

RIGHT OF ENTRY PERMIT

Agency: Department of Parks and Recreation
Bay Area District
Mount Diablo State Park

Project: Morgan Territory Road Repair

This Right of Entry Permit (Permit) is made and entered into this _____ day of June, 2017, between the State of California, acting by and through its Department of Parks and Recreation, hereinafter called State, and County of Contra Costa, a political subdivision of the State of California, hereinafter called Permittee; State and Permittee may hereinafter be referred to as a Party, or collectively the Parties.

RECITALS

- **Whereas**, the State owns, operates and maintains the State Park known as Mount Diablo State Park, in the County of Contra Costa, State of California; and
- **Whereas**, Mount Diablo State Park has land use restrictions in place pursuant to Land and Water Conservation Fund (LWCF) agreement with National Park Service (NPS); and
- **Whereas**, Permittee has applied to State for permission to access Mount Diablo State Park for purposes of carrying out Permittee's Morgan Territory Road Repair project (the Project); and
- **Whereas**, the State desires to accommodate Permittee's application for permission to enter Mount Diablo State Park for purposes of the Project, as provided herein and as, and to the extent, such Project may be ultimately described, permitted, approved and conditioned by the State's Project Evaluation Form to serve as the Environmental Document, incorporated herein by reference as Exhibit "A", and as may be conditioned by any other regulatory agency having jurisdiction, if applicable; and
- **Whereas**, Permittee has requested an easement from the State for the installation of permanent subsurface tieback soil anchors. The process for granting a permanent easement may take some time, and State and Permittee agree that due to the necessity of beginning the Project as soon as possible so that Permittee may meet its obligations to the community, this Permit is expected to be the first phase of a two-phase process which will ultimately result in State granting an easement for the Project improvements within the Property to County of Contra Costa. Permittee agrees that, as a condition of this Permit, it will work cooperatively with the State and provide necessary information for the execution of the easement, including but not limited to compliance with NPS LWCF requirements and consideration to the State.

TERMS AND CONDITIONS

Now therefore, the State by this Permit hereby grants to the Permittee permission to enter upon State's property, conditioned upon the agreement of the Parties that this Permit does not create or vest in Permittee any interest in the real property herein described or depicted, that the Permit is revocable and non-transferable, and that the Permit is further subject to the following terms and conditions:

1. **Project Description:** By this Permit, the State hereby grants to the Permittee permission to enter onto those lands depicted on Exhibit "B" (the Property), attached hereto and herein incorporated by this reference, solely for the purpose of completing Morgan Territory Road Repairs as described on Exhibit "C" (Project Description), attached hereto and herein incorporated by this reference, the limits of which are described in the Environmental Document.
2. **Permit Subject to Laws and Regulatory Agency Permits:** This Permit is expressly conditioned upon Permittee's obtaining any and all regulatory permits or approvals required by the relevant regulatory agencies for the Project and Permittee's use of the Property, and upon Permittee's compliance with all applicable municipal, state and federal laws, rules and regulations, including all State Park regulations. Permittee shall, at Permittee's sole cost and expense, comply with the Project Description, and requirements and mitigations contained in the Environmental Document, and NPS requirements for LWCF designated land.

Permittee shall obtain all such legally required permits or approvals and submit to the State full and complete copies of all permits and approvals, including documentation related to or referenced in such permits and approvals, along with the corresponding agency contact and telephone numbers, and related California Environmental Quality Act (CEQA) and/or National Environmental Policy Act (NEPA) documentation as applicable.

Permittee has been informed and acknowledges the Property has existing NPS LWCF land use restrictions in place.

Further, as a condition and requirement of this Permit and at no cost to State, Permittee shall comply with any and all requirements imposed by NPS for Permittee's use of the Property, including, but not limited to, preparing and submitting all documentation, studies and reports required for NPS to make a determination of the Permittee's use of the Property, and if NPS determines the Project is a conversion, then Permittee shall furnish to State any and all requirements as a result of the conversion determination, including, but limited to, fees, compensation, suitable replacement property, studies or research reports, environmental compliance, and documentation until NPS is satisfied and approves conversion proposal. This obligation shall survive the expiration or termination of this Permit.

3. **Term of Permit:** This Permit shall only be for a Term up to a maximum of six months, with the Term beginning on the date shown above.
4. **Consideration:** Permittee agrees to pay State the sum of NINE THOUSAND FIVE HUNDRED and No/100 Dollars (\$9,500.00) as consideration for the temporary rights granted by this Permit. This Consideration is comprised of Seven Thousand and No/100 Dollars (\$7,000.00) for reimbursement of State's staff time in preparation and administration of this Permit and Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) as a nominal fee for the use of this Property for the Term of this Permit as noted herein. Payment is due upon execution of this Permit.
5. **Permit Subject to Existing Claims:** This Permit is subject to existing contracts, permits, licenses, encumbrances and claims which may affect the Property.
6. **Waiver of Claims and Indemnity:** Permittee waives all claims against State, its officers, agents and/or employees, for loss, injury, death or damage caused by, arising out of, or in any way connected with the condition or use of the Property, the issuance, exercise, use or implementation of this Permit, and/or the rights herein granted. Permittee further agrees to protect, save, hold harmless, indemnify and defend State, its officers, agents and/or employees from any and all loss, damage, claims, demands, costs and liability which may be suffered or incurred by State, its officers, agents and/or employees from any cause whatsoever, arising out of, or in any way connected with this Permit, exercise by Permittee of the rights herein granted, Permittee's use of the Property and/or the Project for which this Permit is granted, except those arising out of the sole active negligence or willful misconduct of State. Permittee will further cause such indemnification and waiver of claims in favor of State to be inserted in each contract that Permittee executes for the provision of services in connection with the Project for which this Permit is granted.
7. **Contractors:** Permittee shall incorporate the terms, conditions and requirements contained herein when contracting out all or any portion of the work permitted hereunder. Permittee shall be responsible for ensuring contractor/subcontractor compliance with the terms and conditions contained herein. Failure of Permittee's contractors to abide by State's terms and conditions shall constitute default by Permittee (see DEFAULT paragraph below) allowing State to terminate this Permit and seek all legal remedies.
8. **Insurance Requirements:** As a condition of this Permit and in connection with Permittee's indemnification and waiver of claims contained herein, Permittee shall maintain, and cause its contractors to maintain, a policy or policies of insurance as follows:

