

UNITED STATES DEPARTMENT OF THE INTERIOR
National Park Service

Special Use Permit

Name of Use Access to Point Loma Wastewater Treatment Plant Date Permit Reviewed 20
Reviewed 20
Reviewed 20
Expires 20

Long Term X

Permit # PWR-8110-6000-4065

Region Park Type No. #

Short Term _____

CABRILLO NATIONAL MONUMENT
Name of Area

Metropolitan Wastewater Department of City of San Diego, 9192 Topaz Way, SD, CA 92123-1165

Name or Permittee

Address Phone: 858-272-6402

is hereby authorized during the period from (Time: 12 a.m. day 10 Month Nov. 2004), through (Time: 12 .am.
day 10 Month Nov. 2009), to use the following described land or facilities in the above named area:

Cabrillo and Gatchell roads within the boundary of Cabrillo National Monument

For the purpose(s) of: providing access to and from the Point Loma Wastewater Treatment Plant for employees, vendors, contractors and visitors in order to operate the treatment plant twenty-four hours per day, seven days per week.

Authorizing legislation or other authority (RE - DO-53): 16 U.S.C. Section 1 et seq

NEPA Compliance: CATEGORICALLY EXCLUDED X EAFONSI _____ EIS _____ OTHER APPROVED PLANS

PERFORMANCE BOND: Required _____ Not Required X Amount \$

LIABILITY INSURANCE: Required _____ Not Required X Amount \$

ISSUANCE of this permit is subject to the conditions on the reverse hereof and appended pages and when appropriate to the payment to the U.S. Dept. of the Interior, National Park Service of the sum of \$ N/A

The undersigned hereby accepts this permit subject to the terms, covenants, obligations, and reservations, expressed or implied herein.

PERMITTEE

[Signature]

10/28/04

Signature

Date

Authorizing Official

Signature

Terry M. DiMattio

Superintendent

Date

**Conditions of Special Use Permit
PWR-8110-6000-4065**

I. Background

WHEREAS, the Metropolitan Wastewater Department of the City of San Diego ("MWWD"), operates the Point Loma Wastewater Treatment Plant (the "Treatment Plant"), which is the primary wastewater treatment plant serving the greater San Diego metropolitan area; and

WHEREAS, the only access to the Treatment Plant is via Cabrillo and Gatchell roads across land within the boundary of Cabrillo National Monument (the "Park"), a unit of the National Park System, administered by the National Park Service (the "Service"), United States Department of the Interior; and

WHEREAS, on or about September 10, 1984, the Service granted the City of San Diego (the "City") a right-of-way permit for a period of 20 years to use Cabrillo and Gatchell Roads for access to the Treatment Plant in exchange for the City's agreement to maintain the roads; and

WHEREAS, the City has expressed the need to continue using Cabrillo and Gatchell roads for access to the Treatment Plant; and

WHEREAS, the City has agreed to continue maintenance of Cabrillo and Gatchell roads at no cost to the Service in exchange for continued access; and

WHEREAS, the Service will benefit from continued maintenance of these roads by the City; and

WHEREAS, the Service administers the Park that was established as a National Monument pursuant to Presidential Proclamation Number 1255, October 14, 1913, and later established as a unit of the National Park System, Department of the Interior, by Executive Order Number 6166, June 10, 1933, and Executive Order Number 6228, July 28, 1933, and subsequently enlarged by Presidential Proclamation Number 3273, February 2, 1959, and Presidential Proclamation Number 4319, September 28, 1974, and Public Land Order 7447, July 3, 2000; and

WHEREAS, 16 U.S.C. Section 1 et seq authorizes the Director of the Service (or his/her delegate) having jurisdiction over subject property, to authorize uses, when those activities conform to the fundamental purposes for which that unit of the National Park System was established; and

WHEREAS, the Director of the Service (or his/her delegate) is required to authorize only those uses of land within the Park which will not be a derogation of the values and purposes for which the Park was established, except as may have been or shall be directly and specifically provided by Congress; and

WHEREAS, 16 U.S.C. Section 1 et seq provides for the promotion and regulation of the various areas of the National Park System so that the authorization of activities be construed and the protection, management and administration of these areas be conducted in the light of the high public value and integrity of the National Park System; and

WHEREAS, the Service has determined that the continued use of the Park lands by the City for access to the Treatment Plant may be accomplished with minimum impact upon the public interest or the use of such lands for Park purposes.

