

## RIGHT OF ENTRY PERMIT

Agency: Department of Parks and Recreation

Project: Goat Canyon Sedimentation Basin Cleanout

This Right of Entry Permit (Permit) is made and entered into this 10<sup>th</sup> day of September, 2012, between the State of California, acting by and through its Director of the Department of Parks and Recreation, hereinafter called State Parks, and the Department of Resources Recycling and Recovery, its officers, employees, agents and contractors, hereinafter called CalRecycle.

### RECITALS

- Whereas, State Parks owns, operates, and maintains the State Park unit know as Border Field State Park, in the County of San Diego, State of California; and
- Whereas, State Parks has requested CalRecycle to accomplish a sedimentation basin cleanout in a portion of Border Field State Park; and
- Whereas, CalRecycle approved the Border Field State Park for a Department-managed remediation project pursuant to PRC section 48020 et seq., and through the Director Request For Approval dated September 4, 2012.
- Now therefore, State Parks desires to provide permission to CalRecycle to enter Border Field State Park for purposes of the Goat Canyon Sedimentation Basin Cleanout Project and to the extent such project is ultimately described, permitted, approved and conditioned by a CEQA document dated August 30, 2012, and as may be conditioned by any other regulatory agency having jurisdiction, if applicable.

### AGENCY PARTNERSHIP COMMITMENTS

This project is a cooperative venture between State Parks and CalRecycle. To ensure the short and long term viability of the basins for their intended purpose, the agencies agree to the following:

- CalRecycle shall perform a sediment basin cleanout project to remove sediment from the basin, screen a portion of the stockpiled sediment for use in a beach deposition study, and perform all closely related tasks. This includes providing project oversight, the use of CalRecycle contractors, permitting, and the preparation of a project report.
- State Parks shall reimburse CalRecycle \$300,000 for project costs and shall administer a beach deposition study for approximately \$375,000.
- State Parks shall commit to establishing a basin maintenance plan and allocate sufficient funding (current CalRecycle estimate from State Park's past basin maintenance projects is \$800,000) for annual basin maintenance, as budget provisions allow.
- State Parks commits to identifying, permitting, and securing local sediment deposition locations to minimize future sediment removal costs. Potential locations include the Nelson Sloan Quarry remediation site, beach deposition within the Border Field State Park, and any other local fill location either on or off of State property.

### TERMS AND CONDITIONS

This Permit hereby gives CalRecycle the revocable rights stated below, and is not transferable to any other party. This Permit is further subject to the following terms and conditions:

1. **Project Description:** By this Permit, State Parks hereby gives permission to CalRecycle to enter upon those lands within Border Field State Park for the purpose of removing sediment and debris located within the sedimentation basins, processing the sediment and debris, removing and

disposing trash and oversized material, and leaving the remaining processed sediment on the processing pad. Depending on available funding the processing of sediment and debris and disposal of trash and oversized material may be removed from the scope of work.

- 2. Permit Subject to Laws and Permits:** CalRecycle shall, at CalRecycle's sole cost and expense, comply with requirements of all municipal, state, and federal authorities now in force or which may be in force pertaining to the project and use of the Property as provided by this Permit. This Permit is expressly made subject to any and all laws and regulatory permits or approvals, including any conditions of such permits and approvals issued or required to be issued by such regulatory agencies.

Prior to commencement of any work, State Parks and CalRecycle shall jointly obtain all such legally required permits or approvals, and California Environmental Quality Act (CEQA) compliance and submit to CalRecycle full and complete copies of all permits and approvals, along with the corresponding agency contact and telephone numbers and related CEQA and/or National Environmental Policy Act (NEPA) documentation.

- 3. Term of Permit:** This Permit shall only be for the period beginning on September 1, 2012, and ending on June 30, 2013, or as may be reasonably extended by written mutual agreement.
- 4. Consideration:** The Goat Canyon Sedimentation Basin Cleanout Project is being performed by CalRecycle at the request of State Parks for the benefit of State Parks, and as such no further consideration is due for the rights granted by 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:** CalRecycle shall cause its contractors to name State Parks as an additional insured under its contractors' liability insurance policies covering work or activities conducted under this Permit. CalRecycle shall include in all contracts covering work to be performed under this Permit a provision whereby CalRecycle's contractors agree to protect, save, hold harmless, indemnify, and defend State Parks, its officers, agents and/or employees, from any and all claims for loss, damage or injury to persons or property which may be asserted against or incurred by State Parks, its officers, agents and employees caused by, arising out of, or in any way connected with the work or activities conducted pursuant to this Permit, except those arising out of the sole active negligence of State Parks. CalRecycle shall cause its contractors to incorporate the terms, conditions, and requirements contained herein when contracting out all or any portion of the work permitted hereunder. CalRecycle shall be responsible for ensuring contractor/subcontractor compliance with terms and conditions contained herein.
- 7. Reservation of Rights:** State Parks reserves the right to use the Property in any manner, provided such use does not unreasonably interfere with CalRecycle's contractors rights herein.
- 8. Access Limits and Conditions:** Access to the Property shall be limited to the access and routes designated by State Parks.
- 9. Notice of Work:** Prior to any entry upon the Property for any of the purposes hereinabove set forth, CalRecycle shall notify the authorities in charge of Border Field State Park named below by written notice at least forty-eight (48) hours prior to commencement of work. Permittee shall also notify authorities in charge of Border Field State Park at least forty-eight (48) hours of any change in the project schedule or prior to cessation of work:

Name: Mr. Clay Philips, South Sector Superintendent  
Address: 301 Caspian Way  
Imperial Beach, California 91932  
Telephone: (619) 575-3613 Ext. 303  
Fax: (619) 575-6913

- 10. 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

permitted or authorized by any regulatory agency, permit, or approval, shall work exceed that which is reasonably necessary to carry out the purpose or project limits set forth in Subsection 9.

**11. Public Safety:** CalRecycle shall cause its contractors and subcontractors to take any and all other necessary and reasonable steps to protect the public from harm due to the work.

**12. Compliance with Monitoring and Mitigation Measures:** Activities conducted within the boundaries defined in this Permit will 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.

Permittee shall consult with State Parks resource specialists (Environmental Scientist, Historian, and Archaeologist) to determine site-specific conditions and avoidance measures to be taken by its contractors for the protection of natural and cultural resources.

State Parks will advise CalRecycle if any new historical resources (including archaeological sites), special status species, Threatened/Endangered Species protocols, or other resource issues are identified within the proposed project site. CalRecycle shall consult with State Parks resource specialists to determine the appropriate level of avoidance/mitigation necessary to provide guidance to its contractors to protect the resource(s) during future work.

*In making any excavation on said Property of State Parks, CalRecycle's contractors shall make all excavation activities available to the State Parks Archaeologist for observation and monitoring. During excavation, the State Parks archaeological monitor may observe and report to State Parks on all excavation activities. State Parks archaeological monitor shall be empowered to stop construction activities by notifying the Site Superintendent of CalRecycle's remediation contractor in the event the monitor determines that significant cultural resource values are 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 put on hold at that specific location, and the project work will be redirected to other tasks until a State Parks-qualified cultural resource specialist has been contacted to evaluate the find and implement appropriate treatment measures and disposition of artifacts, as appropriate, in compliance with environmental law and department resource directives prior to State Parks's Representative authorizing resumption of work at that specific location.*

*If human remains are discovered during the project the specific protocol, guidelines and channels of communication outlined by the California Native American Heritage Commission (NAHC) and in accordance with Section 7050.5 of the Health and Safety Code and Section 5097.98 of the Public Resources Code will be followed. Section 7050.5 (c) will guide the potential Native American involvement in the event of discovery of human remains.*

*If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the remains to be those of a Native American, or has reason to believe that they are those of a Native American, he or she will contact by telephone within 24 hours the Native American Heritage Commission.*

*State Parks will ask the NAHC to identify the Most Likely Descendant(s) (MLD) of the interred individual(s). Working in consultation with the MLD, State Parks will recommend appropriate disposition of the remains. Work shall not resume in the area of the find until proper disposition is complete (PRC 5097.98). No human remains or funerary objects will be cleaned, photographed, analyzed, or removed from the site prior to consultation with the MLD.*

*If it is determined the find indicates a sacred or religious site, the site will be avoided to the maximum extent practicable. Formal consultation with the State Historic Preservation Officer and review by the Native American Heritage Commission and/or Tribal Representative will also be undertaken as necessary to define additional site mitigation or future restrictions.*

*CalRecycle shall provide a written work schedule to State Parks so that the State Parks archaeological monitor can arrange to be on site on the necessary days. CalRecycle agrees to include the State Parks archaeologist in any preconstruction meetings with the prime or subcontractors. The archaeologist shall be provided at least two (2) weeks advanced notice of the commencement of work undertaken pursuant to this Permit. State Parks will provide names and telephone numbers for State Parks archaeological contacts to CalRecycle at least 30 days prior to start of construction.*