A. Commercial Permittees

Permittee shall maintain motor vehicle liability with limits of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of a motor vehicle, including all owned, hired, and non-owned motor vehicles.

Permittee shall maintain statutory Workers' Compensation and employer's liability insurance coverage in the amount of \$1,000,000/employee/disease/each accident, for all its employees who will be engaged in the performance of work on the Property, including special extensions where applicable. Said policy shall include a waiver of subrogation in favor of State. If the permittee has no employees and/or the owner(s) have elected not to be covered by workers' compensation, Permittee shall provide State with a written confirmation that Permittee is not required to be, and/or has elected not to be, covered by Workers' Compensation.

Permittee shall procure commercial general liability insurance at least as broad as the most commonly available ISO policy form CG 0001 covering premises operations, products/completed operations, personal/advertising injury and contractual liability with limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Said policy shall apply separately to each insured against whom any claim is made or suit is brought subject to the Permittee limits of liability

B. Private Party Permittees

Permittee shall maintain personal auto insurance with limits of not less than \$100,000 bodily injury per person, \$300,000 bodily injury per accident, and \$50,000 property damage per accident.

Permittee shall maintain comprehensive personal liability with limits of not less than \$300,000 each occurrence.

Each policy of insurance required by this provision shall: (a) be in a form, and written by an insurer, reasonably acceptable to State and (b) be maintained at Permittee's sole expense.

Permittee shall provide to the State within five (5) business days following receipt by contractor a copy of any cancellation or non-renewal of insurance required by this Permit.

Insurance companies issuing such policies shall have a rating classification of "A-" or better and financial size category ratings of "VII" or better according to the latest edition of the A.M. Best Key Rating Guide. All Insurance companies issuing such policies shall be licensed admitted insurers or eligible surplus lines insurers authorized to do business in the State of California.

Said motor vehicle liability and commercial general liability policies shall contain an endorsement naming the STATE OF CALIFORNIA and the CALIFORNIA DEPARTMENT OF PARKS AND RECREATION ITS OFFICERS, AGENTS, EMPLOYEES AND SERVANTS as an additional insured at no cost to State. The endorsements shall be provided and not substituted by referring to such coverage on the certificate of insurance.

Permittee shall provide to State evidence that the insurance required to be carried by this Permit, including the endorsements affecting the additional insured status and waiver of subrogation, is in full force and effect and that premiums therefore have been paid. Such evidence shall, at State's discretion, be in the form of a Certificate of Insurance or DPR Form 169A, Certificate of Insurance for Concession Contracts/Special Events, or a certified copy of the original policy, including all endorsements.

Permittee is responsible for any deductible or self-insured retention contained within the insurance program.

Should Permittee fail to keep the specified insurance in effect at all times, Permittee shall be considered to be in default of this Permit, and State may, in addition to any other remedies it has, terminate this Permit.

Permittee shall require and ensure that all contractors and subcontractors have adequate insurance meeting the coverage requirements in this provision.

Any insurance required to be carried shall be primary and not excess to any other insurance carried by State.

Coverage shall be in force for the complete term of this Permit, including any extension thereof, and for all work being done for which this Permit is required.

9. **Reservation of Rights:** State reserves the right to use the Property in any manner, provided such use does not unreasonably interfere with Permittee's rights herein.
10. **Access Limits and Conditions:** Access to the Property shall be limited to the access designated by State and as shown Exhibit "B" and described on Exhibit "C".

Permittee shall retain ownership and maintenance of all the improvements constructed within Permittee's Project, unless otherwise noted by State, and shall work promptly to comply with NPS LWCF requirements and secure an easement for the improvements with the State. This obligation shall survive the expiration or termination of this Permit.

Permittee shall furnish to State a record of survey, signed by a licensed surveyor, of the completed subsurface anchor improvements within the Permittee's requested easement for subsurface

tieback soil anchors (there shall be no surface improvements nor permanent surface access) through Mount Diablo State Park, subject to review by State.

Permittee agrees to work cooperatively with State and furnish to State all necessary information and preparation of materials, including but not limited to, an appraisal of easement value, compliance with NPS LWCF requirements, and consideration for the execution of Permittee's requested easement for subsurface tieback soil anchors through Mount Diablo State Park.

