

**RESOLUTION NO. 70-2021**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA  
APPROVING THE OPERATING AGREEMENT BETWEEN THE CITY OF PACIFICA AND  
THE STATE OF CALIFORNIA, ACTING THROUGH THE DEPARTMENT OF PARKS AND  
RECREATION FOR THE OPERATION OF PACIFICA STATE BEACH**

**WHEREAS**, the State of California may enter into an operating agreement with any city, county, district, public agency, or combination thereof of the State of California for the care, maintenance, administration, and control of lands under the jurisdiction of State for the purpose of the state park system; and

**WHEREAS**, the State of California, operating through its Department of Parks and Recreation, has acquired certain real properties known as Pacifica State Beach located in the City of Pacifica; and

**WHEREAS**, the State and City desire to enter into an agreement to provide for the development, operation, control, and maintenance of Pacifica State Beach by City;

**NOW, THEREFORE, BE IT RESOLVED** BY THE CITY COUNCIL OF THE CITY OF PACIFICA THAT the Operating Agreement between the City of Pacifica and State of California, Department of Parks and Recreation for the operation of Pacifica State Beach, as set forth in Attachment 1 is hereby approved, subject to such minor revisions or modifications as may be approved by the City Attorney, and that the City Manager is authorized to execute the Operating Agreement on behalf of the City of Pacifica.

. . . . .

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Pacifica, California, held on the 8<sup>th</sup> day of November 2021, by the following vote:

**AYES**, Councilmembers: Beckmeyer, Bier, Bigstyc, O'Neill, Vaterlaus.

**NOES**, Councilmembers: n/a.

**ABSENT**, Councilmembers: n/a.

**ABSTAIN**, Councilmembers: n/a.



\_\_\_\_\_  
Sue Beckmeyer, Mayor

ATTEST:



\_\_\_\_\_  
Sarah Coffey, City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
Michelle Kenyon, City Attorney

# ATTACHMENT 1

**#P21OA006**

Operating Agreement

with

City of Pacifica

for

Pacifica State Beach

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY  
DEPARTMENT OF PARKS AND RECREATION  
PARTNERSHIPS DIVISION  
1416 NINTH STREET, 14<sup>TH</sup> FLOOR  
SACRAMENTO, CA 95814



OPERATING AGREEMENT

for

Pacifica State Beach

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OPERATING AGREEMENT

with  
City of Pacifica  
for  
Pacifica State Beach

This OPERATING AGREEMENT (“Agreement”), by and between the STATE OF CALIFORNIA, acting through the Department of Parks and Recreation, hereinafter referred to as “**State**”, and the City of Pacifica, a municipal corporation, hereinafter referred to as “**City**”, each a “**Party**” and collectively referred to as the “**Parties.**”

WITNESSETH:

**Whereas**, pursuant to the provisions of § 5080.30, et seq., of the California Public Resources Code (PRC), State may enter into an operating agreement with any city, county, district, public agency, or combination thereof of the State of California for the care, maintenance, administration, and control of lands under the jurisdiction of State for the purpose of the state park system; and

**Whereas**, State has acquired for park and recreational purposes certain real properties known as Pacifica State Beach located within San Mateo County; and

**Whereas**, State and City desire to enter into an Agreement to provide for the development, operation, control, and maintenance of Pacifica State Beach by City; and

**Whereas**, the Legislature in the Budget Act of 2014/2015 has authorized the State and City to enter into said agreement; and

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter contained, the Parties hereto agree as follows:

## **1. PREMISES**

A. State authorizes City to develop, operate, control, and maintain Pacifica State Beach as shown in **Exhibit A**, which is attached hereto and incorporated herein, hereafter referred to as "Premises". City agrees to accept Premises, including facilities covered by this Agreement, and take the same in their present condition "AS IS" with all faults, and agrees to maintain the same in a safe and tenable condition, and, at any termination of this Agreement, to promptly turn back the same to State in the same or better condition, reasonable wear and tear excepted. State shall not be obligated to make any alterations, additions, or betterments to the Premises except as otherwise provided for in this Agreement. This Agreement is not intended to and does not create any third party rights and in no event shall be relied on by any party other than City and State.

B. Any time City is required to obtain State approval, consent, or permission, State approval shall be in writing.

C. Notwithstanding any other provision in this Agreement, the requirements of this Agreement are limited to the State Beach parcels designated in Exhibit A, and no provision of this Agreement shall apply to restrict the use of City-owned parcels by City.

## **2. TERM**

The term of this Agreement shall be for a period of Twenty Five (25) years and shall commence on the first of the month following approval by the State of California Department of General Services. Should City hold-over after the expiration of the term of this Agreement with the express or implied consent of the State, such holding-over shall be deemed to be a tenancy from month-to-month at the herein stated rent as set forth in this Agreement subject to all the terms and conditions of this Agreement.

## **3. USE OF PREMISES**

City agrees to develop, operate, control, and maintain the Premises as a state beach for the use and enjoyment of all citizens of the State of California, and all other persons entitled to use and enjoy the same with related concessions and/or other

facilities accessible and subject to the use and enjoyment of the general public.

Development and operation of the Premises shall be conducted in accordance with all applicable State general planning principles which includes the 1990 Pacifica State Beach General Plan and subsequent revisions, State Parks and Recreation Commission policies and all federal, state, and local government statutes, laws, and regulations. At a minimum, City agrees to operate and maintain the Premises for public recreation to include day use area, restroom facilities and a parking lot, in accordance with the 1990 Pacifica State Beach General Plan and subsequent revisions.

City currently allows the use of the Premises for environmental clean-up events, "off the grid" food events, surf contests, photography shoots, film shoots, educational events, recreational events, and other similar events that are currently permitted by the City at the Premises. City and State agree that such uses are permitted uses of the Premises. City may conduct surf camps on City property, outside of the Premises, or as a concession on the Premises in accordance with Section 8, Concessions.

City may adopt rules and regulations for the use and enjoyment of the Premises by the public. Any such rules and regulations adopted by City shall conform to, and be consistent with, the rules and regulations adopted by State and generally applicable to the California State Park System. The Premises shall not be used for any purpose other than those permitted by this Agreement.

City shall not use or permit the Premises to be used in whole or in part during the term of this Agreement for any purpose other than as herein set forth without the prior consent of the State.

#### **4. CONSIDERATION**

In consideration of the services to be performed by City pursuant to this Agreement, State hereby authorizes the use of the Premises by City on a rent-free basis on the condition that City exert a good faith effort in performing the terms and conditions of this Agreement. In the event that City fails to exert such good faith effort, the Premises shall revert back to the State, at State's option, and State shall have the



right to pursue any other remedies available under this Agreement and/or otherwise available by law.

Any revenue to City derived from its control and operation of Premises for services, benefits, or accommodation to the general public, or otherwise, shall be used only for the operation, and maintenance of lands and/or facilities located within Pacifica State Beach, or for the development and renovation of improvements as outlined in the following section. Any such portion of revenue as may exceed costs and expenses described in this paragraph shall be remitted to State in accordance PRC § 5080.32 (b)(2). For the avoidance of doubt and notwithstanding anything to the contrary in this agreement, parking revenue subject to this restriction and reporting under this agreement shall be limited to revenue derived from the 29 parking spaces as are located on State Beach parcels, and parking revenue subject to this restriction shall be determined by apportionment as compared to revenue from the total number of parking spaces from parking lots and other paid parking operated by the City.

## **5. CONSTRUCTION AND COMPLETION OF IMPROVEMENTS**

A. At no cost or expense to the State, City may undertake new construction, reconstruction, and renovation subject to the following provisions:

- 1) In the event that City desires to undertake improvements that constitute renovation, reconstruction or new construction to any part of the Premises, including: changes to structural design, landscape design, interior or exterior fixtures, design, and/or furnishings; or resource management projects (collectively "Alteration(s)"), approval by State District Superintendent or his/her designee shall be obtained prior to the commencement of non-cultural or non-natural resources related work in excess of \$25,000.
- 2) Any cultural or natural resources related work shall be conducted only with prior State District Superintendent (or her/his designee) advance approval and in compliance with section 25, "Environmental Compliance and Resource Protection".

