



Monterey District
2211 Garden Road
Monterey, CA 93940
Phone (831) 649-2836
Fax (831) 647-6239

June 4, 2007

Dewey Evans, CEO
Seaside Basin Watermaster
600 Garden Road, Suite 228
Monterey, CA 93940

Dear Mr. Evans,

As you know State Parks staff have been in discussions with Martin Feeney and other consultants representing the Seaside Basin Watermaster concerning installation of groundwater monitoring wells within Fort Ord Dunes State Park. Pursuant to those discussions the attached Right of Entry Permit has been prepared. Please sign both copies of the permit and return them to me. An approved copy of the permit will be returned to you after it is approved by State Parks.

In keeping with the permit terms and conditions please submit the following materials when you return the signed permit copies:

1. A check payable to the California Department of Parks and Recreation for \$1,500 to cover the administration costs of preparing the permit.
2. A Certificate of Insurance in keeping with the permit language.

If you have any questions about this issue please contact me at (831) 649-2862 or kgray@parks.ca.gov.

Sincerely,

Kenneth L. Gray
Senior Park and Recreation Specialist

cc: Martin B. Feeney
P.O. Box 23240
Ventura, CA 93002

RIGHT OF ENTRY PERMIT

Agency: Department of Parks and Recreation

Project: Fort Ord Dunes State Park
Seaside Groundwater Basin Monitoring Wells

This Right of Entry Permit (Permit) is made and entered into this ____ day of _____ 2007, between the State of California, acting by and through its Director of the Department of Parks and Recreation, hereinafter called State and, the Seaside Basin Watermaster, its officers, employees, agents and contractors, hereinafter called Permittee.

RECITALS

- Whereas, the State owns, operates, and maintains the State park unit known as Fort Ord Dunes State Park in Monterey County, California; and
- Whereas, permittee is planning a project to install four monitoring wells within Fort Ord Dunes State Park to monitor for possible seawater intrusion into the Seaside groundwater basin; and
- Whereas, a court order requires that the monitoring wells be installed and due to the location of the Seaside groundwater basin, no practical alternative exists to locate the wells outside State Park property; and
- Whereas, temporary construction access on State Park property is required to construct the monitoring wells; and
- Whereas, Permittee has requested permission from State to access Fort Ord Dunes State Park in order to facilitate the construction of the monitoring wells.
- Now therefore, the State desires to accommodate Permittee's application for permission to enter the State Park for purposes of the Seaside Groundwater Basin Monitoring Wells Project, as and to the extent such project is ultimately described, permitted, approved and conditioned by environmental documents, and as may be conditioned by any other regulatory agency having jurisdiction, if applicable.

TERMS AND CONDITIONS

This Permit hereby gives the Permittee the rights stated below which are revocable at will, and are not transferable to any other party. This Permit does not create an interest in the real property herein described or depicted and is further subject to the following terms and conditions:

1. **Project Description:** By this Permit, State hereby gives permission to Permittee to enter upon those lands as depicted on the attached map entitled Exhibit "A" (the Property), which shows the Seaside Basin Watermaster Seawall Project's access limits, solely for the purpose of the work described herein. The Seaside Groundwater Basin Monitoring Wells Project, hereafter referred to as "Project," involves the construction of the four monitoring wells within Fort Ord Dunes State Park.
2. **Permit Subject to Laws and Permits:** Permittee shall, at Permittee's sole cost and expense, comply with the requirements and mitigations identified by Permittee's environmental document, including all municipal, state, and federal authorities now in force or which may be in force pertaining to the project and use of the Property as provided by this Permit. This Permit is expressly made subject to any and all laws and regulatory permits or approvals, including any conditions of such permits and approvals issued or required to be issued by such regulatory agencies.

Prior to commencement of any work, 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.