11. **Notice of Work:** Any required notices to State shall be sent to the State authorities in charge of Mount Diablo State Park named below. At least forty-eight (48) hours prior to any entry upon the Property for any of the purposes hereinabove set forth, Permittee shall provide the State contact[s] named below with written notice of Permittee's intent to enter the Property. Permittee shall also notify the State contact[s] listed below in writing at least forty-eight (48) hours prior to any change in the Project schedule or cessation or completion of work. Should State personnel need to contact Permittee, State shall notify Permittee's contact person listed below:

STATE:

Contact: Ryen Goering, Sector Superintendent
Sector/District: Contra Solano/Bay Area
Address: 96 Mitchell Canyon Road
Clayton, CA 94517
Telephone: 925-673-2895
Mobile: 925-890-4403

PERMITTEE'S CONTACT:

Contact: Neil Leary, Senior Civil Engineer
Contra Costa County Public Works Dept.
Address: 255 Glacier Drive
Martinez, CA 94553
Telephone: 925-313-2278
Fax: 925-313-2333

12. **Limits of Work:** In no event shall this Permit authorize work in excess or contrary to the terms and conditions of any regulatory agency permit or approval. Under no circumstances, whether or not authorized by any regulatory agency, other permit or any person or entity other than State, shall work exceed that which is authorized by this Permit.
13. **Public Safety:** Permittee shall erect orange plastic temporary construction fencing and appropriate signage prior to commencement of work to prevent public access to the construction zone. Permittee shall remove such fencing within two (2) days after the completion of work. Permittee shall take, and shall cause its contractors or subcontractors to take, any and all necessary and reasonable steps to protect the public from harm in connection with the Project or implementation of this Permit.
14. **Compliance with Project Requirements, Monitoring and Mitigation Measures (if applicable):** Resource monitoring and mitigation measures identified by State Park Environmental Scientist shall be completed in accordance with and to the satisfaction of the District Superintendent or designee.

Permittee's activities conducted under this Permit shall comply with all State and Federal environmental laws, including, but not limited to, the Endangered Species Act, CEQA, and Section 5024 of the Public Resources Code.

Any of Permittee's archaeological consultants working within the boundaries of the Property shall obtain a permit from the California State Parks Cultural Resources Division prior to commencing any archaeological or cultural investigations of the Property.

Permittee shall immediately advise State's contact person if any new site conditions are found during the course of permitted work. State will advise Permittee if any new historical resources (including archaeological sites), special status species, threatened/endangered species protocols, or other resource issues are identified within the Project site. Permittee shall abide by District Superintendent or designee's instructions to protect the resource(s) during the permitted work or risk revocation of the Permit.

Permittee shall make all excavation activities on the Property available to the State Archaeologist for observation and monitoring. During excavation, the State archaeological monitor may observe and report to the State on all excavation activities. State archaeological monitor shall be empowered to stop any construction activities as necessary to protect significant cultural resources from being disturbed.

In the event that previously unknown cultural resources, including, but not limited to, dark soil containing shell, bone, flaked stone, groundstone, or deposits of historic trash are encountered during Project construction by anyone, work will be suspended at that specific location, and the Permittee's work will be redirected to other tasks, until after a State-qualified archaeologist has

evaluated the find and implemented appropriate treatment measures and disposition of artifacts, as appropriate, in compliance with all applicable laws and department resource directives.

If human remains are discovered during the Project, work will be immediately suspended at that specific location and the District Superintendent or designee shall be notified by Permittee. The specific protocol, guidelines and channels of communication outlined by the California Native American Heritage Commission (NAHC), and/or contained in Health and Safety Code Section 7050.5 and Public Resources Code Sections 5097.9 et seq., will be followed. Those statutes will guide the potential Native American involvement in the event of discovery of human remains.

Permittee shall provide a written work schedule to State so that the State archaeological monitor can arrange to be on site on the necessary days. Permittee shall provide reasonable advance notice of and invite the District Superintendent or designee to any preconstruction meetings with the prime contractor or subcontractors.

- 15. Restoration of Property:** Permittee shall complete the restoration, repair, and revegetation of the Property in consultation with, and to the satisfaction of, the State Environmental Scientist within one (1) year after completion of the Project or the expiration or termination of this Permit, whichever comes first. This obligation shall survive the expiration or termination of this Permit.

Before Permittee performs any re-seeding or re-planting on parkland, it must comply with the State's policy titled "Genetic Integrity Policy" attached as Exhibit "D", attached hereto and herein incorporated by this reference. The seeds or planting's must be from a local source and Permittee must have prior written approval by State.

- 16. Performance Bond:** Not Required

- 17. Right to Halt Work:** The State reserves the right to halt work and demand mitigation measures at any time, with or without prior notice to Permittee, in the event the State determines that any provision contained herein has been violated, or in the event that cessation of work is necessary to prevent, avoid, mitigate or remediate any threat to the health and safety of the public or state park personnel, or to the natural or cultural resources of the state park.

- 18. Use Restrictions:** The use of the Property by Permittee, including its guests, invitees, employees, contractors and agents, shall be restricted to the daytime hours between sunrise and sunset on a day-by-day basis, unless otherwise approved in advance in writing by State. No person shall use or occupy the Property overnight.

Activities on the Property shall be conducted only in a manner which will not interfere with the orderly operation of the state park. Permittee shall not engage in any disorderly conduct and shall not maintain, possess, store or allow any contraband on the Property. Contraband includes, but is not limited to: any illegal alcoholic beverages, drugs, firearms, explosives and weapons.

Roads and trails where motorized vehicles are normally prohibited may be used for vehicle access by Permittee, its employees, agents or contractors for patrol, maintenance or repair purposes only, and only to the extent specified by State, and shall be otherwise subject to all other conditions and/or restrictions of this Permit and any applicable laws, state park regulations and state park policies.

Permittee shall not use or allow the Property to be used, either in whole or in part, for any purpose other than as set forth in this Permit, without the prior written consent of the State.