Alterations involving non-cultural or non-natural resources related work in excess of \$25,000, and all cultural or natural resources related work (regardless of dollar amount) shall follow requirements in **Exhibit B**.

B. For all Alterations erected on the Premises by City, upon completion of construction, City shall (1) record a Notice of Completion, with a copy provided to the State; (2) provide State with a complete set of "as-built" plans for all improvements in a format reasonably acceptable to State; (3) submit evidence that all improvements are clear of any mechanic's liens or stop notices; (4) submit an accounting of cost for all Alterations, excluding equipment and trade fixtures that are the personal property of City; (5) City must demonstrate full compliance with the pertinent state and federal accessibility laws, including but not limited to, the Americans with Disabilities Act of 1990, Titles II. Equipment and trade fixtures purchased with revenue derived from operation of the Premises shall not be considered property of City.

C. All work shall be performed in a professional manner, and will comply substantially with plans and specifications submitted to State as required herein and with all applicable governmental permits, laws, ordinances, and regulations. It shall be the responsibility of City, at its own cost and expense, to obtain all licenses, permits, security, and other approvals necessary for the construction of approved Alterations. City shall comply with any applicable public bidding requirements as set forth in the California Public Contract Code.

D. Title to all permanent Alterations affixed to real property existing or hereafter erected on Premises, regardless of who constructs such improvements, shall upon completion become State's property, and realty and title shall vest in State without compensation to City. Notwithstanding any other provision of this Agreement, upon termination of this Agreement, City may at its option remove any or all Alterations erected on the Premises by City, other than: (1) Alterations erected with funds realized through income generated from the Premises, or (2) Alterations the cost of which has been paid or reimbursed by the State, which shall be considered the City's property upon removal. State may elect, by notice to City, that City must remove any Alterations that are peculiar to City's use of the Premises and are not compatible with State's systems or used by State and/or future occupants of the Premises. In this event, City

shall bear the cost of restoring the Premises to their condition prior to the installment of the Alterations.

E. There are no known eligible or potentially eligible historic properties on the Premises.

## **6. MAINTENANCE OBLIGATIONS OF CITY**

A. During the term of this Agreement and at City's own cost and expense, City shall maintain and operate the Premises in accordance with **Exhibit C**, City of Pacifica Minimum Maintenance Requirements. All construction, operation, and maintenance shall be in accordance with all laws, codes, regulations, ordinances, and generally accepted industry standards pertaining to such work.

B. Should City fail, neglect, or refuse to undertake and complete any required maintenance, State shall have the right to perform such maintenance or repairs for the City. In this event, City shall promptly reimburse State for the cost thereof, provided, however, that State shall first give City thirty (30) days written notice of its intention to perform such maintenance or repairs. State shall not be obligated to make any repairs to or maintain any improvement on the Premises. City hereby expressly waives the right to make repairs at the expense of the State. State has made no representations regarding the condition of the Premises, except as specifically set forth in this Agreement.

C. State reserves the right to enter the Premises for inspection and work related to its care and maintenance during the term hereof, provided that State shall give City reasonable written notice of its intention to do any of the work herein mentioned before such work is undertaken.

## **7. CONFLICT RESOLUTION**

In the event that a conflict arises between the parties regarding this Agreement the Parties shall make a good faith attempt to resolve the conflict through the following steps:

- A. Informal communication and discussion to identify the specific issue and potential solutions.

- B. If not resolved by the above measure, formal written communication to the other party to identify the specific issue and potential solutions.
- C. If not resolved by the above measure, a meeting of State and City representatives at a mutually acceptable time and place to address the specific issue and potential solutions.
- D. If not resolved by the above measure, State and City representatives shall agree on mediation to address the specific issue and potential solutions.
- E. If not resolved by the above measures, State and City may terminate the Agreement and shall seek a mutually acceptable distribution of property and funds.

## **8. CONCESSIONS**

Subject to prior approval by State, City may grant concessions in or upon the Premises consistent with the requirements of State under PRC §§ 5080.33 and 5080.34. All concession contracts shall be subject to the requirements of PRC § 5080.20 and shall be assumable and/or subject to termination by State, at State's sole discretion, in the event this Agreement is terminated by its terms. No concessions that exploit public lands for commercial purpose shall be granted by City. Further, all concession agreements shall be made subject to audit by State. State shall have the right, through its representative and at all reasonable times, to examine and copy all working papers supporting concessionaire's annual financial statement. In addition, the State, acting through its representative, may conduct additional independent reviews of the concession operations upon written notification of such intent to City.

City acknowledges that concessions are designed to enhance the general public's recreational and educational experience in units of the state park system, usually in a repetitive or ongoing basis. The requirements of this Section 8 shall not apply to special events including environmental clean-up events, non-recurring "Off the Grid" food events, surf contests, photography shoots, film shoots, educational events, recreational

events, and other similar events that are currently offered through or are permitted by the City at the Premises.

The requirements of this Section 8 shall not apply to surf camps as long as City conducts the surf camps on City property, not the Premises.

## **9. TAXES**

City, by signing this Agreement, acknowledges that occupancy interest and rights to do business on State property may create a possessory interest as that term is defined in Revenue and Taxation Code § 107.6, which possessory interest may subject a concessionaire to liability for the payment of property taxes levied on such possessory interest. City and/or any concessionaire engaged by City shall pay all lawful taxes, assessments, or charges that may be levied by the state, county, city, or any tax or assessment levying body at any time upon any interest in or created by this Agreement, or any possessory right that City and/or any concessionaire may have in or to the Premises covered hereby or the improvements thereon, by reason of City and/or any concessionaire's use or occupancy thereof or otherwise, as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by City and/or any concessionaire in or about the Premises.

## **10. RECORDS AND ACCOUNTS**

A. At all times during the term of this Agreement, City shall keep separate, true, and complete books, records, and accounts of all income and fees received and all expenditures made by City in relation to concessions, events, special services, and all other matters incident to the development, control, operation and maintenance of the Premises. City shall report said income, expenditures and attendance to State in accordance with "**Exhibit D**" Annual Revenue and Expenditure Report, or in a similar format acceptable to State on an annual basis, which annual report shall be submitted for the period commencing July 1<sup>st</sup> and ending June 30<sup>th</sup> of each reporting year, and shall be filed with State no later than the following September 30<sup>th</sup>. In addition, within forty-five (45) days of the expiration or termination of this Agreement, City shall submit to

State a statement of income and expenditures for the period of operation not previously reported, prepared as set forth above.

B. City shall provide State with an annual attendance report to include a reasonable annual estimate of the number of visitors and vehicles to Premises. Such annual reports shall be submitted to State with the Annual Revenue and Expenditure Report by September 30<sup>th</sup> each year.

C. The books, records, and accounts applying to the operation of the Premises and kept by City shall be open for audit or inspection by State at all reasonable times. All records shall be kept by City for a period of at least four (4) years.

D. Premises currently does not have concessions, nor use of cash registers. Should this change in the future, City shall obtain and install cash registers or other accounting equipment acceptable to the State, through which City shall record all gross receipts from the operation of the Premises. This equipment shall be non-resettable and shall supply an accurate recording of all sales on tape and produce a receipt for each transaction. All such equipment shall have a customer display that is visible to the public. City shall make all cash register tapes available to the State upon State's request. City shall provide a cash register receipt to each customer setting forth the full amount of a sale. Upon such time the State's Point of Sale (POS) system, or equivalent, is offered to the City, the City is obligated to use the system and pay any applicable transaction fees.

## **11. UTILITIES AND SERVICES**

City shall be responsible for all expenses resulting from utilities supplied to the Premises. City shall be responsible for lighting, sinks, showers, toilets, and all expenses associated with those facilities within the Premises.