II. Terms and Conditions

This permit (Permit) is subject to the following terms and conditions:

- (1) The purpose of this Permit is to provide the City continued access to the Treatment Plant and the continuation of the cooperative relationship between the City and the Service concerning the use and maintenance of Cabrillo and Gatchell roads within the Park that are used jointly by the City and Service.
- (2) The lands covered by this Permit are those depicted on the map attached as Exhibit 1, consisting of portions of Cabrillo and Gatchell roads (sometimes referred to as the "Roads") as they exist at the time of the issuance of this Permit, being a strip of land 40.00 feet in width, lying 20.00 feet on each side of the center lines including slope rights of 1:1 cut and 1 ½ :1 fill to natural ground along said center lines (sometimes referred to herein as the "Permitted Area").
- (3) The City shall be permitted to use the Roads indicated on Exhibit 1 as a means of access to the Treatment Plant through the Park and for maintaining the Roads and their appurtenances. Such access is limited to City-owned vehicles, privately owned vehicles of City employees, visitors, vendors and contractors and agents of the City engaged in the routine maintenance operation, and upgrades of the Treatment Plant. Trucks, tractors, and other maintenance and construction equipment of the City or its agents shall not travel outside the Permitted Area for hauling workers, supplies or equipment; maintenance of Cabrillo and Gatchell roads shall be accomplished in a manner not requiring travel outside the lands shown on Exhibit 1 unless otherwise approved by the Superintendent of the Park ("Superintendent").
- (4) This Permit shall not be construed as a grant of any interest in land, but shall be considered a permitted use of the Permitted Area shown on Exhibit 1, subject to revocation or termination as provided hereinafter.
- (5) All costs for routine and preventive maintenance of the Roads, their surfaces, curbs, gutters, drainage structures, and related appurtenances within the Permitted Area shall be borne by the City. The City must receive prior written approval of the Superintendent prior to conducting any such maintenance. The Service shall

contribute to the cost of maintaining the Roads only if the Service's actions or use of the Roads, if any, prematurely creates the need for additional maintenance.

- (6) The Superintendent shall be notified in writing no less than two weeks prior to the start of construction, maintenance, or repairs to the Permitted Area, except for emergency repairs, in which case, the Superintendent shall be notified as soon as possible before such work, or immediately thereafter. All work within the Permitted Area shall be completed to the satisfaction of the Superintendent or his/her representative.
- (7) All costs for modifications to Cabrillo and/or Gatchell roads, their alignments, surfaces, curbs, gutters, drainage structures and related appurtenances designed solely to ensure long-term access to the Treatment Plant shall be borne by the City.
- (8) The City shall submit to the Superintendent for his review and concurrence all drawings and specifications for all work other than routine maintenance.
- (9) The City shall be responsible for the provision, use and maintenance of proper signs, barricades or other means of warning motorists, bicyclists and pedestrians of danger during all periods of construction or maintenance.
- (10) The City shall halt any activities and notify the Superintendent immediately upon discovery of any archeological, paleontological or historical artifacts and objects within or adjacent to the Permitted Area. Subject to applicable Federal law, artifacts unearthed are the property of the Service.
- (11) Any underground utilities previously located by the Service or owners or operators of such utilities within the Permitted Area, which are damaged or disrupted during construction or maintenance shall be repaired or restored by the City or cause to be repaired or restored by the City upon a mutually acceptable schedule at no cost to the Service.
- (12) The City shall comply with all applicable Service regulations and Federal laws and other existing regulations promulgated thereunder in the construction, use and maintenance of the Permitted Area.
- (13) The City shall take adequate measures as directed and approved by the Superintendent to prevent or minimize damage to Park resources. This may include restoration, soil conservation and protection measures, landscaping with indigenous grasses and shrubs, and repairing roads, culverts, inlets, trails, signs, fences, historic structures, etc. within the Permitted Area. The City shall dispose of brush and other refuse as required by the Superintendent. The Superintendent or his/her representative may enter and inspect the Permitted Area as deemed necessary and without restriction.