- 19. State's Right to Enter:** At all times during the term of this Permit and any extension thereof, there shall be and is hereby expressly reserved to State and to any of its agencies, contractors, agents, employees, representatives, invitees or licensees, the right at any and all times, and any and all places, to temporarily enter upon said Property to survey, inspect, or perform any other lawful State purposes.

Permittee shall not interfere with State's right to enter.

- 20. Protection of Property:** Permittee shall protect the Property, including all improvements and all natural and cultural features thereon, at all times at Permittee's sole cost and expense, and Permittee shall strictly adhere to the following restrictions:

- (a) Permittee shall not place or dump garbage, trash or refuse anywhere upon or within the Property, except in self-contained trash receptacles that are maintained to State's satisfaction by Permittee.

- (b) Permittee shall not commit or create, or suffer to be committed or created, any waste, hazardous condition or nuisance in, on, under, above or adjacent to the Property.
- (c) Permittee shall not cut, prune or remove any vegetation upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.
- (d) Permittee shall not disturb, move or remove any rocks or boulders upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.
- (e) Permittee shall not grade or regrade, or alter in any way, the ground surface of the Property, except as herein permitted, or subsequently approved in writing by the District Superintendent.
- (f) Permittee shall not bait, poison, trap, hunt, pursue, catch, kill or engage in any other activity which results in the taking, maiming or injury of wildlife upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.
- (g) Permittee shall not use, create, store, possess or dispose of hazardous substances (as defined in the California Hazardous Substances Act) on the Property except as herein permitted, or subsequently approved in writing by the District Superintendent.
- (h) Permittee shall exercise due diligence to protect the Property against damage or destruction by fire, vandalism and any other causes.

21. Default: In the event of a default or breach by Permittee of any of the terms or conditions set forth in this Permit, State may at any time thereafter, without limiting State in the exercise of any right of remedy at law or in equity which State may have by reason of such default or breach:

- (a) Maintain this Permit in full force and effect and recover the consideration, if any, and other monetary charges as they become due, without terminating Permittee's right to use of the Property, regardless of whether Permittee has abandoned the Property; or
- (b) Immediately terminate this Permit upon giving written notice to Permittee, whereupon Permittee shall immediately surrender possession of the Property to State and remove all of Permittee's equipment and other personal property from the Property. In such event, State shall be entitled to recover from Permittee all damages incurred or suffered by State by reason of Permittee's default, including, but not limited to, the following:
 - (i) any amount necessary to compensate State for all the detriment proximately caused by Permittee's failure to perform its obligations under this Permit, including, but not limited to, compensation for the cost of restoration, repair and revegetation of the Property, which shall be done at State's sole discretion and compensation for the detriment which in the ordinary course of events would be likely to result from the default; plus
 - (ii) at State's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

22. State's Right to Cure Permittee's Default: At any time after Permittee is in default or in material breach of this Permit, State may, but shall not be required to, cure such default or breach at Permittee's cost. If State at any time, by reason of such default or breach, pays any sum or does any act that requires the payment of any sum, the sum paid by State shall be due immediately from Permittee to State at the time the sum is paid. The sum due from Permittee to State shall bear the maximum interest allowed by California law from the date the sum was paid by State until the date on which Permittee reimburses State.

23. Revocation of Permit: The State shall have the absolute right to revoke this Permit for any reason upon ten (10) days written notice to Permittee. Written notice to Permittee may be accomplished by electronic or facsimile transmission, and the notice period set forth in this paragraph shall begin on the date of the electronic or facsimile transmission, or, if sent by mail, on the date of delivery. If Permittee is in breach of the Permit or owes money to the State pursuant to this Permit, any prepaid monies paid by Permittee to State shall be held and applied by the State as an offset toward damages and/or amounts owed. Nothing stated herein shall limit the State's exercise of its legal and equitable remedies.

- 24. Recovery of Legal Fees:** In any action brought to enforce or interpret any provisions of this Permit or to restrain the breach of any agreement contained herein, or for the recovery of possession of the Property, or to protect any rights given to the State against Permittee, and in any actions or proceedings under Title 11 of the United States Code, if the State shall prevail in such action on trial or appeal, the Permittee shall pay to the State such amount in attorney's fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of the costs of said action.
- 25. Voluntary Execution and Independence of Counsel:** By their respective signatures below, each Party hereto affirms that they have read and understood this Permit and have received independent counsel and advice from their attorneys with respect to the advisability of executing this Permit.
- 26. Reliance on Investigations:** Permittee declares that it has made such investigation of the facts pertaining to this Permit, the Property and all the matters pertaining thereto as it deems necessary, and on that basis accepts the terms and conditions contained in this Permit. Permittee acknowledges that State has made, and makes, no representations or warranties as to the condition of the Property, and Permittee expressly agrees to accept the Property in its as-is condition for use as herein permitted.
- 27. Entire Agreement:** The Parties further declare and represent that no inducement, promise or agreement not herein expressed has been made to them and this Permit contains the entire agreement of the Parties, and that the terms of this agreement are contractual and not a mere recital.
- 28. Warranty of Authority:** The undersigned represents that they have the authority to, and do, bind the person or entity on whose behalf and for whom they are signing this Permit and the attendant documents provided for herein, and this Permit and said additional documents are, accordingly, binding on said person or entity.
- 29. Assignment:** This Permit shall not be assigned, mortgaged, hypothecated, or transferred by Permittee, whether voluntarily or involuntarily or by operation of law, nor shall Permittee let, sublet or grant any license or permit with respect to the use and occupancy of the Property or any portion thereof, without the prior written consent of State.
- 30. Choice of Law:** This Permit will be governed and construed by the laws of the State of California.