## **12. INSURANCE**

A. Commercial General Liability Insurance: At its sole expense, City agrees to maintain in force during the term of this Agreement comprehensive general liability insurance, insuring against claims for injuries to persons or property occurring in, upon, or about Premises. The insurance shall have limits of not less than ONE MILLION DOLLARS (\$1,000,000) for injuries to person or persons, with TWO MILLION DOLLARS

(\$2,000,000) aggregate; and not less than ONE MILLION DOLLARS (\$1,000,000) for property damage.

B. State agrees that City, at City's option, may self-insure the coverage required by this section.

C. Each policy of liability insurance shall contain additional named insured endorsements in the name of the State of California, through its Department of Parks and Recreation, as to all insurable interests of the State including, but not limited to, the Premises and all contents as follows:

- 1) State of California, its officers, employees, and servants are included as additional insured but only insofar as operations and facilities under this Agreement are concerned;
- 2) The insurer will not cancel or reduce the insured's coverage without thirty (30) days prior written notice to State.

D. Worker's Compensation and Employer's Liability Insurance: City shall maintain statutory worker's compensation and employer's liability insurance for all of City's employees who will be engaged in the performance of work on the property, including special coverage extensions where applicable. When work is performed on State-owned or controlled property the Workers' Compensation and Employers' Liability policy shall be endorsed with a waiver of subrogation endorsement in favor of the State (this endorsement shall also be provided).

E. No cancellation provision in any insurance policy shall diminish the responsibility of the City to furnish continuous insurance throughout the term of the Agreement. A signed Certificate of Insurance, with each endorsement required, including but not limited to State's additional insured endorsement, shall be submitted to State at the time this Agreement is executed, showing that the required insurance has been obtained. Further, at least thirty (30) days prior to the expiration of any such policy, City shall submit to State a signed and completed Certificate of Insurance, with all endorsements required by this section, showing, to the satisfaction of State, that such insurance coverage has been renewed or extended. Within fifteen (15) days of State's request, City shall furnish State with a signed and complete copy of the required policy and/or evidence of self-insurance.

F. City agrees to impose the foregoing insurance requirements on any and all concessionaires and shall require that State be named as an additional insured on all policies. Failure to provide any of the required insurance and/or endorsements shall constitute a material breach of this Agreement.

### **13. HOLD HARMLESS AGREEMENT**

City shall indemnify, hold harmless, and defend State, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, or liability costs (including but not limited to reasonable attorney fees, experts fees, and costs of suit), arising indirectly or directly out of the development, operation, or maintenance of the Premises by City, or in any way related to the performance of this Agreement by City, by reason of its acts or omissions relating to the Premises and/or its obligation pursuant to this Agreement and/or by reason of injury, death, property damage, or any claim arising from the alleged violations of any state or federal law, statute, or regulations, including but not limited to the Americans with Disabilities Act of 1990 Titles I, II and III (ADA), however caused or alleged to have been caused, provided, however, in no event shall City be obligated to defend or indemnify State with respect to the sole negligence or willful misconduct of State, its employees, or agents (excluding City herein, or any of its concessionaires).

In the event State is named as co-defendant in a legal action under the provisions of the Government Code § 810 et seq., and served with process of such legal action, State shall immediately notify City of such fact. If State undertakes to represent itself as co-defendant in such legal action, State shall bear its own litigation costs, expenses, and attorney's fees.

State shall indemnify, hold harmless, and defend City, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, or liability costs, (including but not limited to reasonable attorney fees, experts fees, and costs of suit), arising indirectly or directly out of the development, operation, or maintenance of the Premises by State, or in any way related to the performance of this Agreement by State, by reason of its acts or omissions relating to the Premises



and/or its obligation pursuant to this Agreement and/or by reason of injury, death, property damage, or any claim arising from the alleged violations of any state or federal law, statute, or regulations, including but not limited to the Americans with Disabilities Act of 1990 Titles I, II and III ["ADA"], however caused or alleged to have been caused, provided, however, in no event shall State be obligated to defend or indemnify City with respect to the sole negligence or willful misconduct of City, its employees, or agents.

In the event City is named as co-defendant in a legal action under the provisions of the Government Code § 810 et seq., and served with process of such legal action, City shall immediately notify State of such fact. If City undertakes to represent itself as co-defendant in such legal action, City shall bear its own litigation costs, expenses, and attorney's fees.

In the event judgment is entered against State and City because of the concurrent negligence of State and City, their officers, agents, or employees, an apportionment of the liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.

#### **14. EMINENT DOMAIN PROCEEDINGS**

If the Premises or any portion thereof is taken by proceedings in eminent domain, State shall receive the entire award for such taking, except that City shall receive out of said award the fair market value of any Alterations constructed by City other than (1) Alterations erected with funds realized through income from said property, or (2) Alterations the cost of which has been paid or reimbursed by State.

#### **15. PROHIBITIONS AGAINST ASSIGNING, SUBLETTING**

This Agreement and/or any interest therein or thereunder shall not be assigned, delegated, mortgaged, hypothecated, or transferred by City without obtaining the prior consent of State.

**16. NOTICES**

Any notice and/or report required to be given or that may be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States Postal Service, postage prepaid, and addressed as follows:

State: Department of Parks and Recreation  
Santa Cruz District Office  
303 Big Trees Park Road  
Felton, CA 95018  
(831) 335-6318

Copy to: Department of Parks and Recreation  
Partnerships Division  
P.O. Box 942896  
Sacramento, CA 94296-0001

Agency: City of Pacifica  
Parks, Beaches and Recreation  
1810 Francisco, Blvd.  
Pacifica, CA 94044  
(650) 738-2165

Copy to: Burke, Williams & Sorensen, LLP  
1901 Harrison Street, 9<sup>th</sup> Floor  
Oakland, CA 94612  
(510) 273-8780  
Attn: Michelle Marchetta Kenyon

**17. DEFAULTS AND REMEDIES**

A. Prior to a declaration of default, or termination of the Agreement, the parties shall follow the procedures set forth in Section 7, Conflict Resolution.

B. Any failure by a party to this Agreement to observe or perform a provision of this Agreement, where such failure continues for thirty (30) days after written notice of

such failure, shall constitute a default and breach of this Agreement. However, if the nature of the default is such that it cannot be reasonably cured within the thirty (30) day period, the offending party shall not be deemed to be in default if an effective cure is commenced within the thirty (30) day period and thereafter diligently prosecuted to completion.

C. Upon an event of default by State, City shall have the right to terminate this Agreement by providing written notice to the State.

D. Upon an event of default by City, State shall have the right to terminate this Agreement and obtain immediate possession of the Premises at any time by written notice to City. In such an event, State shall be entitled to all rights and remedies of law and/or in equity, including but not limited to, costs and expenses incurred by State in recovering possession of and/or restoring the Premises and compensation for all detriment proximately caused by City's failure to perform its obligations under this Agreement.

## **18. TERMINATION**

Notwithstanding the provisions of Section 17, DEFAULTS AND REMEDIES, either party may terminate this Agreement for any reason. The party who wishes to terminate the Agreement shall give written notice of its intention no later than three hundred and sixty five (365) days before the scheduled termination date. Such notice shall be given in writing and shall be effective on the date given in the notice as the scheduled date for the termination of the Agreement.

## **19. SURRENDER OF THE PREMISES; HOLDING OVER**

A. Surrender: On expiration of this Agreement or within thirty (30) days after earlier termination of this Agreement, City shall surrender the Premises to State with all fixtures, improvements, and Alterations in the same condition as existed on the beginning of the Term of this Agreement, except for fixtures, improvements, and Alterations that City is obligated to remove or that City may remove pursuant to section 5(D) of this Agreement. City shall remove all of its personal property and shall perform all

restoration required by the terms of this Agreement within the above stated time unless otherwise agreed to in writing.