3. **Term of Permit:** This Permit shall only be for the period beginning on the above date and ending on March 1, 2008 or as may be reasonably extended by written mutual agreement.
4. **Fees:** Permittee agrees to pay State the sum of One Thousand-Five Hundred Dollars (\$1,500.00) to cover the State's costs associated with the preparation and processing of this document is due at the time of submittal of the application. The payment shall be in the form of a check payable to the California Department of Parks and Recreation.
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 employees, for loss or damage caused by, arising out of, or in any way connected with the exercise of this Permit, and Permittee agrees to protect, save harmless, indemnify, and defend State, its officers, agents and employees, or contractors from any and all loss, damage or liability which may be suffered or incurred by State, its officers, agents and employees, or contractors, caused by, arising out of, or in any way connected with the exercise by Permittee of the rights hereby granted, and the project for which this Permit is granted, except those arising out of the sole active negligence 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 issued.
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 terms and conditions contained herein. Failure of contractors to abide by State's terms and conditions shall constitute default by Permittee (see Paragraph 20) allowing State to terminate this Permit and seek all legal remedies.
8. **Insurance Requirements:** As a condition of this Permit and in connection with its indemnification and waiver of claims for the project, Permittee will provide, and/or cause its contractors to provide, a policy or policies of insurance as follows:

Permittee shall procure commercial general liability insurance at least as broad as the most commonly available ISO policy form CG 0001 covering bodily injury, property damage and personal injury and 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.

Permittee shall also procure property insurance at least as broad as the most commonly available special form policy with a limit of not less than \$500,000. Said policy shall contain an endorsement naming CALIFORNIA STATE DEPARTMENT OF PARKS AND RECREATION as loss payable and provide that payments for any losses be made to CALIFORNIA STATE DEPARTMENT OF PARKS AND RECREATION and Permittee as co-payees and shall be used to repair, rebuild, restore or replace the insured property at State's direction for any damage resulting from the installation or operation of Permittee's equipment. If payments are not used, they shall be made payable directly to CALIFORNIA STATE DEPARTMENT OF PARKS AND RECREATION for rebuilding or repair as necessary in the discretion of the State.

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 owned, hired, and non-owned motor vehicles in use by Permittee.

Permittee shall maintain statutory worker's compensation, and employer's liability 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.

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, nonrenewal 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 to do business in the State of California.

Such policies shall contain an endorsement naming the CALIFORNIA STATE DEPARTMENT OF PARKS AND RECREATION as an additionally named insured at no cost to State.

Permittee shall provide to State evidence that the insurance required to be carried by this provision, including any endorsement affecting the additional insured status, 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, State may, in addition to any other remedies it has, terminate this Permit. If any policy of insurance required by this provision lapses, evidence of a new policy shall be provided to State within ten (10) working days of such lapse.

Permittee is required to ensure 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 and the 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 and as depicted in Exhibit A.
11. **Notice of Work:** Prior to any entry upon the Property for any of the purposes hereinabove set forth, Permittee shall notify the authorities in charge of State Park named below by written notice at least prior to commencement of work. Permittee shall also notify authorities in charge of the State Park at least forty-eight (48) hours of any change in the project schedule or prior to cessation of work.

Mathew Fuzie, District Superintendent
District Name: Monterey District
Address: 2211 Garden Road
Monterey, CA 93940

Telephone: (831) 649-2836
Fax: (831) 647-6239

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 permitted or authorized by any regulatory agency, permit, or approval, shall work exceed that which is reasonably necessary to carry out the purpose or project limits set forth in Exhibit A herein.
13. **Public Safety:** Permittee shall erect orange plastic temporary construction fencing prior to commencement of work to prohibit public access to the construction zone. Permittee shall remove such fencing within two (2) days of the completion of work. Permittee shall, or cause its contractors or subcontractors to take any and all other necessary and reasonable steps to protect the public from harm due to the work.
14. **Compliance with Monitoring and Mitigation Measures:** Natural resource monitoring and mitigation measures identified by the State shall be completed in consultation with and to the satisfaction of the State Environmental Scientist.

Activities conducted within the boundaries defined in this Permit will comply with all State and Federal environmental laws, including but not limited to the Endangered Species Act, CEQA, and Section 5024 of the Public Resources Code.

Archaeological consultants working within the boundaries of State Park Property shall obtain a permit from the California State Parks Cultural Resource Division prior to commencing any investigations of the Premises.

Permittee shall consult with State District resource specialists (environmental scientist, historian, and archaeologist) to determine site-specific conditions and avoidance measures for the protection of natural and cultural resources.