STATE OF CALIFORNIA
Department of Parks and Recreation

COUNTY OF CONTRA COSTA
Department of Public Works

By: _____
Name: Vince Anibale
Title: District Superintendent (Acting)

By: _____
Name: Julia R. Bueren
Title: Public Works Director
Address: 255 Glacier Drive
Phone: 925-313-2201; Fax: 925-313-2333

Mount Diablo STATE PARK



 Spider Takes on ground on Mt. Diablo. Check for spider on your children frequently.	 Poison-Plant Poison will not be identified in areas they grow in groups of three and have green leaf edges.
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EXHIBIT "B" The Property

See inset below for Property



Most land adjacent to the park is private property. No trespassing without owner's permission.

Property

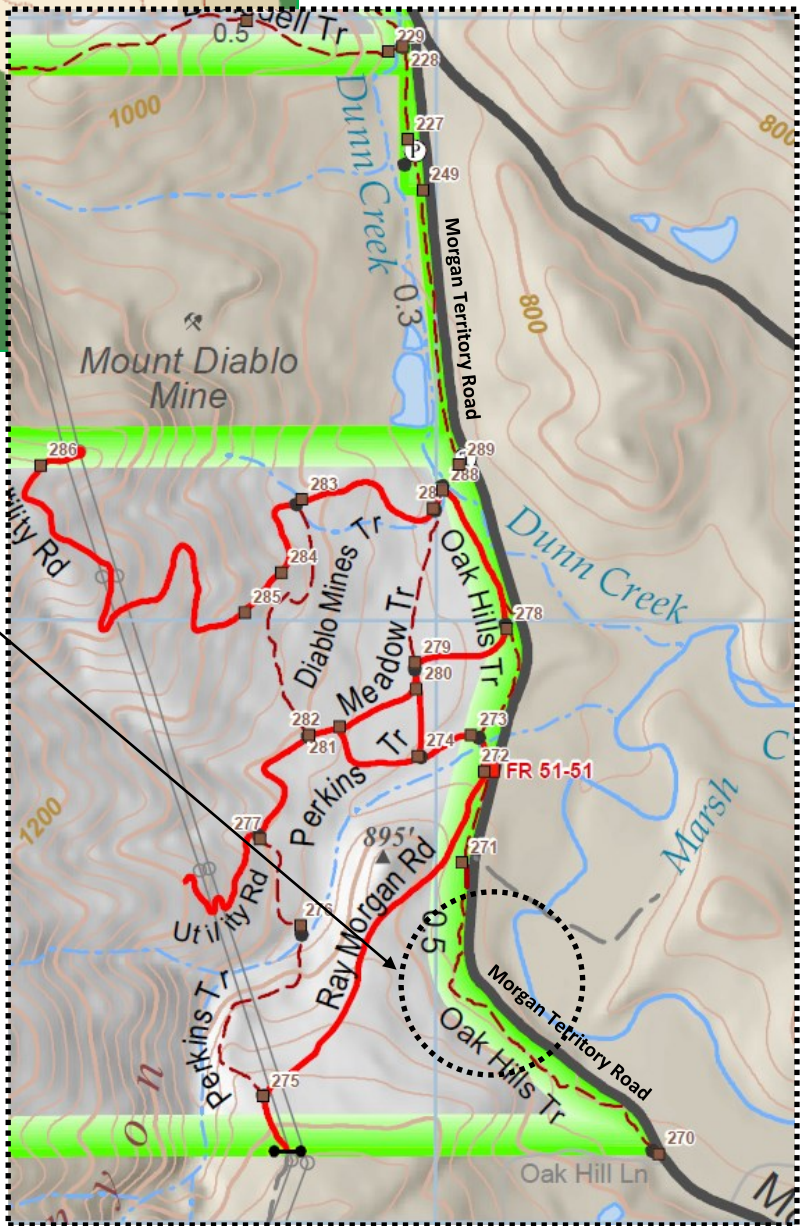


EXHIBIT “C”

Project Description

Morgan Territory Road Slide Repair Project

Background

Morgan Territory Road is located on the southeast side of Mount Diablo State Park and is south of the Town of Clayton. It is an off system, local rural road that provides approximately 300 vehicles per day access to homes and businesses and is used by residents and emergency life safety services to access the rural area west of Marsh Creek Road. The road is generally 22’ wide and winds through rolling and mountainous terrain.

During the recent “Atmospheric River” storms, a section of Morgan Territory Road experienced a land slide rendering the road unsafe for public use and was closed. The slide involves an area about 30 feet above the roadway to about 60 feet downhill of the road and is approximately 170 feet long. The terrain is relatively steep with slopes close to 1:1 and is about 80 feet above Marsh Creek at the bottom. During the initial slide, the ground at the top of the slide dropped vertically about 3 feet and is continuing to move with present vertical displacement approximately 8 feet.

The location of the slide is about 1.1 miles west of the Morgan Territory Road and Marsh Creek Road intersection and is immediately adjacent a portion of the eastern boundary of Mount Diablo State Park.

State Parks property is located to the west and is on the uphill side of the road.

The project is located in the East Contra Costa County Habitat Conservation/Natural Community Conservation Plan (HCP/NCCP) area, and is a covered project under Section 2.3.3 Rural Infrastructure Operation and Maintenance Activities, Natural Disaster Damage Repair of the HCP/NCCP.