If City fails to surrender the Premises as required by this section, City shall hold State harmless for all damages resulting from City's failure to surrender the Premises.

B. Holding Over: After the expiration or earlier termination of the term and if City remains in possession of the Premises with State's express consent, such possession by City shall be deemed to be a temporary tenancy terminable on thirty (30) days written notice given at any time by either party. All provisions of this Agreement, except those pertaining to the term, shall apply to the temporary tenancy.

## **20. REAL PROPERTY ACQUISITION**

It is understood and agreed to by the Parties that all applications for real property rights, appurtenant to the Premises, shall be made in the name of and on behalf of State, and shall be subject to the prior approval of State.

## **21. COMPLIANCE WITH LAWS, RULES, REGULATIONS, AND POLICIES**

City and its officers, agents and employees shall comply with all applicable laws, rules, regulations, and orders existing during the term of this Agreement, including obtaining and maintaining all necessary permits and licenses. City acknowledges and warrants that it is, or will make itself, through its responsible managers, knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the Premises, including but not limited to laws affecting health and safety, hazardous materials, pest control activities, historical preservation, environmental compliance, and building standards.

## **22. NON-DISCRIMINATION**

Pursuant to PRC § 5080.34, this Agreement and every contract on lands that are subject to this Agreement shall expressly prohibit discrimination against any person because of sex, sexual orientation, race, color, religious creed, marital status, ancestry, national origin, medical condition, age (40 and above), and disability (mental and physical) including HIV and AIDS.

City shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12900 et seq.) and the applicable regulations promulgated thereunder (CA Code Regs, tit. 2, § 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code § 12990 (a-f), are incorporated into this agreement by reference and made a part hereof as if set forth in full (2 CCR's § 7285.0). City shall give written notice of its obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

City shall include the non-discrimination and compliance provisions of this clause in all contracts to perform work under and/or in connection with this agreement.

### **23. DISABILITY ACCESS LAWS**

With regard to all operations and activities that are the responsibility of City under this Agreement, and without limiting City's responsibility under this Agreement for compliance with all laws, City shall be solely responsible for complying with the requirements of the Americans with Disabilities Act of 1990 (ADA) (Public Law 101-336, commencing at § 12101 of Title 42, United States Code, including Titles I, II, and III of that law), the Rehabilitation Act of 1973, and all related regulations, guidelines, and amendments to both laws.

With regard to all City constructed facilities and alterations made by City under this Agreement, City also shall be responsible for compliance with Government Code § 4450, et seq. Access to Public Buildings by Physically Handicapped Persons, and Government Code § 7250, et seq., Facilities for Handicapped Persons, and any other applicable laws, regulations, guidelines and successor statutes. Such compliance shall be at City's sole cost and expense. State shall be solely responsible with respect to facilities it constructed.

### **24. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

By signing this Agreement, City does hereby certify, that no final, unappealable findings of contempt of court by a federal court have been issued against City within the two-year period immediately preceding the date of this Agreement because of City's

failure to comply with a federal court order that City shall comply with an order of the National Labor Relations Board.

## **25. ENVIRONMENTAL COMPLIANCE AND RESOURCE PROTECTION**

The City shall comply with State's Cultural and Natural resource management policies and mandates in the conduct of all activities that may potentially affect cultural, natural, and/or scenic values, and is responsible for maintaining current knowledge of these requirements as they may be amended. These mandates may include, but are not limited to, the California Environmental Quality Act (CEQA/PRC § 21000 et seq.), the Memorandum of Understanding between California State Parks and the Office of Historic Preservation Executive Orders W-26-92 and B-10-11, Departmental Notice 2004-02, PRC §§ 5024, 5024.5 and 5097 et seq., the Native American Graves Protection and Repatriation Act (NAGPRA) (PL 101-601, 25 U.S.C. 3001 et seq., 104 stat. 3048) Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings, California Endangered Species Act, the Federal Endangered Species Act, the Clean Air Act, Clean Water Act, and the Porter Cologne Water Quality Act. When an undertaking has a Federal nexus, the National Historic Preservation Act (NHPA)- § 106 (36 CFR Part 800.1 to 800.16) and the National Environmental Policy Act (42 U.S.C. § 4321) will be required as well. The California State Parks Departmental Operations Manuals (DOM 300, 400, 2000) for natural and cultural resources shall also be complied with for projects with a potential to affect resources.

City acknowledges relevant Natural Resource Management policies include, but are not limited to, Resource Guidelines attached hereto as **Exhibit E**, and Departmental Notice 2014-02 Western Snowy Plover Management, attached hereto as **Exhibit F**.

Specific obligations of these Natural Resource Management policies and directives shall not apply to the City where those obligations are by their nature the responsibility of State, and do not apply to the operation of a single park unit.

In recognition of the sensitive natural resources known to exist at the Premises, City will, in cooperation with State, prepare an annual Natural Resource Management

Plan and submit it to State by September 30 each year. The Natural Resource Management Plan will list the measures that the City expects to implement to fulfill the relevant Natural Resource policies contained in the California State Parks and Recreation Department Operations Manual and in the Department Notice included as **Exhibit E and F**. City will implement the actions identified in the Natural Resource Management Plan to the extent feasible and evaluate the results in an annual Natural Resource Management Report, to be submitted by September 30 of each year.

All resource management projects proposed within the Premises will be undertaken with the oversight provided by the appropriate State staff, specifically Environmental Scientists, State Historians, and State Archaeologists.

Sensitive information will be safeguarded from general public distribution as required by state and federal law (California Government Code §§ 65040.2(g)(3); 6254.10; 43 CFR 7, § 7.18(a)).

## **26. HAZARDOUS SUBSTANCES**

A. On the Premises City shall not:

- 1) Keep, store, or sell any goods, merchandise, or materials that are in any way explosive or hazardous;
- 2) carry on any offensive or dangerous trade, business, or occupation;
- 3) use or operate any machinery or apparatus that shall injure the Premises or adjacent buildings in any way; or
- 4) do anything other than is provided for in this Agreement.

B. Nothing in this section shall preclude City from bringing, keeping, or using on or about said Premises such materials, supplies, equipment, and machinery as is appropriate or customary in the care, maintenance, administration, and control of parklands. Gasoline, oils, and all other materials considered under law or otherwise to be hazardous to health and safety shall be stored, handled, and dispensed as required by applicable regulations and laws.

C. City shall comply with all laws, federal, state, or local, existing during the term of this Agreement pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law. In the event

the State or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney fees and costs, as a result of the City's illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, City shall protect, indemnify, defend, and hold harmless any of these individuals against such liability. Where City is found to be in breach of this provision due to the issuance of a government order directing City to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition directly caused by City or any person acting under City's direct control or authority, City shall be responsible for all costs and expenses of complying with such order including any and all expenses imposed on or incurred by the State in connection with or in response to such government order.

D. Notwithstanding the foregoing, in the event a government order is issued naming City, or City incurs any liability during or after the term of the Agreement in connection with contamination that preexisted the City's obligations and occupancy under this Agreement, or prior agreements or that were not directly caused by City, the State shall be solely responsible as between City and State for all expenses and efforts in connection therewith, and State shall reimburse City for all reasonable expenses actually incurred by City therewith including, but not limited to, reasonable attorney fees and other associated costs and expenses.

E. All pest control activities, chemical and non-chemical, shall be approved by State prior to action by the City. City or the pest control business acting on behalf of City shall submit a DPR 191, Pest Control Recommendation, or equivalent to State for approval. State has fourteen (14) days to approve or deny the request. State review and approval shall be solely for compliance with State's policies and in no way shall relieve City or its contractors, employees, agents, or representatives from compliance with all laws and regulations concerning such activities, nor from carrying out the work in a workmanlike manner.

City or the pest control business acting on behalf of City shall submit a report of completed work for each pest management action to the State no later than seven (7) days after performance of the work. The report may be submitted on a DPR 191, Pest Control Recommendation, or equivalent.



