" outlining the silhouette of an architectural plan on site prior to project approval.²²

Malibu's Story Pole Policy allows homeowners who register "Primary View Determinations" with the city to prevent proposed construction that obscures their protected views. The code recognizes a private field of view as a primary source of "economic value and/or enjoyment," and positions one's right to protect this property interest as superseding the right of another homeowner to develop their property without impediment.

Just as story poles can be understood to represent a real estate development's promise of future value, Malibu's view protection codes make clear that these poles also represent the capacity of one's property interests to erode another's.

Story Poles (Proposal for New Wight Gallery) presents a story pole plan for the construction of a building that would block the view of all walls inside UCLA's New Wight gallery. This work asserts that the gallery, like the primary view, is a site in which fields of view are assessed according to their potential to hold economic value. As an architectural plan for a building with no use or exchange value, *Story Poles* proposes an anti-architecture wherein construction constitutes the negation of "economic value and/or enjoyment."

During installation of *Intextuation*, story poles were erected throughout the entirety of the New Wight gallery according to this work's story pole plan. Before *Intextuation* opened to the public, co-exhibiting artists requested that the story poles in front of their work be modified or removed due to the visual interference the poles imposed. Deinstalled lumber and fencing piled at the gallery entrance evince *Story Poles'* antagonism to the exhibition structure.

²² "Story Pole Policy" City of Malibu Planning Department. Effective July 1, 2012.

Malibu Primary View Determinations

Archival giclée prints

34" x 22" (each)

2025

After the United States acquired California with the Treaty of Guadalupe Hidalgo in 1848, the California legislature relied on government surveyors to identify tracts of public land. In the 1850s, the state made over 500,000 acres of public land available for purchase, and required each purchased tract be surveyed by its buyer.²³ Privatization was used to populate California with taxable, non-native peoples and visually assimilate unmapped lands into the state's registry.

Malibu's Municipal code represents a continuation of this colonial logic. Homeowners are entitled to register "Primary View Determinations" recorded in 180° from a single point 60 inches from the ground, either inside or within a 10-foot radius of their home. These records can be used to prevent proposed construction that obscures their protected views.

The *Malibu Primary View Determinations* series reproduces Primary View Determination photographs in Malibu's records. Though the images are tools in the expansion of property rights, as municipal records they are legally unowned and available in the "public domain." As works of fine art, *Malibu Primary View Determinations* become property objects eligible for intellectual property claims. The production of these images replicates colonial California's privatization of public property using the logic of visual appropriation.

²³ Gates, Paul W. "Public Land Disposal in California." *Agricultural History* 49, no. 1 (1975): 161.



7111 Grasswood Ave PVD (with FREEWAY)

Inkjet print on vinyl

96" x 29"

2025

The Catholic Church's 15th century Doctrine of Discovery entitled agents of the king of Spain to claim lands occupied by non-Christians "upon arrival," and granted them religious authority to establish missions in California.²⁴ During the Gold Rush, American standardization of land survey strategies facilitated the near-complete expropriation of California land from Indigenous peoples.²⁵

²⁴ The doctrine also entitled European settlers to enslave non-Christians in foreign territories, and is cited as one of the principle acts to establish the Atlantic slave trade. In the 1823 case *Johnson v. McIntosh* heard by the Supreme Court, Chief Justice John Marshall's majority decision held that the Doctrine of Discovery was enforceable legal precedent in the United States and the doctrine had entitled each "discovering" nation to distribute title to territories while they were "yet in possession of the natives." Today, Marshall's ruling based on the racial logic of the Doctrine of Discovery continues to serve as precedent for some U.S. Indian law. See Quotation from Charles, Mark and Soong-Chan Rah, *Unsettling Truths: The Ongoing, Dehumanizing Legacy of the Doctrine of Discovery*, InterVarsity Press (2019): 16; Park, K-Sue. "The History Wars and Property Law: Conquest and Slavery as Foundational to the Field." *The Yale Law Journal* 131, no. 4 (2021): 1093; Marshall, John, and Supreme Court Of The United States. U.S. Reports: *Johnson v. McIntosh*, 21 U.S. 8 Wheat. 543 (1823): 574; Dunbar-Ortiz, Roxanne. *An Indigenous Peoples' History of the United States*, United Kingdom: Beacon Press (2023): 198-199; *City of Sherrill v. Oneida Indian Nation of N. Y.*, 544 U.S. 197 (2005).