Project Scope of Work on Property

In order for Permittee to repair its Morgan Territory Road, Permittee plans on the construction of retaining walls on both the uphill and downhill sides of the damaged road. The uphill retaining wall is immediately adjacent to State Parks’ land. Permittee’s design requires the installation of subsurface tieback soil anchors that extend permanently in the ground into State Parks land (see attached soil anchor cross

section). Permittee will install 30 anchors shown on Parcel 1 (see figure 1 below). These subsurface soil anchors will lie a minimum of 15 feet vertically beneath the surface and extend approximately 115' horizontally onto State Parks land at a 15 degree angle down from horizontal. Permittee will install the 6" diameter anchors by a horizontal drill rig from the roadway level, then will fill the 6 inch drilled holes with anchor, steel tendons, and grouted with a slurry cement mixture.

Permittee shall not perform any soil excavation on State Park land to construct the retaining wall.

Permittee may cut down and remove six trees (# 5, 6, 21, 22, 23, and 36) located on Parcel 2 that have been identified for removal as shown in the Arborist Report revised May 25, 2017 (see figure 3 below), and as approved by State Parks. Additionally, there are three additional trees (# 45, 46 and 52) that may be removed by Permittee if the trees' root system is adversely affected by the construction of the retaining wall, as determined by the Permittee's Arborist and approved by State Parks. Any trees removed will be accessed by Permittee on foot. Trees will be flush cut using a chain saw near to the ground with no soil disturbance.

Prior to tree removal, Permittee shall conduct a pre-construction survey to determine where active nests occur within/around the tree removal area; and monitor tree removal activities to determine whether nesting birds in the vicinity of the tree removal activity are showing behavioral signs of nest disruption. Permittee shall provide and on-site wildlife biologist to provide real-time recommendations to Permittee's Resident Engineer to reduce the potential for disruption. If an active nest appears to be at risk of abandonment work in the vicinity of the nest Permittee shall cease work and immediately consult with the Migratory Bird Office at USFWS as well as CDFW to determine appropriate measures.

Permittee shall place a temporary wildlife exclusion fence along the entire length of the Project area to prevent animals from entering the job site in accordance with their HCP/NCCP. Permittee shall not perform any digging to install the fence (any t-posts installed shall be pounded into the ground). Upon project completion, Permittee shall completely remove the temporary fence and repair any damage caused by Project to pre-Project or better conditions as approved by State.

Upon completion of Project, Permittee shall restore and revegetate all disturbed soil areas within State Park jurisdiction as required herein *Paragraph 15. RESTORATION OF PROPERTY* and as directed by the State Parks. Permittee shall comply State Parks Genetic Integrity Policy.

Permittee has requested two areas (as shown as Parcel 1 and Parcel 2, see figure 2 below) within the Property for access for construction related activity.

Parcel 1 is approximately 115 feet by 200 feet and is required for installation of subsurface tieback soil anchors required for retaining wall support. Permittee shall perform installation work from adjacent Morgan Territory Road and Permittee shall limit their surface access on Parcel 1 to crews hand installation and removal of the wildlife exclusion fence. Parcel 1 will subsequently require a grant of an easement to Contra Costa County for the permanent placement of the subsurface tieback soil anchors.

Parcel 2 is approximately 10 feet by 360 feet long for surface access for hand crews for construction access for the retaining wall and the removal of up to nine trees as noted above for hand crew work during construction. No vehicles or equipment will be operated in this area. All equipment activity will take place from the roadway level.

Permanent Easement

This Right of Entry Permit on Parcel 1 will require a subsequent permanent easement granted by State Parks due to the installation of subsurface tieback soil anchors that will extend permanently into State Park property.

