

Recorded at the request of:  
Contra Costa County

Return to:  
Contra Costa County  
Public Works Department  
Real Estate Division  
255 Glacier Drive  
Martinez, CA 94553  
Attn: Brandon Mielke

OFFICIAL STATE BUSINESS – EXEMPT FROM RECORDING FEES  
PURSUANT TO GOVT. CODE SECTION 27383 AND DOCUMENTARY  
TRANSFER TAX PURSUANT TO REVENUE AND TAXATION CODE SECTION 11922

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**AGREEMENT AND GRANT OF NON-EXCLUSIVE EASEMENT**

Agency: Department of Parks and Recreation

**Roadway Anchor Easement**

Project: **Contra Costa County Morgan  
Territory Road Anchor Easement**

File:

Portion of Assessor Parcel No: 078-120-01-41, **Contra Costa County**

For valuable consideration, this AGREEMENT AND GRANT OF EASEMENT is made and entered into by and between the STATE OF CALIFORNIA, acting by and through the DEPARTMENT OF PARKS AND RECREATION, hereinafter called State, and **Contra Costa County Public Works** a *Public Utility*, hereinafter called Grantee.

State, pursuant to the provisions of Public Resources Code Section 5012 hereby grants unto Grantee, its successors and assigns forever, beginning on the date of recordation of this instrument, a non-exclusive easement (the Easement) and right of way for roadway anchor purposes and facilities incidental thereto in, under, along and across GRANTOR's certain real property situated in the unincorporated area of the County of Contra Costa, State of California, referred to in this Easement as the "Premises" and is more particularly described in Road Anchor Easement Exhibit "A", consisting of 1 page, and as depicted on Exhibit "B", consisting of 1 page, all attached hereto and situated within Mount Diablo State Park in, County of Contra Costa, State of California, and by this reference made a part hereof.

**THE PROVISIONS ON THE FOLLOWING \_\_\_ PAGES HEREOF CONSTITUTE A PART OF THIS AGREEMENT**

Dated \_\_\_\_\_

GRANTOR:  
STATE OF CALIFORNIA  
Department of Parks and Recreation

GRANTEE: **Contra Costa County Public Works**

*(notarized signature)*

*(notarized signature)*

By \_\_\_\_\_  
Name: Brian Dewey  
Title: Assistant Deputy Director  
Facilities and Development

By \_\_\_\_\_  
Name: Brian M. Balbas  
Title: Public Works Director

*I hereby certify that all conditions for exemption have been complied with and this document is exempt from the Department of General Services approval.*

By: \_\_\_\_\_

Name: Brian Dewey

Title: Assistant Deputy Director  
Facilities and Development

PROVIDED, this Grant of Easement is subject to the following terms and conditions:

1. **Subject to Existing Rights.** This Easement is subject to existing contracts, leases, licenses, easements, encumbrances, and claims which may affect said Premises and the use of the word "Grant" herein shall not be construed as a covenant against the existence of any thereof.
2. **Waiver and Release.** Grantee waives all claims against State, its officers, agents, and/or employees for any and all loss, injury, death or damage caused by, arising out of, or in any way connected with the Premises or Grantee's implementation or exercise of the Easement rights granted herein. Grantee shall protect, save, hold harmless, indemnify, and defend State, its officers, agents, and/or employees, from and against any and all loss, damage, claims, demands, liability, and costs, including, without limitation, all legal fees, expert witness fees, consultant fees, and expenses related to the response to, settlement, and/or defense of any claims, legal actions, or liability, which may be suffered or incurred by State, its officers, agents and/or employees, caused by, arising out of, or in any way connected with this Agreement and Grant of Easement, Grantee's use or occupation of the Premises, or implementation or exercise by Grantee of the Easement rights hereby granted, except those arising out of the sole active negligence or willful misconduct of State. Further, Grantee shall cause such indemnification and waiver of claims in favor of the State to be inserted in each contract Grantee executes in connection with Grantee's exercise of the rights granted herein. The obligations contained in this section shall survive termination of the Easement.
3. **Reservation.** State reserves the right to use said Premises in any manner, provided such use does not unreasonably interfere with Grantee's Easement rights hereunder.
4. **Relocation.** State reserves the right to require Grantee, at State expense, to remove and relocate all improvements placed by Grantee upon said Premises, upon determination by State that the same interfere with future development of State's property. Within 180 days after State's written notice and demand for removal and relocation of the improvements, Grantee shall remove and relocate the improvements to a feasible location on the property of State, as designated by State, and State shall furnish Grantee with an easement in such new location on the same terms and conditions as herein stated, all without cost to Grantee, and Grantee thereupon shall quitclaim to State the Easement herein granted.
5. **Automatic Termination.** This Easement shall automatically terminate in the event Grantee fails for a continuous period of 18 months to use this Easement for the purposes herein granted. Within 90 days after receiving written notice of such termination from State, Grantee shall deliver to State a fully executed quitclaim deed to all of Grantee's right, title and interest hereunder, in a form approved by State, and shall, without cost to State, remove all personal property and improvements placed by or for Grantee upon said Premises and restore the Premises as nearly as possible to the same condition they were in prior to the execution of this Easement, unless otherwise agreed to in writing by State. In the event Grantee should fail to remove the property and improvements and restore the Premises within 90 days, State may, at its sole discretion, do so at the risk of Grantee, and all costs of such removal and restoration shall be paid to State by Grantee within 10 days of receiving written demand by State. The obligations to quitclaim this Easement, remove all personal property and improvements, restore the

