



United States Department of the Interior
NATIONAL PARK SERVICE
Cabrillo National Monument
1800 Cabrillo Memorial Drive
San Diego, California 92106-3601
<http://www.nps.gov/cabr/>

A44 (Agreement with MWWD)
xL30

September 22, 2010

Mr. Jim Barrett, Public Utilities Director
Public Utilities Department
City of San Diego
9192 Topaz Way (MS 901A)
San Diego, California 92123-1165

Dear Mr. Barrett:

Enclosed for your records is an Amended Copy of the signed Special Use Permit (SUP), #PWR-8110-9500-0033, which grants the City of San Diego continued access across National Park Service land at Cabrillo National Monument to the Point Loma Wastewater Treatment Plant for a period of Three years from 12 p.m., March 4, 2010 until 12 p.m., March 4, 2013.

We appreciate your support for recognizing the need of the National Park Service to protect the viewshed of Cabrillo N.M. from possible affects of future operational changes at the treatment plant and agreeing to work cooperatively with us should the need arise to accomplish this goal while making those changes at the plant.

Sincerely,

/S/

Tom Workman
Superintendent

Enclosure

cc: Rory Westberg, PWR Director
Greg Lind, DOI Solicitor

File: Cover Letter Executed SUP 03-04-10

UNITED STATES DEPARTMENT OF THE INTERIOR
National Park Service

Special Use Permit

Name of Use Special Use Permit Road Use

Date: Permit Reviewed March 4, 2010
Reviewed 2012
Reviewed 2014
Expires March 4, 2013

Long Term x

Permit # 8110-9500-0033

Short Term _____

Region: PWR Park: CABR Type: SUP No. #

CABRILLO NATIONAL MONUMENT
Name of Area

Public Utilities Department of City of San Diego, 9192 Topaz Way, San Diego, CA 92123

Name or Permittee

Address

Phone

is hereby authorized during the period from (Time: 4th day of March, 2010), through (Time: 4th Day of March, 2013), to use the following described land or facilities in the above named area:

Cabrillo and Gatchell Roads Access

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

Authorizing legislation or other authority (RE - DO-53): 36 CFR 5.5

NEPA Compliance: CATEGORICALLY EXCLUDED x EA/FONSI _____ 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 attachments 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 attached.

PERMITTEE

[Signature] 9/23/10

Signature

Date

Authorizing Official Thomas Workman Thomas Workman

Signature

Superintendent

Date

9/22/2010

**Conditions of Special Use Permit
PWR-8110-9500-0033**

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

EXHIBIT 1 Map of Lands and Roads Subject to Agreement

Cabrillo National Monument Permitted Area

Special Use Permit #PWR-8110-9500-0033

February 27, 2010

Point Loma Wastewater
Treatment Plant

Temporary
Use Area

Gravel Road

Gravel Road

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



800 0 800 1600 Feet

Map created 01/22/03, edits 07/21/05
A. Compton, Cabrillo NM
Map data provided by US Navy
interagen.apr