

Agency: Department of Parks and Recreation

## RIGHT OF ENTRY PERMIT

Project: Sierra District  
Washoe Meadows State Park  
Sawmill 2 Bike Path & Erosion Control Project

This Right of Entry Permit (Permit) is made and entered into this 22nd day of April 2011 between the State of California, acting by and through its Department of Parks and Recreation, hereinafter called State, and El Dorado County Department of Transportation (EDOT) 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 Parks known as Washoe Meadows State Park, in the County of El Dorado, State of California; and
- **Whereas**, Permittee has applied to State for permission to access Washoe Meadows State Park for purposes of implementing Permittee's Sawmill 2 Bike Path & Erosion Control Project (the Project); and
- **Whereas**, the State desires to accommodate Permittee's application for permission to enter Washoe Meadows 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 Permittee's MND environmental document entitled Sawmill 2 Bike Path & Erosion Control Project (JN 95165) and dated July 19, 2009, the Notice of Determination dated December 14, 2009 attached hereto as Exhibit "A" and herein incorporated by reference, and as may be conditioned by any other regulatory agency having jurisdiction, if applicable.

### 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 and/or described on Exhibit "B" (the Property), attached hereto and herein incorporated by this reference, solely for the purpose of the construction and maintenance of Class 1 bicycle path within the east side of Washoe Meadows State Park paralleling Sawmill Road between the intersections with US Highway 50 and with Lake Tahoe Boulevard. The limits of which are described in the EDOT Mitigated Negative Declaration (MND) Environmental Document. This project is to construct and maintain a bike path meandering within a corridor as described in the attached Exhibit "B" description which width varies but is not to exceed a width of 60 feet of State Parks land immediately adjacent to Sawmill Road. The bike path would be constructed of asphalt concrete, bordered on each side by wood-chip shoulders, all within the 20-foot corridor. Disturbed areas on each side of the bike path will be revegetated with native vegetation. A fence (3 ½ feet minimum in height) will be constructed between the bike path and the park unit along the entire bike path run and maintained by the Permittee. Vertical vehicle barriers will be installed for bike safety when the bike path is located less than five (5) feet from the edge of road pavement of Sawmill Road. Additionally, Permittee's erosion control and water quality improvement devices will capture, convey, and treat storm water run-off via improved erosion control elements from County administered rights of way and easement areas.
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.

Prior to commencement of any work, 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.

3. **Term of Permit:** This Permit shall only be for the period beginning on July 1, 2011, and ending on July 1, 2012, or as may be reasonably extended by written mutual agreement of the Parties.
4. **Consideration:** Permittee agrees to pay State the sum of one thousand and No/100 Dollars (\$1,000.00) as consideration for the rights granted by this Permit. 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; (b) be maintained at Permittee's sole expense; and (c) require at least thirty (30) days written notice to State prior to any cancellation, non-renewal or material modification of insurance coverage.

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 CALIFORNIA DEPARTMENT OF PARKS AND RECREATION as an additional insured at no cost to State.

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 either the form of an ACORD Form (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.

Gates will be installed at existing DPR access points. Any erosion control or water quality devices to be installed on DPR property will be in consultation with the State's Hydrologist. Permittee is solely responsible for all costs, coverage credits, or mitigation for impervious coverage that is proposed to be constructed for the bike path with the Tahoe Regional Planning Agency and other agencies. Any trees to be removed on DPR property will be approved by the State's Forester. Any changes to the natural environment from this project including bike path, fencing, signage, gates, erosion control devices, barriers, etc. will be the responsibility of the Permittee to repair and maintain.

- 11. Notice of Work:** Any required notices to State shall be sent to the State authorities in charge of Washoe Meadows 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: Matt Green, Acting District Superintendent  
And Tamara Sasaki, Sr. Env. Scientist  
District: Sierra  
Address: 7360 W. Lake Blvd.  
P.O. Box 266, Tahoe, CA 96142  
Telephone: 530/721-0694 and 530/525-9535  
Fax: 530/525-3380

**PERMITTEE'S CONTACT:**

Contact: Craig McKibbin, Deputy Director  
And Brendan Ferry, Senior Planner  
Address: 924B Emerald Bay Rd, South Lake  
Tahoe, CA 96150  
Telephone: 530/621-5914 and 530/573-7900  
Fax: 530/541-7049

- 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 Monitoring and Mitigation Measures:** Resource monitoring and mitigation measures identified by the District Archaeologist (cultural) or the District's 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 Archaeology, History & Museums 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.
- 16. Performance Bond:** If required by State in order to ensure that Permittee performs and completes its obligations in accordance with the terms of the Permit, Permittee or its contractor(s) shall obtain a Performance Bond in the amount of \$10,000 from a surety duly licensed in the State of California. Permittee shall provide State with a copy of such insurance bond.
- 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.

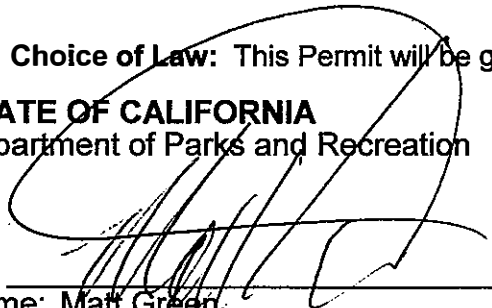
Permittee shall not interfere with State's right to enter.

- 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

By:   
Name: Matt Green  
Title: Acting District Superintendent  
Sierra District

**COUNTY OF EL DORADO**  
Department of Transportation

By: \_\_\_\_\_  
Name: James Ware, P.E.  
Title: Director, Dept. of Transportation  
Address: 2850 Fairlane Court, Placerville,  
CA 95667  
Phone: 530/621-7533