Figure 1: Typical Subsurface Soil Anchor Cross Section

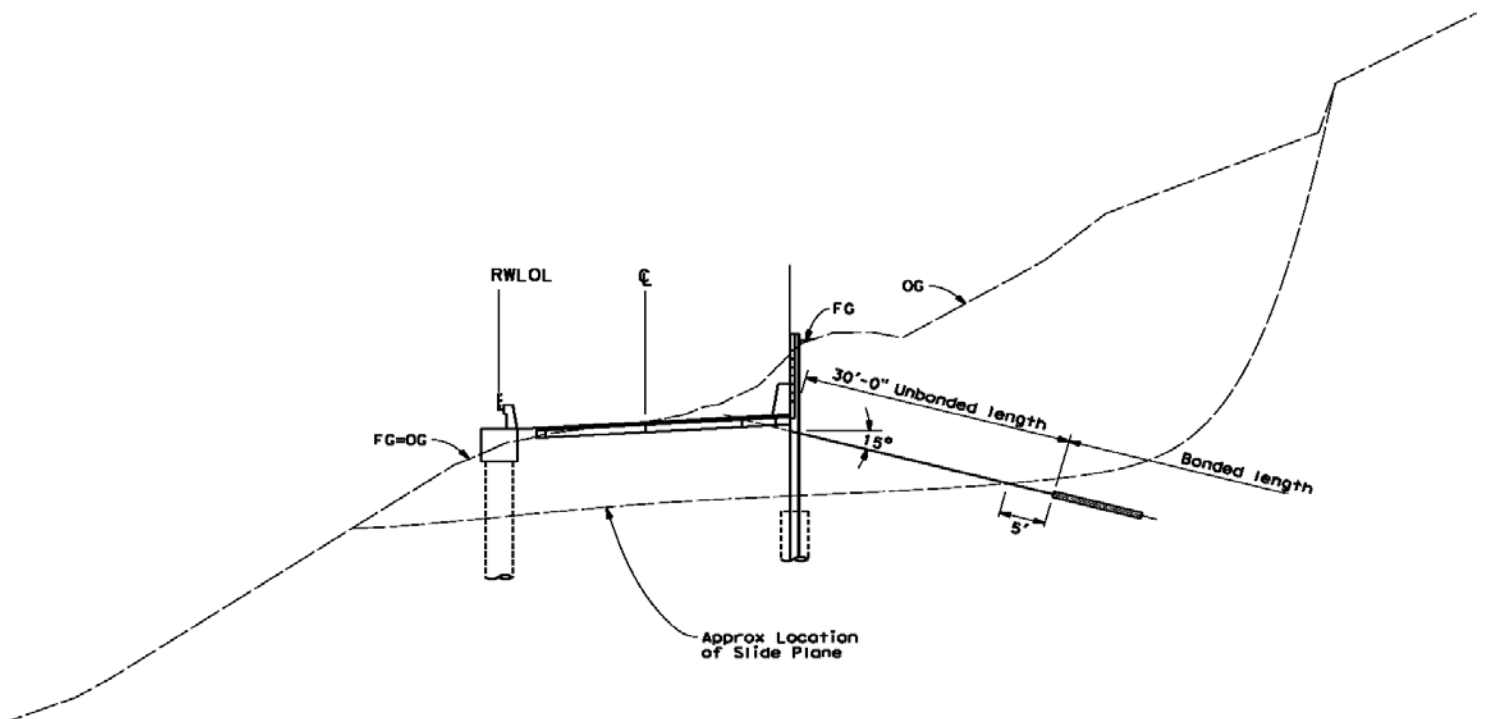


Figure 2: Parcels 1 & 2

Parcel 1 - Permanent anchors and subsequent easement

Parcel 1 & 2—Temporary access for construction

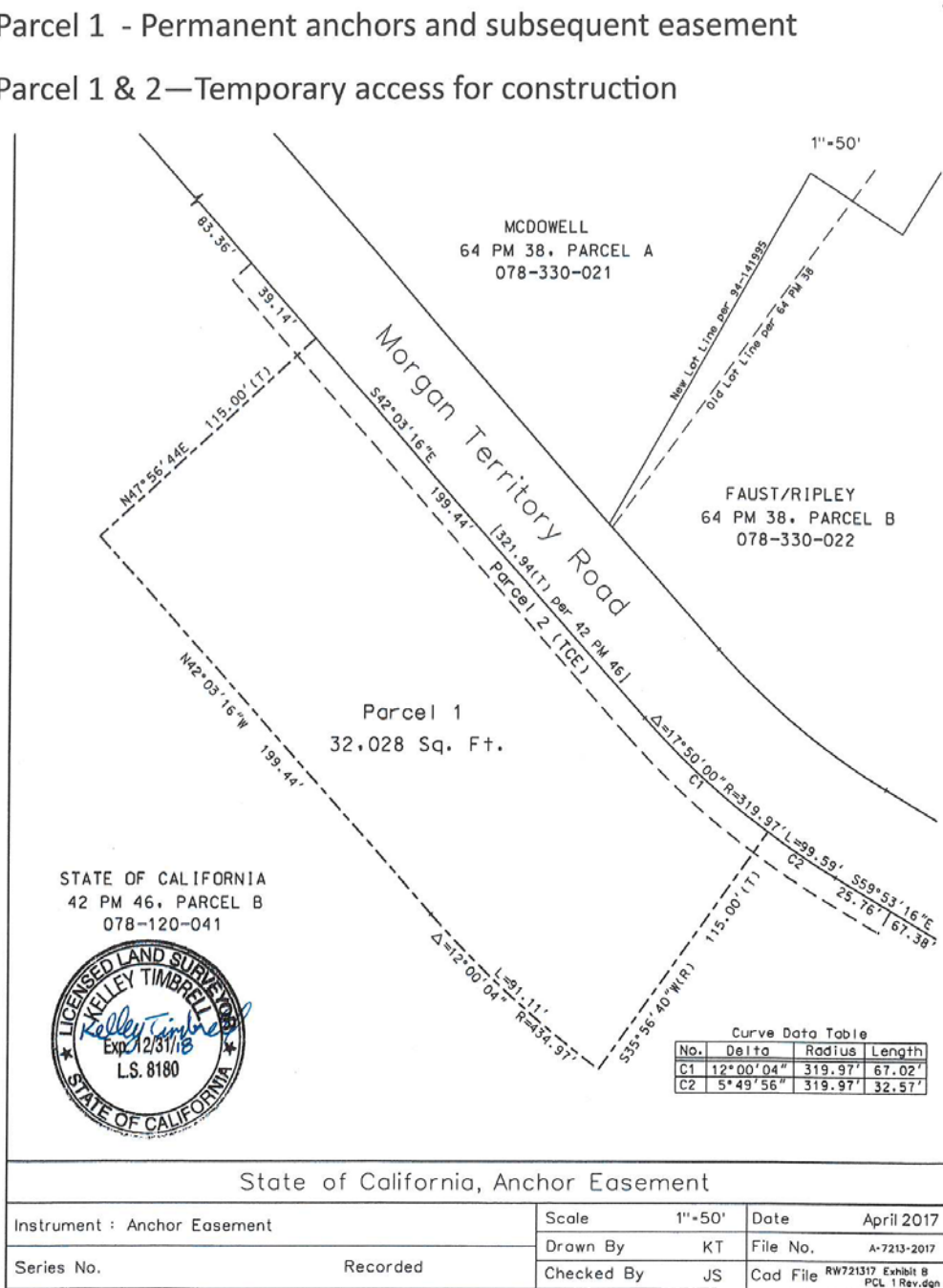
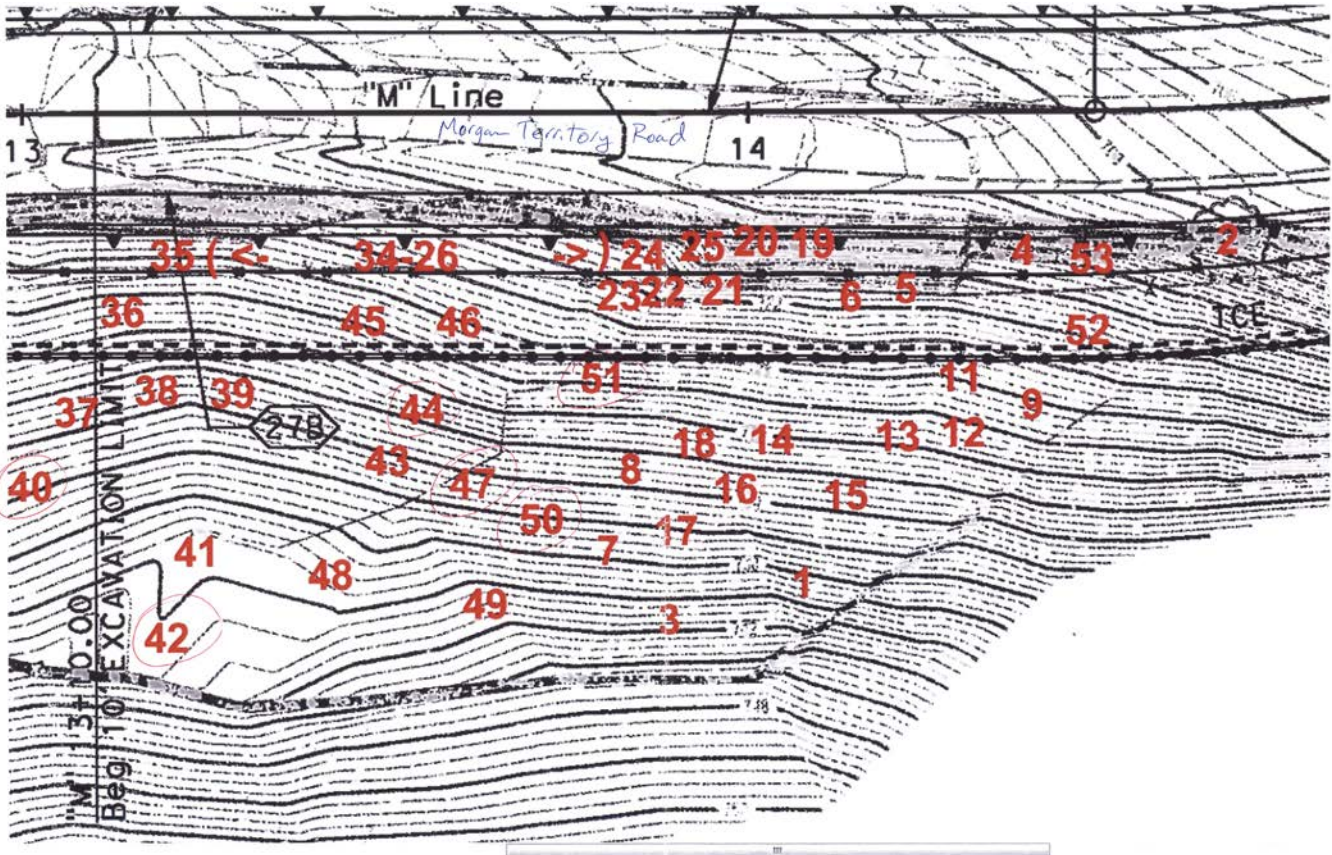


Figure 3: Arborist Report Tree Map





DEPARTMENT OF PARKS AND RECREATION
Bay Area District
845 Casa Grande Road
Petaluma, CA 94954

Lisa Ann L. Mangat, *Director*

EXHIBIT “D”

Department of Parks and Recreation
Department Operations Manual (DOM)
Natural Resources Section
Plant Resources Chapter 0310.4.1

Genetic Integrity Policy

In order to maintain the genetic integrity and diversity of native California plants, revegetation or transplant efforts in the State Park System will employ local populations, unless it is shown by scientific analysis that these populations are not genetically distinct from other populations being proposed for use. If local populations have been decimated, the closest, most genetically similar population(s) to those being lost from the State Park System unit will be used (California State Park and Recreation Commission Policy II.4).

Sources of materials for revegetation will be, in preferred order:

1. Seeds, plants, and cuttings salvaged from the site prior to disturbance;
2. Materials from similar vegetation and sites within the unit;
3. Materials collected offsite, but from within the same ecological region, elevation, and site characteristics as the site to be revegetated.

If seeds or plants must be acquired from commercial sources, the origin of the materials should be from within the same ecological region, elevation, and site characteristics as the project area.

In order to eliminate the possibility of genetic contamination of any naturally occurring population at or near a revegetation site, threatened or endangered plant taxa will not be used for revegetation unless the revegetation is being done as part of a restoration plan for that taxon (See DOM Section 0310.5.3.1).