Premises, and reimburse State for any costs incurred by State for removal and/or restoration, shall survive termination of this Easement.

6. Termination for Grantee's Default. State may terminate this Easement in the event of a breach or default of the terms of this Agreement and Grant of Easement by Grantee if such breach or default continues for more than 30 days after State has given Grantee written notice of such breach or default. However, if the nature of Grantee's breach or default is such that more than 30 days is required for its cure, then Grantee shall not be deemed to be in breach or default if Grantee commences such cure within such 30-day period and diligently proceeds with such cure to completion. A failure of State to enforce any term, covenant, or provision of this Agreement and Grant of Easement against Grantee shall not constitute a waiver of that term, covenant, or condition. A waiver by State of any breach or default by Grantee or any term, covenant or provision of this Agreement and Grant of Easement shall not be deemed a waiver of any other breach or default or any term, covenant or provision in any other instance. Any waiver by State shall not be effective unless in writing and signed by an authorized State representative.
7. No improvements shall be allowed on the surface of the Premises except as specified herein or approved in writing by State. In making any excavation on said Premises, Grantee shall make the same in such manner as will cause the least injury to the surface of the ground around such excavation, and shall replace the earth so removed by it and restore the surface of the ground and any improvements thereon as nearly as possible to the condition they were in prior to such excavation.
8. Use Restrictions. Grantee understands that said Easement is within Mount Diablo State Park, a state park, and Grantee agrees to abide by certain restriction and conditions concerning Grantee's access to and use of said Easement as follows:
  - a. Except in the case of emergencies, at least two days prior to any entry upon the Premises for any of the purposes herein set forth, Grantee shall notify State by written or oral notice to the authorities in charge of said state park.
  - b. Grantee shall restrict travel to such roads or routes within said state park as authorities in charge of the park may reasonably designate.
  - c. Use of said roads or routes by Grantee shall be restricted to that use reasonably necessary for access to the Premises for Easement purposes.
  - d. Grantee shall not consent to the use of any of said roads or routes by members of the public without approval of State.
  - e. Any work or excavation on State property outside of the Premises shall require a Right of Entry Permit from State.
  - f. Except as otherwise provided herein, Grantee shall refrain from interfering with the public's use and State's operation of the state park and shall comply with all state park regulations.
  - g. Grantee shall keep and maintain the Premises, including all improvements, in good order and repair, and in a clean, safe condition. No disturbance of soil, pesticide application or dumping of refuse shall be permitted in any portion of the state park unless Grantee obtains the prior written approval of State. Grantee shall not commit or suffer to be committed any waste or nuisance on the Premises. Grantee shall at all times exercise due diligence in the protection of the Premises against damage or destruction by fire or other causes.
  - h. Grantee shall not cut or remove any trees or brush except as necessary for Easement purposes and approved in writing by State. Pruning of all trees shall comply with American National Standards Institute A300, Part 1 pruning standards, as may be amended.

- i. State shall not be responsible for losses or damage to Grantee's personal property, equipment or materials.

9. Excavations.

- a. In coordinating the scheduling of any excavation on the Premises, Grantee shall make scheduling of all excavation activities 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. State archaeological monitor shall be empowered to stop construction activities in the event the monitor determines that significant cultural resources are being disturbed. In the event that significant cultural resources are being disturbed, all work within thirty feet of the find shall be immediately halted.
- b. Should Grantee or its contractors find any cultural or historical resources, or suspected cultural or historical resources, in the absence of a State archaeologist, Grantee shall halt all work within thirty feet (30') of the find and immediately notify the State archaeologist or a State park ranger. Cultural resources include, but are not limited to, prehistoric deposits containing bone, flaked stone, or ground stone, historic deposits, and any other historical or archaeological artifacts. Grantee shall not resume work in the area of the find until authorized by the State archaeologist. Should human bone or bones of questionable appearance be disturbed during excavation, Grantee shall immediately notify the District Superintendent of the state park and halt ALL excavation until Health and Safety Code section 7050.5, Public Resources Code sections 5097 et seq. and 5097.9 et seq, and any applicable protocols, guidelines and channels of communication outlined by the California Native American Heritage Commission, have been complied with and the State archaeologist has authorized work to resume.
- c. The Grantee or Grantee's contractor shall provide a work schedule to State so that the State archaeological monitor can arrange to be on site on the necessary days; Grantee agrees to include the State archaeologist in any preconstruction meetings with the prime contractors or subcontractors. The Grantee shall provide the State archaeologist with notice at least two weeks prior to the work start date.