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 proposed project site. Permittee shall consult with State resource specialists to determine the appropriate level of avoidance/mitigation necessary to protect the resource(s) during future work.

In making any excavation on said Property of State, Permittee shall make all excavation activities 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 construction activities in the event the monitor determines that significant cultural resource values are being disturbed. In the event that significant cultural resource values are being disturbed, all work within thirty feet (30') of the find shall be immediately halted.

In the event that previously undocumented cultural resources are encountered during the project construction (including but not limited to dark soil containing shellfish, bone, flaked stone, ground stone, or deposits of historic trash), work within the immediate vicinity of the find would be temporarily halted or diverted until a State qualified cultural resource specialist has evaluated the find and implemented appropriate treatment and disposition of the artifact(s). Once any significant cultural resources are found in a project location, a qualified historian and/or archaeologist would monitor any ground-disturbing work in that area from that point forward.

Should Permittee, Permittee's contractors or subcontractors find any cultural or historical resources in the absence of a State archaeologist, Permittee agrees to halt all work within thirty feet (30') of the find and immediately notify the State Park Archaeologist or State Park Ranger. Permittee further covenants that work shall not resume in the area of the find until authorized by the State Park Archaeologist.

In the event that human remains are discovered, work shall immediately cease in the area of the find and the project manager/site supervisor will notify the appropriate State personnel. Any human remains and/or funerary objects will be left in place or returned to the point of discovery and covered with soil. The State District Superintendent or authorized representative will notify the County Coroner, in accordance with California Health and Safety Code §7050.5 and the Native American Heritage Commission (NAHC) or Tribal Representative. If a Native American monitor is on site at the time of the discovery, the monitor will be responsible for notifying the appropriate Native American authorities.

If the coroner or tribal representative determines the remains represent Native American interment, the NAHC in Sacramento and/or tribe will be consulted to identify the most likely descendants and appropriate disposition of the remains. Work will not resume in the area of the find until proper disposition is complete (PRC §5097.98). No human remains or funerary objects will be cleaned, photographed, analyzed, or removed from the site prior to determination. If it is determined that the find indicates a sacred or religious site, the site will be avoided to the maximum extent practicable. Formal consultation with the State Historic Preservation Office and review by the Native American Heritage Commission/Tribal Cultural representatives shall also occur as necessary to define additional site mitigation or future restrictions.

Permittee, Permittee's contractor or subcontractor 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 agrees to include the State archaeologist in any preconstruction meetings with the prime or subcontractors. The archaeologist shall be provided at least two (2) weeks advanced notice of the commencement of work undertaken pursuant to this Permit.

- 15. Restoration of Property:** Permittee shall be responsible for 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.

At the conclusion of work, all equipment, materials and debris will be removed from the State's property. If soil is contaminated with debris due to construction of the Project, the contaminated soil shall be removed from the site. Any damage to State's property shall be repaired by Permittee to its preexisting condition.

- 16. 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 is violated, or any other threat to the health and safety of visitors or users of the State Park arises.

- 17. Use Restrictions:** The use of the Property by Permittee's guest or invitees shall be restricted to the daytime hours between sunrise and sunset on a day-by-day basis, unless otherwise approved in advance in writing by State. No person may use or occupy the Property overnight.

Activities on the Property shall be conducted only in a manner, which will not interfere with the orderly operation of the recreation area. Permittee agrees to immediately discontinue or remove any disorderly conduct and/or contraband. Contraband includes, but is not limited to: beer, alcoholic beverages, illegal and illicit drugs, firearms, explosives and edged weapons.

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

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

- 18. State's Right to Enter:** At all times during the term of this Permit, there shall be and is hereby expressly reserved to State and to any of its agencies, contractors, agents, employees, representatives or licensees, the right at any and all times, and any and all places, to temporarily enter upon said Property to survey, inspect, or perform any other lawful State purposes.

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

State agrees to indemnify Permittee for any damages that Permittee should incur as a direct result of State's negligent exercise of its rights under this paragraph.

- 19. Protection of Property:** Permittee shall protect the Property, including all improvements and the natural resources thereon, at all times at Permittee's sole cost and expense, and Permittee shall strictly adhere to the following restrictions:

(a) Permittee may not place or dump garbage, trash or refuse anywhere upon or within the Property, except in self-contained trash receptacles that are maintained to State's satisfaction by Permittee.