- (14) The use of pesticides and/or herbicides in maintenance operations within the Permitted Area is strictly prohibited without the prior written permission of the Superintendent.
- (15) The City agrees to take such soil and resource conservation and protection measures, including weed control within the Permitted Area, as directed by the Superintendent.
- (16) The City agrees to do everything reasonably within its power, both independently and at the request of the Superintendent, to prevent and suppress fires on and adjacent to the Permitted Area.
- (17) To protect the world class view from the Park, the City agrees to use the area on the west side of Gatchell Road immediately inside the southern entrance to the Treatment Plant (Southwest Area) as indicated in City Manager's Report 96-67, Subject: Point Loma Wastewater Treatment Plant Master Plan Environmental Report, only for temporary lay down and construction staging, and not to build any permanent structures there other than its proposed guard station except as provided herein. In the event that the City anticipates the need to alter the use of the Southwest Area from the limited use identified in Report 96-67 (such as a need to materially change plant operations, or changes in regulatory conformance, such as a requirement by the Environmental Protection Agency (EPA) to upgrade the Treatment Plant to secondary treatment, etc.), the City agrees to invite the National Park Service to work with the leadership of MWWD to identify and implement mutually acceptable ways to accomplish the change in use while protecting the views from the Park's scenic overlooks. The City agrees to continue to operate in conformance with Coastal Development Permit (No. 6-94-063-A2), or with subsequent permits as amended or reissued, and to notify the Park in writing prior to requesting an amendment to or reissue of said permit.
- (18) The City agrees that this Permit shall be subject to the express condition that the exercise thereof will not unreasonably interfere with the management and administration by the Service of the Permitted Area except as agreed to by the Superintendent.
- (19) Use by the City of the Permitted Area is subject to the right of the Service to establish trails, road and other improvements and betterments over, upon or through said premises, and further to the use by travelers and others of such roads, trails and other improvements already existing. If it is necessary to exercise such right, every effort will be made by the Service to refrain from unreasonably interfering or preventing use of the Permitted Area by the City for the purposes intended under this Permit.
- (20) In the event any City facilities within the Permitted Area should interfere with future Park construction, the City agrees to relocate them to a point designated by the Superintendent within ninety (90) days after written notice at no cost to the

Service. If either party requires the relocation of the Roads or their appurtenances, that party shall bear all costs for such relocation.

- (21) Upon expiration, revocation or termination of this Permit, the City shall leave the Permitted Area in as nearly the condition at the beginning of the term of this Permit as possible, as directed and approved by the Superintendent.
- (22) Any alterations to this Permit must be in writing and signed by the parties hereto. Renewals will be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest.
- (23) The City shall indemnify, defend and hold harmless the United States, its officers, agents and employees from any and all loss, damage, including damage to Park Property, and liability caused by, arising out of, or in any way connected with City's, its employee's, and agent's activity on the Permitted Area except those arising out of the sole negligence, omissions or intentional misconduct of the United States, its officers, agents and employees.
- (24) Should any provision of this Permit be held invalid or illegal, such invalidity or illegality shall not invalidate the whole of this Permit, but, rather, the Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.
- (25) No failure of either party to insist upon strict performance by the other of any covenant, agreement, term or condition of this Permit, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Permit, but each and every covenant, condition, agreement and term of the Permit shall continue in full force and effect without respect to any other then existing or subsequent breach.

III. Term of Permit

This Permit shall terminate five (5) years from the effective date hereof, at noon, California time, unless prior thereto it is relinquished, abandoned or otherwise terminated pursuant to the provisions of this Permit or of any applicable Federal law or regulation. The effective date of this Permit shall be the date of its execution by the Superintendent.

This Permit constitutes permissive use and may be revoked at the discretion of the Superintendent with or without cause upon 120 days prior written notice.