**27. SIGNS AND ADVERTISING**

With the exception of signage determined by the City to be necessary for health and safety reasons, which shall not require prior approval, no signs, logos, names, placards, or advertising matter shall be inscribed, painted, or affixed upon Premises, or circulated or published without prior approval of the State. Approval will be granted only when said sign or advertising is consistent with the purposes of this Agreement.

**28. INTELLECTUAL PROPERTY RIGHTS**

A. Clarify Ownership of Pre-existing Intellectual Property Rights: Other than as specifically identified and authorized in this Agreement, City shall not use names, logos, trademarks or copyrighted materials belonging to and/or associated with State without the express consent of State. Further, no such use, even if permitted herein, or otherwise, shall be deemed to instill in City any rights of ownership on such names, logos, trademarks, copyrights or other materials, and any rights to such use shall not, under any circumstances, continue beyond the term of the Agreement.

Any trademarks and/or copyrights belonging to City prior to the commencement of the Agreement shall remain in City's sole ownership upon termination of the Agreement.

B. Ownership of New Logos and Trademarks Developed During Agreement: Any names, logos, and/or trademarks developed by City during and/or pursuant to this Agreement that in any way associate with, identify or implicate an affiliation with State and/or are funded by State shall be approved in writing by State, shall belong to State upon creation, subject to express written agreement otherwise, and shall continue in State's exclusive ownership upon termination of the Agreement. Further, all goodwill and other rights in said marks shall inure to the benefit of the State as the mark owner.

C. Ownership of new Copyrights and Intellectual Property Rights, Developed by City for State Parks, Absent a Separate Written Agreement: All copyrighted materials developed and created by City for State during the term of this Agreement shall be deemed to be "works for hire" under the United States Copyright Act 17 USC § 101 et seq. and shall, unless otherwise agreed to in writing, belong to State upon creation, and

continue in State's exclusive ownership upon termination of this Agreement. Unless otherwise agreed to in writing, City intends and agrees to assign to State all rights, title, and interest in and all works created pursuant to this Agreement as well as all related intellectual property rights.

City agrees to cooperate with State and to execute any document reasonably necessary to give the foregoing provisions full force and effect including, but not limited to, an assignment of copyright.

D. City Rights in Separately Created Works: Any copyrighted materials and/or trademarks developed and created by City separate and apart from this Agreement shall belong to City and shall continue in City exclusive ownership upon termination of this Agreement. In the event that any trademarks and/or copyrights are created by City during the term of this Agreement and same are proposed for use in connection with City performance under the Agreement, City shall promptly notify State in writing of its intention to retain ownership in the specific trademarks and/or copyrights.

## **29. GRANT OF STATE'S TRADEMARK LICENSE**

State hereby grants City, and City hereby accepts a non-exclusive, non-assignable license to use the State Park Logo (sometimes referred to as the "Trademark" or "Mark"), created and owned by State, in accordance with the terms and conditions of the License/Permission for Use of Trademarks which is attached hereto as **Exhibit G** and incorporated herein by reference. After signature by both City and State, this License shall authorize the use of the Trademark and associated goodwill in connection with this Agreement only.

A record of each authorized use by City of the Trademark shall be maintained by City and by State.

City and State will use the State Park name, Trademark, and brand consistent with the State Parks License/Permission for Use of Trademark-Exhibit A, which is attached hereto as **Exhibit G**

, **Attachment 1** and incorporated herein by reference, and the State Park Brand Standards Handbook available at

<https://www.parks.ca.gov/pages/735/files/brandhandbookjanuary2007.pdf> .

The State Park name, Trademark and brand will not be used on City social media pages.

### **30. CHILD SUPPORT COMPLIANCE ACT**

A. City recognizes the importance of child and family support relating to child and family support enforcement, including but not limited to, disclosure of information and compliance with earnings assignment orders as obligations and shall fully comply with all applicable state and federal laws provided in Chapter 8 (commencing with § 5200) of Part 5 of Division 9 of the Family Code.

B. To the best of its knowledge, City is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

### **31. DISPUTES**

City and State shall continue with any and all responsibilities under this Agreement during any dispute.

### **32. LIMITATION**

This Agreement is subject to all valid and existing contracts, leases, licenses, encumbrances, and claims of title that may affect Premises.

### **33. SECTION TITLES**

The section titles in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect this Agreement

### **34. INSPECTION**

State or its authorized representative shall have the right at all reasonable times to inspect the Premises to determine compliance with the provisions of this Agreement.

**35. SUCCESSORS IN INTEREST**

Unless otherwise provided in this Agreement, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties hereto, all of who shall be jointly and severally liable hereunder.

**36. PARTIAL INVALIDITY**

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**37. DURATION OF PUBLIC FACILITIES**

By entering into this Agreement, State makes no stipulation as to the type, size, location, or duration of public facilities to be maintained at this unit, or the continuation of State ownership thereof, nor does the State guarantee the accuracy of any financial or other factual representation that may be made regarding the Premises.

**38. WAIVER OF RIGHTS, CLAIMS, AND AGREEMENT TERMS**

Unless otherwise provided by this Agreement, no waiver by either party at any time of any of the terms, conditions, or covenants of this Agreement shall be deemed as a waiver at any time thereafter of the same or of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of either Party or to exercise any right, power, or privilege, or option arising from any breach, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option, or be construed as a waiver of such breach or relinquishment of any right or acquiescence therein. No notice to either Party shall be required to restore or revive time as of the essence after the waiver by the other Party of any breach. No option, right, power, remedy, or privilege of either Party shall be construed as being exhausted by the exercise thereof in one or more instances. The

rights, powers, options, and remedies given to the Parties by this Agreement shall be deemed cumulative.

### **39. INTERPRETATION OF AGREEMENT**

This Agreement is made under and is subject to the laws of the State of California in all respects as to interpretation, construction, operation, effect, and performance.

### **40. INDEPENDENT CONTRACTOR**

In the performance of this Agreement, City and the agents and employees of City shall act in an independent capacity and not as officers or employees or agents of the State.

### **41. MODIFICATIONS AND APPROVAL OF AGREEMENT**

This Agreement contains and embraces the entire Agreement between the Parties hereto and neither it nor any part of it may be changed, altered, modified, limited, or extended orally or by any Agreement between the Parties unless such Agreement be expressed in writing, signed, and acknowledged by the State and City or their successors in interest.

Notwithstanding any of the provisions of this Agreement, the Parties may hereafter, by mutual consent expressed in writing, agree to modifications thereof, additions thereto, or terminations thereof, which are not forbidden by law. This Agreement, amendments, modifications, or termination thereof shall not be effective until approved by State's relevant control agencies.

### **42. AGREEMENT IN COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement and shall be effective once approved by State and control agencies as applicable.