²⁵ Three years after acquiring California in the Mexican-American War, Congress passed the California Land Act of 1851, which created a Board of Land Commissioners to adjudicate claims to Mexican land grants. Claimants were required to file titles with the Commission, which supplemented vague Mexican deeds with reports from American surveyors. In 1853, Congress created a U.S. Surveyor General position for California alongside an affiliate land office, which worked to systematize land records in the state. Maps provided by government surveyors to the Board of Land Commissioners were essential in the gradual verification of poorly-recorded Mexican claims; just as the Board of Land Commissioners' rulings on claims to private land allowed government surveyors to create increasingly accurate maps outlining the state's public lands. Once the government identified public tracts, the U.S. Surveyor General was authorized to offer this land to squatters or sell it at auction. One of California government's primary projects in the 1850s was to develop and populate the state with American citizens whom it could regulate and tax. Regulation required an understanding of who owned what (as articulated in title registries) and where (as determined by survey). The government accomplished this in part through "preemption" and the auction of public lands. The doctrine of preemption allowed squatters who settled on and "improved" unsurveyed land to purchase plots at significantly discounted rates before they were offered in public auction. Preemption's few conditions required squatters to perform an informal survey of the land, which was then assimilated in the state's records. The improvement

U.S. Route 101 forms part of El Camino Real, a road connecting the sites of all 21 colonial Franciscan missions in the state. The U.S. 101 Main Street exit leads to the site of the original colonial settlement in the City of Los Angeles — Nuestra Señora Reina de los Ángeles Asistencia, a “sub-mission” to the nearby Mission San Gabriel Arcángel.

The City of Malibu Municipal Code § 17.45 and Story Pole Policy give homeowners the ability to register documentation of private views from their property and use these archived photographs to regulate the development of real estate on adjacent plots.

By granting property owners the power to regulate adjacent property use and development within their field of view, the code extends the colonial logic of the Doctrine of Discovery and the American land survey, which positioned visual documentation as foundational to expropriation.

7111 Grasswood Ave PVD is a vinyl reproduction of the “primary view determination” for 7111 Grasswood Ave, Malibu, CA, installed on an overpass of the U.S. Route 101 Main Street exit ramp. This work publicizes a private view that has been protected by the Malibu local government according to its “economic value.”²⁶ Locating this document near the site of La Iglesia de Nuestra Señora la Reina de los Ángeles highlights the basis of local legislation on the colonial view-centric logics that facilitated colonization in California.

requirement of preemption and survey requirement for all unsurveyed land sales ensured that the state’s distribution of titles to squatters increased its proportion of economically productive land while expanding local title registries and their associated tax bases. Gates, Paul W. “Public Land Disposal in California.” *Agricultural History* 49, no. 1 (1975): 161, 215, 225; Gates, Paul W. “Adjudication of Spanish-Mexican Land Claims in California.” *Huntington Library Quarterly* 21, no. 3, (1958): 215, 225; “Diseños Collection,” California Secretary of State Shirley N. Weber, PhD.; *Statutes at Large: 32nd Congress Session 2* Ch. 145, Washington, D.C.: Law Library of Congress (1853): 244.

²⁶ Malibu Municipal Code § 17.45.040(E)

SETTLER-COLONIAL SIGHTLINES (with Hunter Baoengstrum)

Walking tour

5 miles

2025

Notice of Inspection 53-04272025

DATE: Sunday, April 27, 2025

TIME: Meet 9:00 AM, Walk 9:30 AM using Metro 134 Bus

START AND END LOCATION: Downtown Santa Monica E (Expo) Line Station

SETTLER-COLONIAL SIGHTLINES

This is a formal notification of a 6-mile long walking inspection of past and current Malibu story poles in collaboration with Harrison Kinnane Smith as part of the public programming for "Intextuation," an exhibition for UCLA Art on view at the New Wight Gallery from April 17th to April 25th. The purpose of this inspection is to observe municipal codes that use the visual logic of settler-colonialism to expand private property. Please plan accordingly as there will be many obstructed views along the way. Comfortable walking shoes, sun protection, and theodolites are all highly recommended.

Be aware that this inspection's start time from Downtown Santa Monica E (Expo) Line Station is a hard deadline as this is when our Metro 134 bus is scheduled to depart. The Bureau highly recommends downloading the official TAP app to easily add Metro fare or purchasing a physical TAP card at the station. Be aware that due to steep grades and uneven terrain along the walk this inspection will unfortunately not be ADA accessible. There will be a short stop for light snacks and hydration around lunch as per Cal/OSHA T8CCR 3395.