The Superintendent may terminate this Permit upon a major breach of any condition, provided that the Superintendent shall give the City 14 days written notice of the Service's intent to terminate the Permit and provide the City opportunity to remedy the conditions constituting the breach. If the City has not

remedied the condition within the 14 day cure period (or initiated the remedy if the remedy is reasonably expected to take longer than 14 days) or within such other period agreed to by the parties, the Superintendent may terminate the Permit with additional written notice. In addition, either party may terminate this Permit by providing 120 days prior written notice to the other.

The City agrees that this Permit shall be subject to the express covenant that if the Service finds that the City's use of the Permitted Area unreasonably conflicts with works constructed under the Authority of the Service in the Permitted Area, the Permit may be modified, adapted, or discontinued without liability or expense to the Service. The Service agrees to use its best efforts to avoid construction of any work within the Permitted Area which will conflict with the City's use of the Roads.

Unless relinquished, abandoned or otherwise terminated pursuant to the provisions of the agreement or of any applicable Federal law or regulations, the agreement may be renewed by mutual agreement for a period of five (5) years.

IV. Key Officials

This Permit is subject to the conditions of the Superintendent or his/her representative, and shall comply with the regulations of the Secretary of the Interior and other applicable conditions as outlined herein.

Superintendent

Cabrillo National Monument
1800 Cabrillo Memorial Drive
San Diego, CA 92106-3601

The City Manager of the City of San Diego or his/her delegate shall direct operations and measures agreed to in this instrument.