Pacifica State Beach

City of Pacifica Operating Agreement

**CITY OF PACIFICA**

**STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION**

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

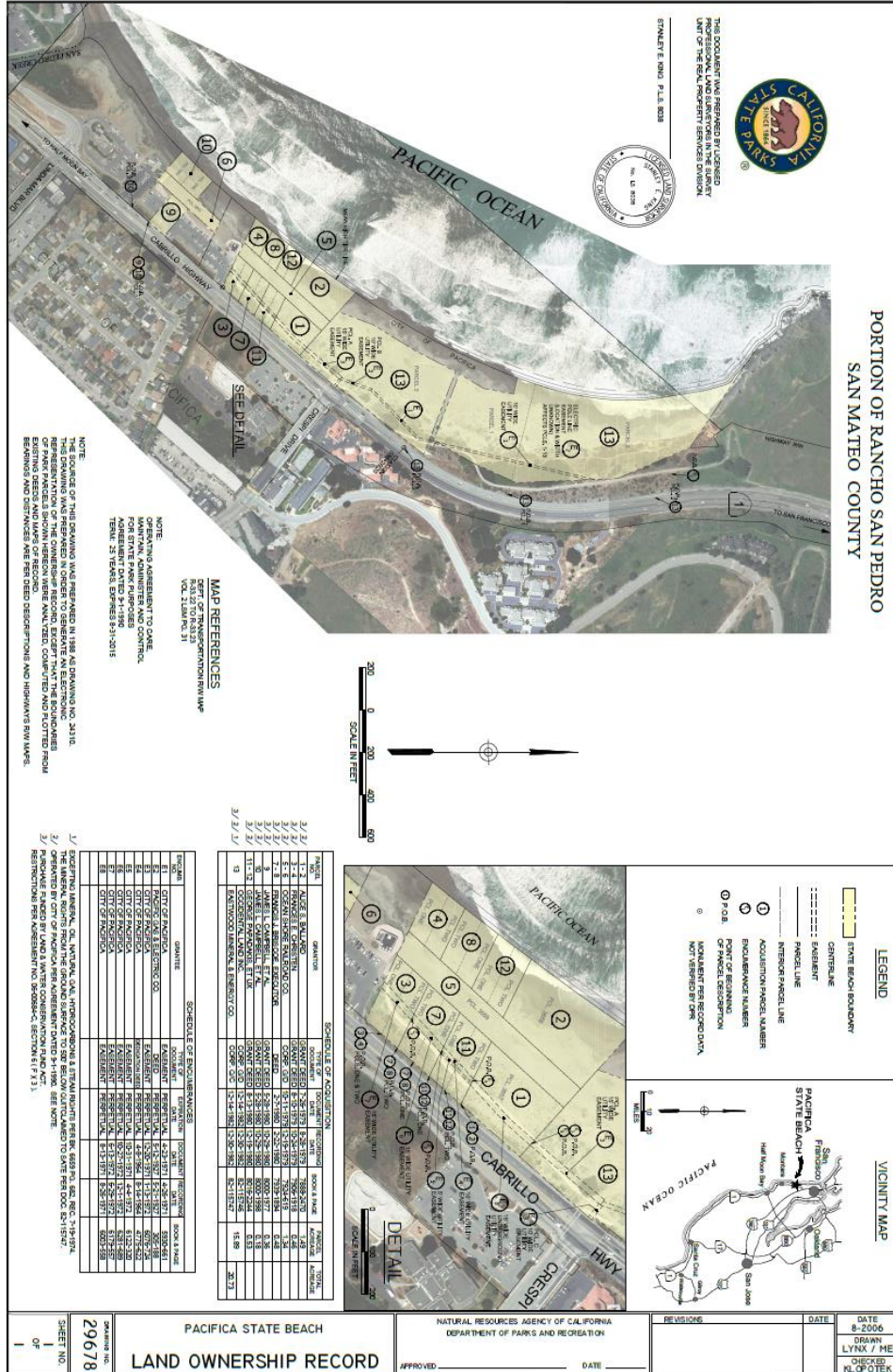
Date: \_\_\_\_\_

**APPROVED:**

**DEPARTMENT OF GENERAL SERVICES:**

**43. EXHIBIT A - Premises**

The Premises, for the purposes of this Agreement, refers to the parcels of property designated in yellow as “State Beach Boundary.”



#### **44. EXHIBIT B – Construction Procedures and Approvals**

##### **I. Management Plan Phase**

- A. As required in the Resource Element of the Pacifica State Beach General Plan approved in April 1990 by the California Park and Recreation Commission, preparation of specific natural resource management plans and studies shall occur to guide management and development of the State Beach. These include a Dune Management Plan, a Wetland Management Plan, an Exotic Plant Species Control Plan, and establishment of a coastal erosion monitoring program to document 1) seacliff retreat, 2) landslides, 3) beach elevation, and 4) beach width. These plans/studies shall be prepared prior to the substantial improvement of existing facilities or the development of new facilities at Pacifica State Beach.
- B. If the City of Pacifica prepares these plans/studies, they shall be submitted to the Department of Parks and Recreation's District Superintendent (or designee) for review and written approval prior to commencement of the project's design and construction phase.

##### **II. Design and Construction Phase**

###### **A. General**

1. All plans and exhibits shall be submitted with a transmittal letter signed and dated by the submitter and indicating the number of sheets and items being submitted and the purpose for which they are being submitted.
2. All plans and exhibits shall be submitted on 24"x36" standard sheets with a title block indicating the following:
  - a. Name of project.
  - b. Location of project.
  - c. Name, address, and professional license number of consultant or submitter.
  - d. Date of submittal.
  - e. Number of sheets.
  - f. A space 4"x6" directly above the title block for approvals.
  - g. The word "Schematics" or "Preliminaries" or "Working Drawings" directly above the title block on each sheet.



## B. Schematic Design Phase

1. Definition: Schematics shall consist of:
  - a. A program statement indicating the scope of work and proposed uses and individual or special features or support needed. Include a discussion of the style, features, materials, or other items that will describe the structure or facility
  - b. A site plan with diagrammatic indications showing existing relationships to proposed Project Components. This shall include (but is not limited to) location, parking, roads, topography, utilities, existing structures, plants, and other major features.
  - c. Building floor plans of all of the principal building areas labeling the major spaces and functions at 1/4" scale.
  - d. Two elevations of proposed structures and buildings showing major materials and features at 1/4" scale.
  - e. Statement of Probable Project Construction Cost.

## C. Preliminary Plan Phase

1. Definition: Preliminaries shall consist of:
  - a. Outline specifications of all applicable C.S.I. sections (if necessary) indicating materials, equipment, and special features or items.
  - b. Floor plan(s) of building(s) drawn at 1/4" scale with dimensions and notes that clearly show the scope of the work and individual materials.
  - c. A section through proposed building(s) and/or structures showing the structural system and the individual use of materials and finishes. Note: More than one section is required if the building or facility is complex enough to warrant additional information.
  - d. Preliminary sketches of major construction details.
  - e. Two elevations drawn at 1/4" scale of the exterior of proposed building(s) indicating materials, heights, and other related information.

- f. Preliminary Civil Engineering drawings, at a minimum scale of 1"=50' indicating the project's layout, grading and drainage, source of water, point of connection, and location of waterlines.
- g. Preliminary Mechanical Engineering drawings, at a minimum scale of 1"=50' indicating the method and location of sewage disposal facilities.
- h. Preliminary Electrical Engineering drawings, at a minimum scale of 1"=50' indicating the electrical source, location of electrical lines, and location of outdoor lighting.
- i. Preliminary Planting and Irrigation drawings, at a minimum scale of 1"=50' indicating the type and location of plant materials and method of irrigation.
- j. Probable construction cost based on Preliminary Plans.

#### D. Working Drawings

- 1. Definition: Working Drawings shall consist of:
  - a. Specifications for the work to be accomplished. Specifications shall follow an organized format (such as C.S.I.) and shall be a complete description of materials, methods of installation, standards of craftsmanship, and finishes required in the completed project.
  - b. Plans, site plans, elevations, sections, details, schedules, and other common and necessary items for the construction of the proposed project. Building and structures' plans and elevations shall be drawn at a minimum scale of 1/4"=1'-0". Building and structures' sections shall be drawn at a minimum scale of 1/2"=1'-0". Building and structures' details shall be drawn at a minimum scale of 1-1/2"=1'-0". Mechanical, electrical, plumbing, finish, door, and other schedules shall be complete and include all information necessary for construction.
  - c. Working drawings shall reflect the content and scope of the approved preliminary drawings. Changes in the preliminary drawings that affect the materials, scope, scale, size, or intent of the project or portions of the project shall require resubmittal of preliminary plans for approval.