10. Notices.

- a. All written notices or other communications required or permitted hereunder shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested, to the addresses set forth below.
- b. All written notices or other communications shall be deemed received upon the earlier of (1) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, or (2) if mailed as provided above, on the date of receipt or rejection, when received by the other party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Time so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.
- c. Oral notices shall be effective upon receipt.

Contact:

**TO GRANTOR:**

California Department of Parks and Recreation  
Diablo Range District  
15751 Tesla Road  
Livermore, CA 94550-9364

Telephone: 925-447-0426

**With a copy to:**

California Department of Parks and Recreation  
Acquisition and Real Property Services Division  
2241 Harvard St.  
Sacramento, CA 95815  
(279) 499-1225

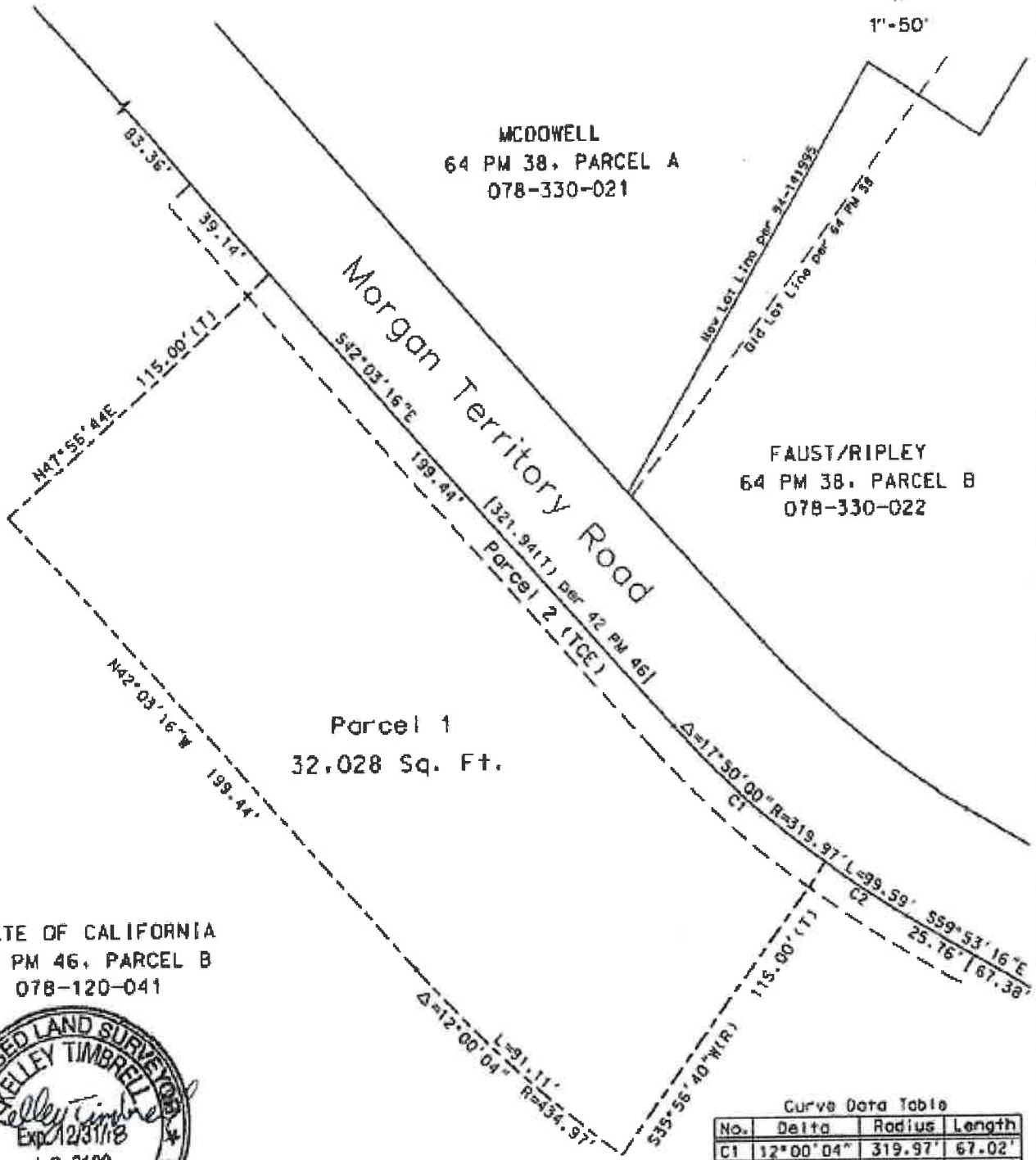
**TO GRANTEE:**

Contra Costa County Public Works  
Real Estate Division  
255 Glacier Drive  
Martinez, CA 94553