City Manager
City of San Diego
202 C Street
San Diego, CA 92101

**Cabrillo National Monument
Permitted Area
Special Use Permit #PWR-8110-6000-4065
July 21, 2004**

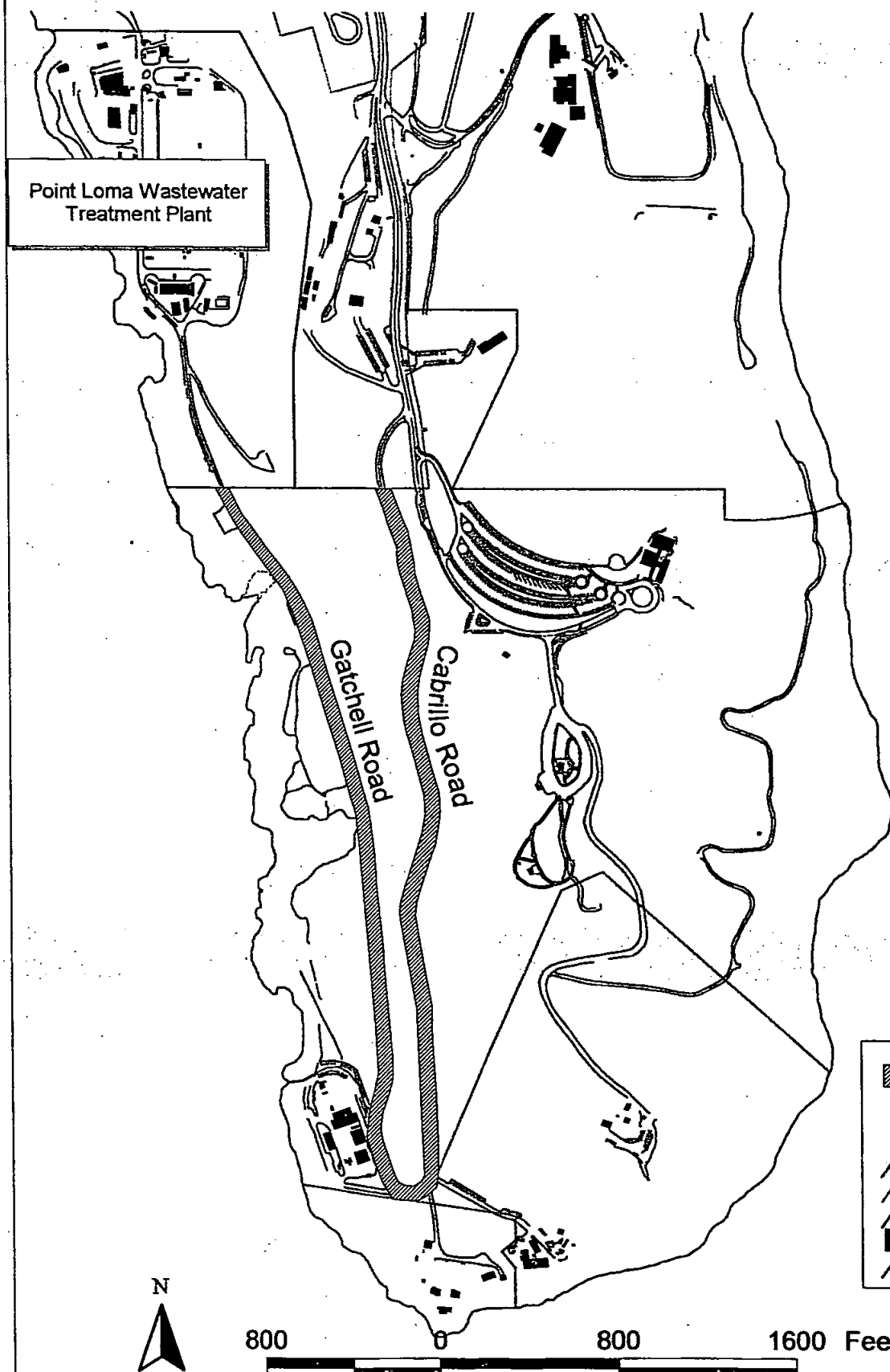


EXHIBIT 1

- Permitted Area (20 ft. on each side of road center line)
- Cabrillo NM boundary
- City of San Diego
- US Navy boundary
- Buildings
- Roads

Map created 01/22/03, edits 07/21/04
A. Compton, Cabrillo NM
Map data provided by US Navy
interagen.apr

legal
side

COPY

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

Grant of Right-of-Way Permit for Use and Maintenance of Roadway
Cabrillo National Monument

WHEREAS, the City of San Diego (hereinafter Permittee) has applied to the National Park Service for a right-of-way to use and maintain an access road, built under Special Use Permit CAB 2-60, October 1, 1960 across lands within the boundaries of the Cabrillo National Monument; and

WHEREAS, this right-of-way provides the City of San Diego access to their wastewater treatment plant which also provides sewage treatment for Cabrillo National Monument; and

WHEREAS, 16 USC 3 authorizes the Secretary of the Interior to grant permits for the use of land for the accommodation of visitors; and

WHEREAS, the said wastewater treatment plant serves visitors to Cabrillo National Monument;

THEREFORE, the United States through the National Park Service, an agency of the Department of the Interior, hereby grants to the City of San Diego a right-of-way permit across Federal lands, to-wit: Cabrillo National Monument, for the purpose of access by the City of San Diego to said wastewater treatment plant and for maintenance of said access road connecting State Highway 209 with the City of San Diego Wastewater Treatment Plant according to the terms and conditions set out hereinafter.

LEGAL DESCRIPTION OF RIGHT-OF-WAY

All that portion of Fort Rosecrans Military Reservation located within Point Loma, in the City of San Diego, County of San Diego, State of California, according to Miscellaneous Map thereof No. 129, filed in the Office of the San Diego County Recorder, April 16, 1934 as File No. 24010, being a strip of land 60.00 feet in width, lying 30.00 feet on each side of the center lines described as Parcels A and C below, including slope rights of 1:1 cut and 1 1/2:1 fill to natural ground along said center lines, said Parcels A and C being further delineated on City of San Diego Engineering Department Drawing 9199 C-D.