- d. Drawings shall be signed by a licensed landscape architect, architect, and/or other consultants as needed. It is the responsibility of the submitter to obtain such permits as: Coastal Commission permits, Handicap Accessibility, Fire Marshal, Caltrans, and others as necessary prior to proceeding with construction.
- e. Civil Engineering drawings, at a minimum scale of 1"=50' indicating the project 's layout, grading and drainage, source of water, point of connection, location and size of waterlines, and construction details.
- f. Mechanical Engineering drawings, at a minimum scale of 1"=50' indicating the method and location of sewage disposal facilities and construction details.
- g. Electrical Engineering drawings, at a minimum scale of 1"=50' indicating the electrical source , location of electrical lines , location of outdoor lighting, and construction details.
- h. Planting and Irrigation drawings, at a minimum scale of 1"=50' indicating the type and location of plant materials, size and location of irrigation lines and sprinklers, and construction details.
- i. Probable construction cost based on Working Drawings.

#### E. Submittal Procedure (all phases)

1. Submit five (5) copies of the plans, specifications and other material required in the prospectus to:
 

State of California  
 Department of Parks and Recreation  
 Santa Cruz District  
 ATTN: District Superintendent (or designee)
2. The State will retain four (4) copies and return one (1) set marked in the following manner :
  - a. "Approved" - The plans are approved as submitted.
  - b. "Revise and Resubmit" - The plans will be approved when the changes noted are made and resubmitted to the District Superintendent (or designee). The approval date does not start until they have been resubmitted and approved.

- c. Submittals that are incomplete will be returned to the submitter marked "Incomplete" without approval.
  - d. The review period for the State shall begin upon the receipt of "Complete" project documents.
3. Written approval of each phase is required before proceeding to the next phase.

**45. EXHIBIT C – City of Pacifica Minimum Maintenance Requirements**

City shall conduct the following maintenance activities:

- Beach Parking Lot Maintenance. Removal of sand from the sidewalks and parking lot and placement of sand back on the beach, on an as needed basis; pavement striping when lines fade or after a slurry sealing or re-pavement event; slurry sealing of pavement; and pavement overlay wherein the entire pavement surface is replaced with a 2-inch asphalt concrete layer. Beach parking lot maintenance activities (i.e., sand removal from the sidewalks and parking lots and placement of the sand back on the beach; pavement striping; pavement slurry sealing; and pavement overlay) shall be on the same schedule as performed by City on City-owned parcels at Pacifica State Beach.
- Sweep sand off of sidewalks and parking lot with sweeper
- Pick up garbage & empty garbage cans.
- Maintain and operate beach showers and bathrooms, and perform graffiti abatement on an as needed basis
- Beach debris removal, on similar frequency as performed on City-owned beaches.
- Trail & pathway maintenance, on similar frequency as performed on other City-owned beaches.
- Lighting and signage maintenance
- General weed abatement and removal of invasive plants
- Parking lot striping
- Removal and/or disposal of dead seals and whales
- Bioswale sand removal / drainage maintenance
- Special Event Cleanups (4<sup>th</sup> of July, Earth Day, Coastal Cleanup Day)

**46. EXHIBIT D - Annual Revenue and Expenditure Report (SAMPLE)**

Operating Agreements

Park Unit \_\_\_\_\_

Operating Agency \_\_\_\_\_

State's Fiscal Year \_\_\_\_\_ to \_\_\_\_\_

Estimated Total Visitors \_\_\_\_\_

	Gross Revenue	Expenditures	Balance
Visitor Entrance or Use Fees			
Parking Fees			
Concession _____ Gross Sales \$ _____			
Concession _____ Gross Sales \$ _____			
Concession _____ Gross Sales \$ _____			
Special Events			
Miscellaneous Revenue			
Total Annual Revenue			
Salaries & Wages			
Maintenance & Housekeeping			
Utilities			
Capital Improvement Projects			
Miscellaneous Expenses			
Total Annual Expense			
Grand Totals			

Preparer Name \_\_\_\_\_ Date \_\_\_\_\_

Phone Number \_\_\_\_\_

## **47. EXHIBIT E – Resource Guidelines**

Department of Parks and Recreation, Department of Operations  
Manual (DOM) Sections

### **0307.3.2.1 Coastal Development Siting Policy**

It is the policy of the Department that natural coastal processes (such as wave erosion, beach deposition, dune formation, lagoon formation, and seacliff retreat) should be allowed to continue without interference. The Department shall not construct permanent new structures and coastal facilities in areas subject to ocean wave erosion, seacliff retreat, and unstable cliffs. New structures and facilities located in areas known to be subject to ocean wave erosion, seacliff retreat, or unstable bluffs shall be expendable or movable. Structural protection and re-protection of existing developments is appropriate only when:

- a. The cost of protection over time is commensurate with the value of the development to be protected, and
- b. It can be shown that the protection will not negatively affect the beach or the near-shore environment.

Where existing developments must be protected in the short run to achieve park management objectives, including high-density visitor use, the Department should use the most natural-appearing method feasible, while minimizing impacts outside the threatened area.

Any shoreline manipulation measures proposed to protect cultural resources may be approved only after an analysis of the significance of the cultural resource and the degree to which proposed measures would impact natural resources and processes, so that an informed decision can be made through an assessment of alternatives and long term costs.

### **0310.1.1 Plant Management Policy**

It is the policy of the Department to acquire, preserve, and interpret outstanding examples of native California species; and to acquire, perpetuate, and interpret natural plant communities, associations, natural processes (e.g., succession), and examples of rare, endangered, endemic, or otherwise sensitive native California plants. This will be done in concert with other agencies and organizations.

To maintain native plants as part of the natural ecosystems, the Department will:

- a. Preserve and restore the natural abundance, diversity, dynamics, distributions, stand structure and species composition, and the communities and ecosystems in which they occur;
- b. Protect state and federally-listed threatened, endangered, rare, or otherwise sensitive species;
- c. Restore native plant populations in parks where they have been extirpated by past human-caused actions;
- d. Minimize negative human impacts on native plants, populations, communities, ecosystems, and the processes that sustain them while providing opportunities for the public to experience plants native to California, and
- e. Protect human health and safety (e.g. hazard tree removal).

### **0311.2 General Animal Management Policy**

It is the policy of the Department to implement park acquisitions and resource, facility, and visitor use management strategies that foster long-term sustainability of natural animal populations and the processes that influence the dynamics of animal populations.

In managing animals and animal habitats, the Department will:

- a. Preserve, protect and restore the natural abundance, diversity, dynamics, distributions, habitats, and behaviors of native animal populations and the communities and ecosystems in which they occur, including State and federally-listed threatened, endangered, or otherwise sensitive species;
- b. Maintain functional linkages to other natural areas in order to sustain populations;
- c. Restore native animal populations in parks where they have been extirpated by past human-caused actions;
- d. Minimize negative human impacts on native animals, populations, communities, and ecosystems, and the processes that sustain them while providing opportunities for the public to experience animals native to California;
- e. Protect human health and safety; and
- f. Protect facilities and cultural resources from damage by animals.

Management activities involving the propagation, reintroduction, reduction, or extirpation of native animals may be carried on the State Park System only where necessary to safeguard the health and safety of State Park System visitors and/or the general public, or when necessary to establish more natural ecological conditions.



#### 0311.5.2.1 Special Animal Policy

It is the policy of the Department to protect species listed under the federal or state endangered species acts that are native to State Park System units. The Department will conserve listed species and avoid detrimental effects by:

- a. Participating in the recovery planning process;
- b. Working with other agencies to help ensure that any formal delineation of critical habitat, essential habitat, and/or recovery areas on State Park System lands is compatible with State Park System management goals; and
- c. Cooperating with responsible state and federal agencies to support the protection and recovery of listed species by maintaining the species and the habitats upon which they depend and reducing negative impacts when feasible.

**48. EXHIBIT F – Department Notice 2014-02 Western Snowy Plover Management**

State of California - Natural Resources Agency DEPARTMENT OF PARKS AND RECREATION		MANUAL
<b>DEPARTMENTAL NOTICE</b> <b>No. 2014-02</b>		Operations
SUBJECT		CHAPTER
Department Western Snowy Plover Management		0300 Natural Resources
ISSUED	EXPIRES	REFERENCE
June 9, 2014	When incorporated	TBD

DPR 375 (Rev. 1/2011)(Word 1/29/2011)

WHEN APPLICABLE, ENTER THE NUMBER AND DATE OF THIS DEPARTMENTAL NOTICE IN THE MARGIN OF THE MANUAL PAGE, ADJACENT TO THE SECTION(S) AFFECTED BY IT.