11. Grantee shall be solely responsible for obtaining all applicable authorizations necessary to enjoy this Easement and shall comply with all applicable laws, including, but not limited to, all state and federal environmental laws, and all laws and government orders applicable to the use, storage, transportation, and disposal of any hazardous substance. The release of non-pesticide petrochemicals on the Premises or state park lands is prohibited. All refueling operations shall have a spill plan signed by a registered engineer and shall use a liner in the secondary container design. Grantee shall immediately notify State in writing in the event of any spill or other incident involving hazardous substance contamination or violation of law and shall undertake the appropriate remedial actions.
12. Sublicenses and Permits. Grantee shall not let or sublet or grant any licenses or permits with respect to the use or occupancy of said Premises or any operation thereof, without the prior written consent of State. This Easement shall not be assigned, mortgaged, hypothecated, or transferred by Grantee, whether voluntarily or involuntarily by operation of law, except as expressly provided herein or with the express written consent of State.
13. Governing Law. This Agreement and Grant of Easement will be governed and construed by the laws of the State of California.
14. Validity. If any term, condition or provision of this Agreement and Grant of Easement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement and Grant of Easement shall not be affected thereby and shall remain valid and enforceable to the fullest extent permitted by law.
15. Attorney's Fees. If any party brings an action to enforce or interpret the terms of this Agreement and Grant of Easement or to declare rights under this Agreement and Grant of Easement, including any action in bankruptcy court, and together with the appeal of any such action, the prevailing party shall be entitled to its reasonable attorney fees and costs as fixed by the court.
16. Time of the Essence. Time is of the essence in this Agreement and Grant of Easement and each and all of its terms or conditions in which performance is a factor.
17. Authority. The person signing on behalf of Grantee warrants that he/she has authority to accept this Agreement and Grant of Easement on behalf of Grantee and to bind the Grantee to the terms and conditions of this Agreement and Grant of Easement.
18. CEQA. Grantee shall comply with the mitigation measures adopted for this project pursuant to the certified Environmental Impact Report or Negative Declaration.

# EXHIBIT "B"

## PLAT TO ACCOMPANY EXHIBIT "A"



Curve Data Table

No.	Delta	Radius	Length
C1	12° 00' 04"	319.97'	67.02'
C2	5° 49' 56"	319.97'	32.51'

### State of California, Anchor Easement

Instrument : Anchor Easement	Scale	1"=50'	Date	April 2017
Series No.	Recorded	Drawn By	Checked By	File No.
		KT	JS	A-720-2017
				Cad File
				RW724317 Exhibit B PCL 1 Rev.dgn

Morgan Territory Road Slide (Road No. 7213)  
State of California  
Portion of APN 078-120-041  
Drawing No. RW7213-2017, Parcel 1

**EXHIBIT "A"**

Real property in an unincorporated area of the County of Contra Costa, State of California, being a portion of Section 33, Township 1 North, Range 1 East, Mount Diablo Meridian, being a portion of Parcel B as shown on the map of Subdivision MS No. 24-75 filed February 3, 1976 in Book 42 of Parcel Maps at page 46, and described in the deed to The State Of California recorded March 2, 1976 in Book 7779 of Official Records at page 470, Contra Costa County records, described as follows:

**Anchor Easement**

Beginning at the southeasterly terminus of a course labeled as "north 42°03'16" west, 321.91 feet" on said map (42 PM 46), said terminus point being on the southwesterly Right of Way of Morgan Territory Road; thence southeasterly along said Right of Way along a tangent curve to the left that is concave to the northeast having a radius of 319.97 feet, through a central angle of 12°00'04", an arc length of 67.02 feet; thence radial to and leaving said Right of Way line south 35°56'40" west, 115.00 feet to a non-tangent curve to the right that is concave to the northeast having a radius of 434.97 feet, through a central angle of 12°00'04", an arc length of 91.11 feet; thence north 42°03'16" west, 199.44 feet; thence north 47°56'44" east, 115.00 feet to a point on said Right of Way; thence southeasterly along said Right of Way south 42°03'16" east, 199.44 feet to the Point of Beginning.

Containing an area of 32,028 square feet of land, more or less.

Exhibit "B", a plat, is attached hereto and by this reference made a part hereof.

Bearings are based on the California Coordinate System of 1927 (CCS27), Zone III.  
Distances given are ground distances.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: Kelley Timbrell  
Licensed Land Surveyor  
Contra Costa County Public Works

Date: APRIL 20, 2017