PARCEL A

Commencing at a point on the Northerly boundary of the Cabrillo National Monument as described in Presidential Proclamation No. 3273 of the Federal Register of the United States in

KR - 261520
DOCUMENT NO. _____
FILED _____ SEP 10 1984
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Volume 24, No. 25, dated February 5, 1959; which said point bears North $53^{\circ}01'00''$ West 2,101.81 feet from Old Lighthouse as shown on said Miscellaneous Map No. 129, the coordinates of which said Old Lighthouse are South 28,687.80 and West 16,850.10 (Old Town Coordinate Grid System), said point of commencement being shown on City of San Diego Engineering Department Drawings 7916-D, 8722-D, and 9199 C-D, and identified thereon as "N.W. Mon."; thence North $89^{\circ}31'35''$ East along the Northerly line of said Cabrillo National Monument, 130.13 feet to the TRUE POINT OF BEGINNING; thence South $22^{\circ}46'18''$ East 55.18 feet to the beginning of a tangent 500-foot radius curve, concave Northeasterly; thence Southeasterly along the arc of said curve, through a central angle of $14^{\circ}16'59''$, a distance of 124.64 feet; thence South $37^{\circ}03'17''$ East 274.94 feet to the beginning of a tangent 1,000-foot radius curve, concave Southwesterly; thence Southeasterly along the arc of said curve, through a central angle of $19^{\circ}45'30''$, a distance of 344.84 feet; thence South $17^{\circ}17'47''$ East 731.34 feet to the beginning of a tangent 1,000-foot radius curve, concave Southwesterly; thence Southeasterly along the arc of said curve, through a central angle of $03^{\circ}53'41''$, a distance of 69.43 feet to a terminus, being a point which bears South $78^{\circ}35'39''$ West 925.64 feet from the above mentioned "Old Lighthouse."

PARCEL C:

Beginning at the terminus of Parcel B, which is located on U.S. Navy land, and shown on said Drawing 9199 C-D, said terminus being a point which bears South $72^{\circ}38'16''$ West, 604.26 feet from the above mentioned "Old Lighthouse", being a point on the arc of a 500-foot radius curve, concave Westerly, to which point a radial of said curve bears North $87^{\circ}08'43''$ East; thence, continuing along said center line, Northwesterly along the arc of said curve, through a central angle of $14^{\circ}09'36''$, a distance of 123.57 feet; thence North $17^{\circ}00'53''$ West 217.90 feet to the beginning of a tangent 500-foot radius curve, concave Easterly; thence Northeasterly, Northerly and Northwesterly along the arc of said curve, through a central angle of $31^{\circ}14'00''$, a distance of 272.56 feet; thence North $14^{\circ}13'07''$ East 139.04 feet to the beginning of a tangent 300-foot radius curve, concave Westerly; thence Northeasterly, Northerly and Northwesterly along the arc of said curve, through a central angle of $31^{\circ}00'00''$, a distance of 162.32 feet; thence North $16^{\circ}46'53''$ West 582.79 feet to a terminus, being a point on said Northerly line of Cabrillo National Monument, said point bearing North $32^{\circ}22'16''$ West 1,505.60 feet from the above mentioned "Old Lighthouse."

PERMITTED USE OF RIGHT-OF-WAY

The right-of-way hereby granted is for the sole purpose of providing access to the City of San Diego's wastewater treatment plant over and across the above described lands, petition for which was made in writing to the Superintendent, Cabrillo National Monument.

EFFECTIVE DATE OF RIGHT-OF-WAY

The grant of the right-of-way permit hereby made shall terminate 20 years from the effective date hereof, at noon, Pacific Standard Time, unless prior thereto it is relinquished, abandoned, or otherwise terminated pursuant to the provisions of this permit or of any applicable Federal law or regulation. The effective date of this permit shall be the date of its acceptance by the City of San Diego

TERMS AND CONDITIONS

The Permit herein made is subject to the following terms and conditions:

- (1) The Permittee shall take adequate measures as directed and approved by the Superintendent of Cabrillo National Monument (hereinafter Superintendent) to prevent or minimize damage to the resources. This may include restoration, soil conservation and protection measures, landscaping, repairing roads, trails, fences, etc. The Permittee shall dispose of brush and other refuse as required by the Superintendent. The Superintendent or his/her designee can enter and inspect the area and facilities as deemed necessary and without restriction.
- (2) The Permittee will halt construction or maintenance activities and notify the Superintendent upon discovery of archeological, paleontological, or historical findings.
- (3) The Permittee shall pay the United States for any damage resulting from this grant which would not reasonably be inherent in the use which the Permittee is authorized to make of the land described herein.
- (4) In consideration for obtaining the privileges granted herein, the Permittee agrees to indemnify and save harmless the United States from any loss to it,

including not only damage to Government property and injury to Government employees, but also judgments, settlements, or compromises for property damage or injury to all persons for which the United States may be liable, resulting from the exercise by the Permittee and its employees of the privileges granted herein.