- 13. Restoration of Property:** State Parks will identify vegetation to be removed or retained in designated work areas prior to start of work in each area. CalRecycle's contractor shall take due care to protect vegetation to remain, and shall provide erosion protection as specified in the approved Work Plan. There is no property within the approved work areas that requires restoration or repair.
- 14. Right to Halt Work:** State Parks reserves the right to halt work and demand mitigation measures at any time, with or without prior notice to CalRecycle, in the event State Parks determines that any provision contained herein is violated, or any other threat to the health and safety of visitors or users of the Border Field State Park arises.
- 15. Use Restrictions:** The use of the Property by CalRecycle's guest or invitees 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 Parks. No person may 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 recreation area. CalRecycle agrees to immediately discontinue or remove any disorderly conduct and/or contraband. Contraband includes, but is not limited to: beer, alcoholic beverages, illegal and illicit drugs, firearms, explosives and edged weapons.

Use of all established roads and trails by any motorized vehicle, (including but not limited to motorcycle, car, truck, jeep, tractor, construction equipment, or all-terrain vehicle) shall be limited to only CalRecycle, CalRecycle's employees, agents or contractors for patrol, maintenance or repair, and remediation work described in the Work Plan only and shall be subject to all other conditions and/or restrictions of this Permit.

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

- 16. State's Right to Enter:** At all times during the term of this Permit, there shall be and is hereby expressly reserved to State Parks and to any of its agencies, contractors, agents, employees, representatives 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 Parks purposes. CalRecycle agrees to not interfere with State Park's right to enter.
- 17. Protection of Property:** Permittee shall protect the Property, including all improvements and the natural resources thereon, at all times at CalRecycle's sole cost and expense, and CalRecycle shall strictly adhere to the following restrictions:
- (a) CalRecycle may 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 Park's satisfaction by CalRecycle.
  - (b) CalRecycle may not commit or create, or suffer to be committed or created, any waste, hazardous condition and/or nuisance to occur upon the Property.
  - (c) CalRecycle may not cut, prune or remove any native trees or brush upon the Property, except for routine fire protection, trail clearing, maintenance or the elimination of safety hazards without first obtaining written permission by the District Superintendent.
  - (d) CalRecycle may not disturb, move or remove any rocks or boulders upon the Property except for routine fire protection, trail clearing, maintenance or the elimination of safety hazards without first obtaining written permission by the District Superintendent.
  - (e) CalRecycle may not grade or regrade, or alter in any way, the ground surface of the Property, except as described in the approved Work Plan for the Project and as otherwise approved by the District Superintendent during the project.
  - (f) CalRecycle may not bait, poison, trap, hunt or engage in any other activity which results in the killing, maiming or injury of animals or wildlife upon the Property, except for mice and rats, and rattlesnakes in the event such snakes pose an immediate danger to persons on the Property without first obtaining written permission by the District Superintendent.

- (g) CalRecycle may not use or dispose of hazardous substances on the Property.
- (h) CalRecycle shall exercise due diligence in the protection of the Property against damage or destruction by fire, vandalism or other cause.

**18. Curing Default of Permit:** In the event of default or breach of the terms of this Permit by CalRecycle and/or its contractors, State Parks may at any time thereafter notify CalRecycle, through written notice by electronic or facsimile transmission of such default or breach. Upon receiving such notification, CalRecycle shall cause its contractors to cure such default and/or breach of the Permit or CalRecycle shall secure other means of curing the same, and shall complete the Goat Canyon Sedimentation Basin Cleanout and Trash Collection Boom Installation according to the approved project Work Plan. Nothing herein shall limit State Park's exercise of its legal and equitable remedies.

**19. 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.

**20. Reliance on Investigations:** CalRecycle accepts this Permit, and the Property to which it pertains, in its as-is condition and has made such investigation of the facts pertaining to this Permit and all the matters pertaining thereto as it deems necessary.

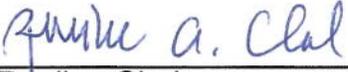
**21. Entire Agreement:** The parties further declare and represent that no inducement, promise or agreement not herein expressed has been made to them and this Permit contains the entire agreement of the parties, and that the terms of this agreement are contractual and not a mere recital.

**22. Warranty of Authority:** The undersigned represents that they have the authority to, and does, 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.

**23. 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**

**STATE OF CALIFORNIA  
DEPARTMENT OF RESOURCE  
RECYCLING AND RECOVERY**

By:   
Name: Ronilee Clark  
Title: Acting Deputy Director,  
Parks Operations

By:   
Name: Mark De Bie  
Title: Deputy Director  
Waste Permitting, Compliance, and  
Mitigation Division