**Purpose**

This Departmental Notice defines policy for the protection of the Pacific Coast population of the western snowy plover (WSP, *Charadrius nivosus nivosus*), a shorebird native to California and the west coast of the US. The WSP is listed as a federally threatened species, and federally-designated critical habitat for WSP occurs on lands managed by California State Parks (CSP). The WSP is also listed as a Species of Special Concern in California. This notice references and relies upon guidelines that have been developed by CSP to inform and provide direction regarding the management of WSP breeding and wintering habitat. The guidelines are available on the State Parks intranet site at: [http://isearch.parks.ca.gov/?page\\_id=592](http://isearch.parks.ca.gov/?page_id=592)

**Background**

The CSP mission, in part, is to preserve the state's extraordinary biological diversity and protect its most valued natural resources. CSP responsibilities, as steward of natural resources within the State Parks, include the management of ecosystems and habitats for the protection and perpetuation of native plant and animal species. These responsibilities extend as well to native species that are listed under the federal or state endangered species acts. Current policy (DOM Section 0311.5.2.1) directs the Department to support the protection and recovery of listed species by maintaining the species and habitats upon which they depend and reducing negative impacts when feasible. This notice is consistent with, and builds upon, this policy in the specific case of the WSP.

WSP are small, sand-colored shorebirds that nest and overwinter along the Pacific Coast from southern Washington to Baja California. Dune-backed beaches, sand spits, beaches at creek/river mouths, and salt pans are their primary nesting habitat. The WSP nest is a simple scrape in the dry sand, sometimes lined with shell, and eggs and chicks are cryptically colored. The breeding season for this bird can start in early March and, with multiple nesting attempts, may continue until the end of September. Threats and disturbances to WSP on State Parks lands include human recreational uses of beaches, the presence of dogs, encroachment on their habitat by European beach grass (*Ammophila arenaria*) and other invasive plant species, predation by native and non-native mammalian and avian predators, and park operations and maintenance activities.

CSP manages 114 coastal park units over approximately 340 miles of the California coastline. Many of the coastal areas managed by the Department provide important nesting, brood-rearing, foraging, and roosting habitat for the WSP and are critical to the survival and recovery of the population. As a result, proper management of Department lands is essential for continued progress toward state and federal WSP recovery goals. The protection and restoration of WSP on State Park lands is

consistent with the overall Department mission and success is dependent upon a coordinated interdisciplinary approach.

### **Policy**

The policy of the Department will be to support the recovery of the WSP through protection of the species and management of coastal habitat following the direction given in the Department's "Western Snowy Plover Systemwide Management Guidelines" (issued March 2002, revised April 2014) and summarized below. The guidelines and the overall program will be revised and updated as new information becomes available.

### **Summary of Directives from the WSP Systemwide Management Guidelines**

#### Coordination:

- District Natural Resources staff will participate in regional WSP Working Groups established to coordinate management and monitoring efforts among federal and state agencies, local governments, research institutions, and others.
- Facilities Maintenance, Visitor Services, Interpretation, and Natural Resource Management staff will coordinate management actions as summarized below.

#### Management Plans:

Protection and recovery of WSP will require long-term, multi-faceted management.

- District Natural Resources staff will prepare, in consultation with other district management functions as needed, unit or district-wide WSP management plans to effectively plan, schedule, implement, and maintain recovery efforts.
- Management plans will address monitoring, all management actions deemed necessary, including measures to be taken with regard to park operations, visitor use, enforcement of regulations, and interpretation/public information. The plans will also summarize WSP results from prior seasons.
- Management plans will be re-evaluated annually and updated, as appropriate.

#### Monitoring:

- Districts will ensure that WSP monitoring efforts are established and maintained to document local WSP status and trends, including abundance, distribution (use of suitable, potential, and/or critical habitat), and reproductive success.
- Districts will identify nest locations and threats to nesting birds, eggs, and young, impacts to habitat, and disturbance factors so that appropriate protection and/or management measures can be implemented.

#### Reporting:

- District summary reports will be prepared by District Natural Resources staff annually to document management activities and results of monitoring.
- Summary reports will be submitted to the Natural Resources Division to be included in the Department's WSP annual report summarizing department-wide management activities and monitoring results throughout the State Park system.

#### Habitat Management:

The protection and recovery of WSP will require active management by all disciplines, such as protecting individual nests and nesting areas, protecting overwintering habitat, managing visitor use and predators, and restoring degraded habitat.

- Districts will provide the level of protection needed at known breeding or overwintering areas to avoid disturbance to WSP and/or loss of birds, eggs, or young due to park operations and visitor use activities. Protection measures include, but are not limited to:
  - installation of visitor informational and warning signs near nesting areas;
  - "symbolic" fencing, barrier-type fencing, and selective use of single nest enclosures;
  - closures, partial closures, and/or seasonal closures of sensitive areas;
  - proper siting or re-routing of trails, visitor access points, and special events away from nesting areas.
- Districts will also:
  - institute predator management as ecologically appropriate and feasible;
  - maintain coastal dune habitat and restore degraded areas as appropriate.

Law Enforcement and Beach Patrols:

- Districts will strictly enforce restrictions and regulations established to prevent disturbance to WSP, including those pertaining to dogs and illegal camping and fires on the beach.
- Districts will restrict and regulate vehicle use on beaches to avoid disturbance to WSP and their nesting or overwintering areas.
- Vehicles involved in regular patrol of beaches through potential WSP habitat will be confined to the wave slope where possible and to daylight hours. In some situations (e.g., where plover encounters are likely), trained WSP monitors will be required to accompany vehicles on the beach to watch for plovers.
- District patrol staff will, as feasible:
  - drive slowly (less than five miles per hour);
  - use open-top vehicles, when available, to improve visibility;
  - avoid driving on the wrack line and during high-tide periods;
  - drive as close to the water line as possible;
  - avoid previous tracks on the return trip.

Trash Management:

- Districts will manage beaches used by WSP so that trash associated with visitor use will not attract predators of WSP. This includes, but is not limited to:
  - installation of wildlife-proof garbage cans;
  - removal of non-compliant trash receptacles in the vicinity of beach nesting areas;
  - scheduling the timing and frequency of trash collection to minimize the potential for full or over-flowing trash receptacles;
  - siting trash receptacles and establishing collection routes outside of sensitive areas.

Beach Cleaning:

- Districts will implement measures to avoid impacts to WSP during beach maintenance and clean-up activities. Districts will:
  - arrange park maintenance vehicle routes, schedules, and driving activities to avoid disturbing WSP and their habitat;
  - limit areas where beach cleaning equipment is operated as cleaning may compromise WSP food availability and cover;
  - ensure management consistent with designated WSP critical habitat by affording critical habitat areas the highest level of protection;
  - carefully review proposals for community-volunteer beach clean-up days, incorporate necessary WSP protection and avoidance measures into clean-up plans, and closely monitor all clean-up activities.

Staff Education and Training:

- Districts will provide orientation training to all CSP staff involved in park operations in or near coastal WSP habitat with training content that meets at least the minimum standards provided in the Department's Western Snowy Plover Stewardship Orientation (2002) training program, (available at [http://isearch.parks.ca.gov/?page\\_id=592](http://isearch.parks.ca.gov/?page_id=592)) Additional training will be provided (and appropriate permits acquired where applicable) to WSP surveyors and others that are directly involved in WSP monitoring and management activities.



Stephen R. Lehman  
Deputy Director  
Park Operations





# For Signature: ResolutionNo70-2021\_ApproveOperatingAgmtPacificaStateBeach

Final Audit Report

2021-11-22

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