- (5) The Permittee shall comply with State and Federal laws applicable to the lands which are included in this right of way.
- (6) Use by the Permittee of the land covered herein is subject to the right of the National Park Service, to establish trails, roads, and other improvements and betterments over, upon, or alongside said premises, and further to the use by travelers and others of such roads and trails as well as of those already existing. If it is necessary to exercise such right, every effort will be made by the National Park Service to refrain from unduly interfering or preventing use of the land by the Permittee for the purpose intended under this grant.
- (7) Use of pesticides and/or herbicides in the maintenance operation on Monument lands is strictly prohibited unless approved in writing by the Superintendent.
- (8) Any alterations to this permit must be in writing and signed by the parties hereto. Renewals will be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest.
- (9) This permit shall not be construed as a grant of permanent interest or right-of-way or as an abandonment of use and occupancy of the premises described in this grant, anything herein contained to the contrary notwithstanding.
- (10) Prior to start of major maintenance on Monument lands, the Superintendent shall be notified. All work on Monument lands shall be completed to the satisfaction of the Superintendent or his/her representative.
- (11) The Permittee shall take adequate measures, as approved by the Superintendent, to restrict and prevent soil erosion on the lands covered hereby and shall so utilize such lands as not to contribute to erosion on adjoining lands.

- (12) In the event that demonstrated earth movement or encroachments caused by wave action occur within the present right-of-way, any subsequent roadway realignment shall be within the same geographical area as the pre-existing road as documented on USN Y and D Dwg. 570211, dated 1-4-60.
- (13) All costs of maintenance of the road located within the permitted area shall be borne by the City of San Diego.
- (14) The City of San Diego shall be liable for any actions on its part which result in damages from the rupture of any of the utility lines located in this area.
- (15) The City of San Diego recognizes the exclusive Federal criminal jurisdiction over the roadway.
- (16) This agreement in no way abrogates the right of the National Park Service, its visitors, the U.S. Navy, Coast Guard or other users of the area to travel on the road.
- (17) If it is determined by a Federal Lands Highway Program study that a bicycle and pedestrian path is necessary for the protection of the Monument visitors, the City of San Diego will cooperate with the Federal Highway Administration and the National Park Service in the construction of such a path.
- (18) This permit may be terminated upon breach of any of the conditions herein or at the discretion of the Director, National Park Service, upon 120 days written notice to Permittee.
- (19) The waiver of any breach of any provision of this right-of-way permit, whether such waiver be expressed or implied, shall not be construed to be a continuing waiver or a waiver of, or consent to, any subsequent or prior breach of the same or any other provision of this permit.

Howard H. Chapman
Howard H. Chapman
Regional Director, Western Region
National Park Service

7-30-84
date

Quinn L. St
City Manager ASSISTANT TO THE CITY MANAGER
City of San Diego, a
Municipal Corporation

SEP 10 1984
date

APPROVED as
to form by JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

R- 261520

Crawford 503
(R-85-366)

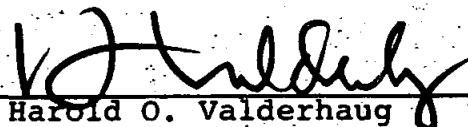
RESOLUTION NUMBER R- 261520

ADOPTED ON SEP 10 1984

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a 20-year Right-of-Way Permit with the UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, which permit will allow the City to use and maintain an access road across Cabrillo National Monument to the Point Loma Wastewater Treatment Plant, under the terms and conditions set forth in that Right-of-Way Permit on file in the office of the City Clerk as Document No. RR- 261520.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
8/27/84
Or.Dept:Prop.
Job:217809
Form=r.none