(b) Permittee may not commit or create, or suffer to be committed or created, any waste, hazardous condition and/or nuisance to occur upon the Property.

(c) Permittee may not cut, prune or remove any native trees or brush upon the Property, except for routine fire protection, trail clearing, maintenance or the elimination of safety hazards without first obtaining written permission by the District Superintendent.

(d) Permittee may not disturb, move or remove any rocks or boulders upon the Property except for routine fire protection, trail clearing, maintenance or the elimination of safety hazards without first obtaining written permission by the District Superintendent.

(e) Permittee may not grade or regrade, or alter in any way, the ground surface of the Property, except for regrading of the roads for fire protection, trail clearing, maintenance or the elimination of safety hazards without first obtaining written permission by the District Superintendent.

(f) Permittee may not bait, poison, trap, hunt or engage in any other activity which results in the killing, maiming or injury of animals or wildlife upon the Property, except for mice and rats, and rattlesnakes in the event such snakes pose an immediate danger to persons on the Property without first obtaining written permission by the District Superintendent.

(g) Permittee may not dispose of hazardous substances on the Property.

(h) Permittee shall exercise due diligence in the protection of the Property against damage or destruction by fire, vandalism or other cause.

- 20. 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 State Property, irrespective of whether Permittee shall have abandoned the Property.

(b) Terminate this Permit whereupon Permittee shall immediately surrender possession of the Property to State. In such event, State shall be entitled to recover from Permittee all damages incurred 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 or which in the ordinary course of events would be likely to result therefrom; 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. Upon termination of this Permit, State shall have the right to make any reasonable repairs, alterations or modifications to the Property, which State, in its sole discretion, deems reasonable and necessary for the State's use of the Property.

20.1 State's Right to Cure Permittee's Default: At any time, after Permittee is in default or material breach of this Permit, State may, but is not 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, and if paid at a late date shall bear the maximum interest allowed by California law from the date the sum is paid by State until State is reimbursed by Permittee.

- 21. Revocation of Permit:** The State shall have the absolute right to revoke this Permit at will, with or without cause and 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 written notice. 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.
- 22. Recovery of Legal Fees:** If any action including actions or proceedings under Title II of the United States Code is brought by the State 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 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.
- 23. 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.
- 24. Reliance on Investigations:** Permittee accepts this Permit, and the Property to which it pertains, in its as-is condition and has made such investigation of the facts pertaining to this Permit and all the matters pertaining thereto as it deems necessary.
- 25. 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.
- 26. Warranty of Authority:** The undersigned represents that they have the authority to, and does, bind the person or entity on whose behalf and for whom they are signing this Permit and the attendant documents provided for herein, and this Permit and said additional documents are, accordingly, binding on said person or entity.
- 27. Assignment:** This Permit shall is not assignable. It may not be mortgaged, hypothecated, or transferred by Permittee, whether voluntary or involuntary or by operation of law, nor shall Permittee let or sublet or grant any license of permit with respect to the use and occupancy of the Property or any portion thereof, without the written consent of State being first had and obtained.
- 28. 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**

Monterey District
2211 Garden Road
Monterey, CA 93940

Seaside Basin Watermaster

2600 Garden Road, Suite 228
Monterey, CA 93940

By: _____

Name: Mathew Fuzie
Title: District Superintendent

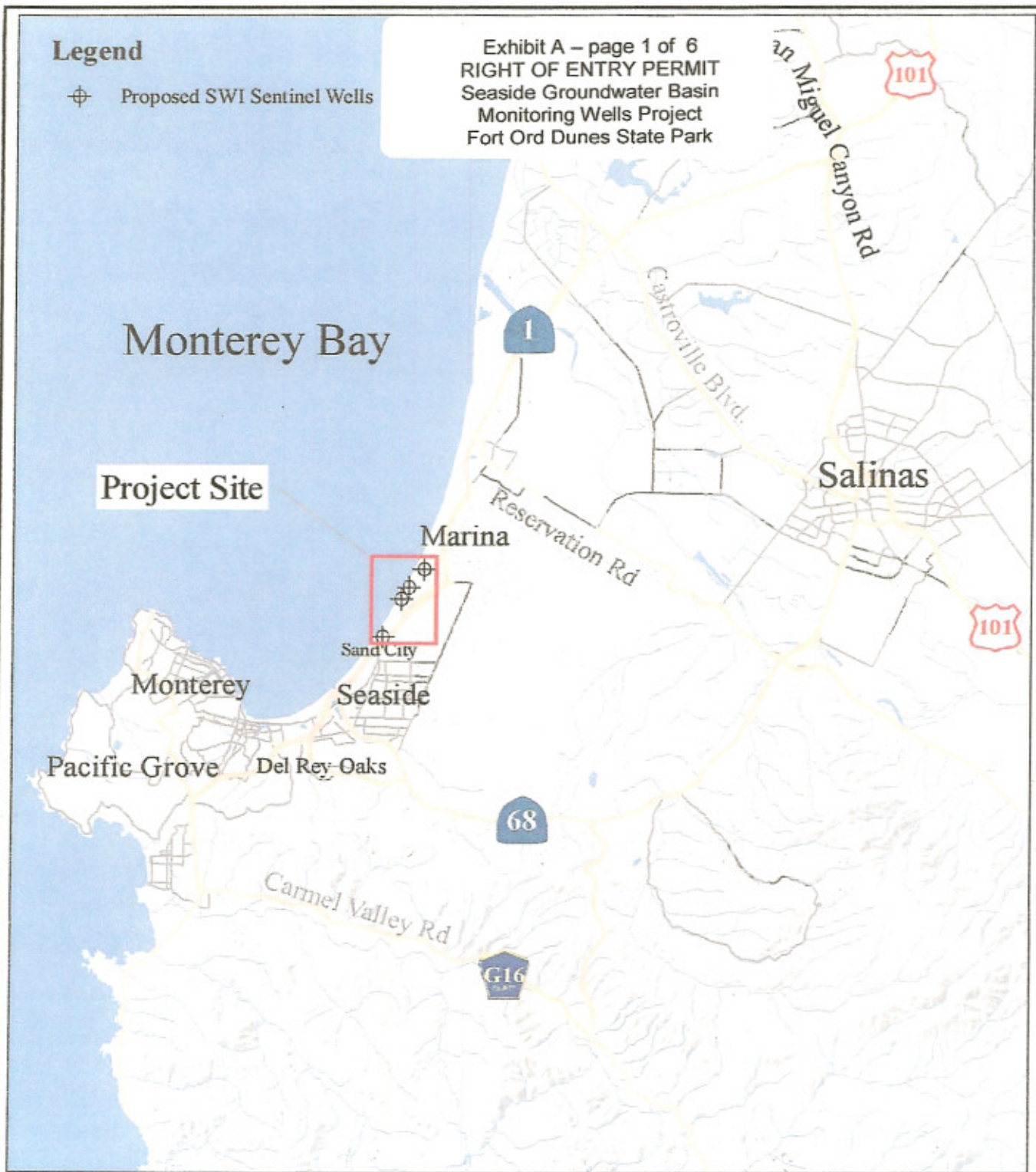
By:  _____

Name: Dewey Evans
Title: CEO

Legend

⊕ Proposed SWI Sentinel Wells

Exhibit A – page 1 of 6
RIGHT OF ENTRY PERMIT
Seaside Groundwater Basin
Monitoring Wells Project
Fort Ord Dunes State Park



Project Site

Monterey Bay

Marina

Salinas

Monterey

Seaside

Pacific Grove

Del Rey Oaks

Sand City

Carmel Valley Rd

G16

68

Reservation Rd

Castroville Blvd.

San Miguel Canyon Rd

101






101

N

Vicinity Map

Figure
1

Exhibit A – page 2 of 6
RIGHT OF ENTRY PERMIT
Seaside Groundwater Basin
Monitoring Wells Project
Fort Ord Dunes State Park

-  Proposed SWI Sentinel Wells
-  Fort Ord Army Wells
-  Existing Monitoring Wells
-  MPWMD Boundary
-  City Limits



Proposed Well Locations

Figure
2

Exhibit A – page 3 of 6
RIGHT OF ENTRY PERMIT
Seaside Groundwater Basin
Monitoring Wells Project
Fort Ord Dunes State Park



Figure
3

Range 8 Well Site Location



Range 8 Construction Area



 Bunker 11 Construction Site

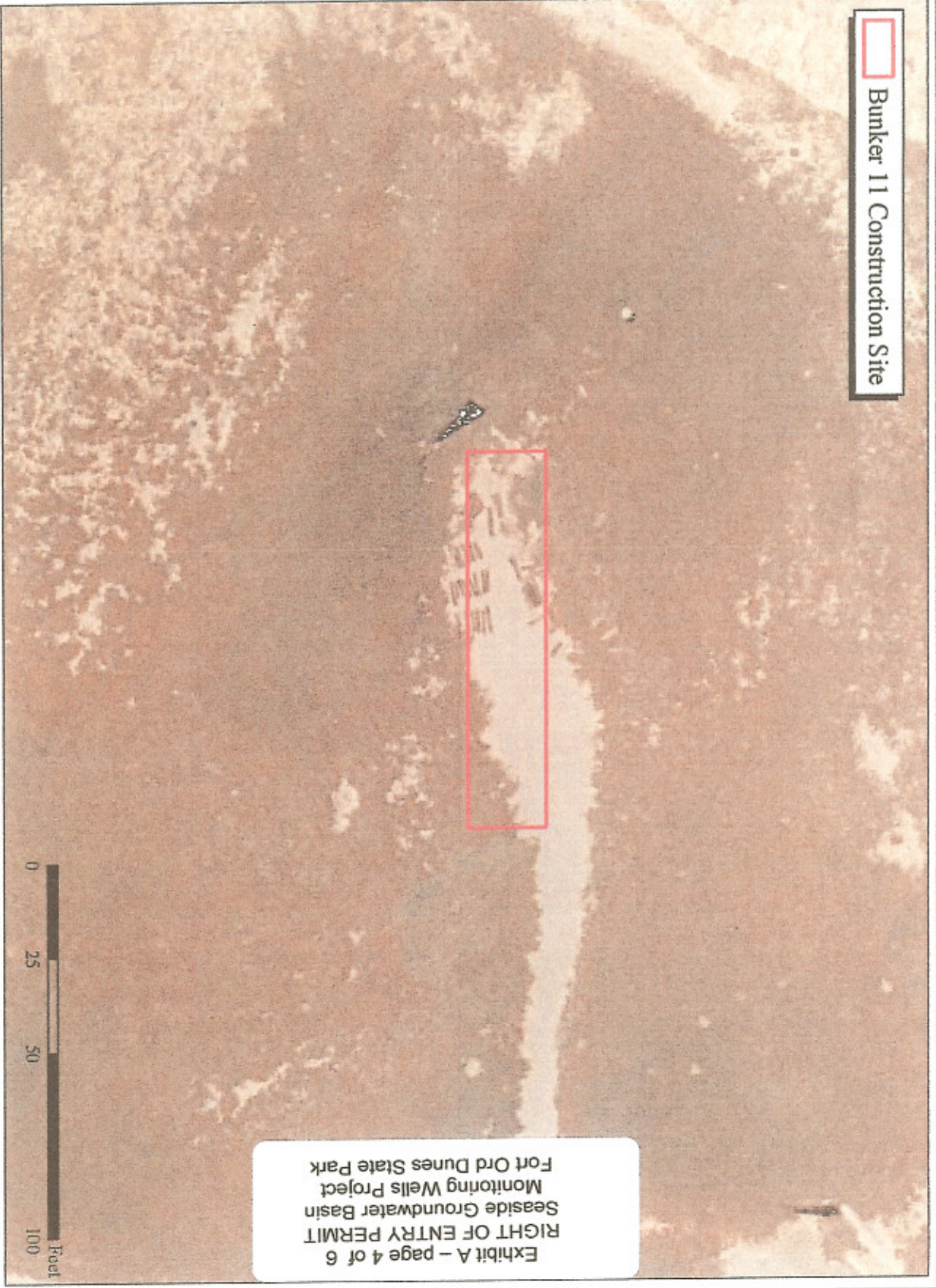


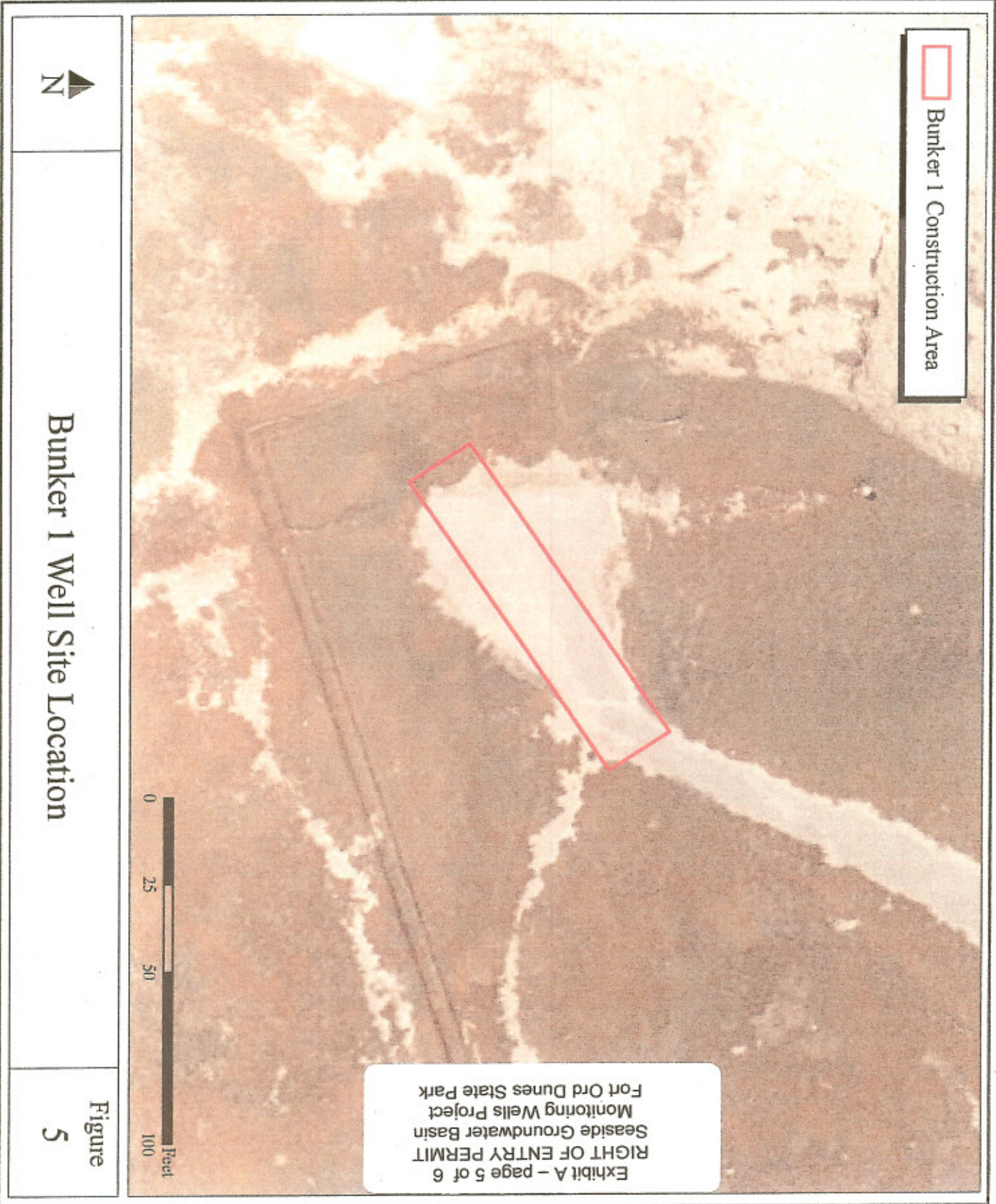
Exhibit A - page 4 of 6
RIGHT OF ENTRY PERMIT
Seaside Groundwater Basin
Monitoring Wells Project
Fort Ord Dunes State Park



Bunker 11 Well Site Location

Figure

4



Bunker 1 Well Site Location

Figure 5



Ord Village Pump Station Well Site Location

Figure

6