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STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION
CONCESSION CONTRACT

CARNEGIE STATE VEHICULAR RECREATION AREA

LOCATED IN

SAN JOAQUIN AND ALAMEDA COUNTIES

THIS CONTRACT, made and entered into this 7th day of May,
1991, by and between the STATE OF CALIFORNIA, acting through its Department of
Parks and Recreation, hereinafter referred to as "State", and Robert and Marie
Horne of Tracy, California, hereinafter referred to as "Concessionaire";

W I T N E S S E T H T H A T:

WHEREAS, it is appropriate that the following contract be entered
into for the safety and convenience of the general public in the use and
enjoyment of, and the enhancement of recreational experience, at Carnegie
State Vehicular Recreation Area;

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS
FOLLOWS:

1 1. GRANT AND DESCRIPTION OF PREMISES: The State, pursuant to the
2 authority of and in accordance with Section 5080.03 of the Public Resources
3 Code of the State of California, and for and in consideration of the
4 agreements hereinafter stated, grants to Concessionaire for the purposes
5 stated herein, the right, privilege, and duty to equip, operate, and maintain
6 a nonexclusive concession in Carnegie SVRA at the location as set forth in
7 Exhibit "A" attached and hereby made a part of this contract.
8

9 The possessory interest herein given to the Concessionaire does not
10 exclude the general public from the premises; however, the use by the general
11 public is limited by the terms and conditions of the possessory interest given
12 herein. This contract is not intended to confer third party beneficiary status
13 to any member of the public who is benefited by the terms of this contract.
14

15 This grant is subject to all valid and existing contracts, leases,
16 licenses, encumbrances, and claims of title which may affect said property,
17 and the use of the word "grant" herein shall not be construed as a covenant
18 against the existence of any thereof.
19

20 2. CONDITION OF PREMISES: The taking of possession of the subject
21 property by the Concessionaire shall, in itself, constitute acknowledgment
22 that the subject property is in good and tenantable condition. Concessionaire
23 agrees to accept said property in the presently existing condition, "as is",
24 and that the State shall not be obligated to make any alterations, additions,
25 or betterments thereto.

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1 3. TERM: The term of this contract shall be for a period of five (5)
2 years, and shall commence on the first day of the month following the date of
3 approval by the Department of General Services, as shown below. Should
4 Concessionaire hold over after the expiration of the term of this contract
5 with the express or implied consent of the State, such holding-over shall be
6 deemed to be a tenancy from month-to-month at the herein stated prescribed
7 rent, subject otherwise to all the terms and conditions of this contract.
8 At the expiration or termination of this contract, as herein provided, the
9 Concessionaire shall within thirty (30) days thereafter remove from said
10 premises, or otherwise dispose of in a manner satisfactory to State, all
11 personal property belonging to Concessionaire located on said premises.
12 Should Concessionaire fail to remove or dispose of said personal property as
13 herein provided, State may, at its election, consider such property abandoned
14 and may dispose of same at Concessionaire's expense. Also, at the expiration
15 or termination of this contract, the Concessionaire shall quit and surrender
16 the said premises, including real property improvements, in a good state of
17 repair, damage by matters over which Concessionaire has no control excepted,
18 provided that such exculpatory provision shall not extend to any risk which
19 Concessionaire is required to insure against as herein provided.

20
21 For purposes of this contract, the term "contract year" shall mean
22 each one-year period of time which commences on the first day of the calendar
23 month following the date of approval by the Department of General Services and
24 extends twelve (12) months therefrom and each anniversary throughout the term
25 of the contract.

26
27 4. QUITCLAIM DEED: Upon termination of the rights hereby granted, the
28 Concessionaire shall execute and deliver to State within thirty (30) days after

1 service of written demand therefor, a good and sufficient quitclaim deed to
2 the rights arising hereunder. Should Concessionaire fail or refuse to deliver
3 to State a quitclaim deed as aforesaid, a written notice by State reciting the
4 failure of the Concessionaire to execute and deliver said quitclaim deed as
5 herein provided, shall after ten (10) days from the date of recordation of
6 said notice be conclusive evidence against the Concessionaire and all persons
7 claiming under Concessionaire of the termination of said contract.

8
9 5. RENTAL: Concessionaire shall pay, without demand, as minimum
10 monthly rental during the months of October through May the sum of Eight
11 Hundred Dollars (\$800.00), or the following percentage of monthly gross
12 receipts, whichever sum is greater:

13
14 5% of monthly gross receipts.

15 During the months of June through September, the percentage only
16 shall apply.

17
18 Beginning with the 15th day of the month following the opening of
19 the concession for business, and on or before the 15th day of each month
20 thereafter, Concessionaire shall furnish to the District Superintendent a
21 verified statement, in a format provided by the State, of the concession's
22 gross receipts for the preceding month. With such monthly statement, the
23 Concessionaire shall pay to State the appropriate rental fee for the preceding
24 calendar month as prescribed above. Payments to the State shall be made to
25 the order of the Department of Parks and Recreation and made at the park
26 office at 18600 Corral Hollow Road, Tracy, CA 95376 or at such other location
27 as may from time to time be designated by State.

1 In the event a rental payment is not made on or before the due date
2 herein provided, Concessionaire shall pay to State a late charge on said
3 unpaid rental at the rate of ten percent (10%) per month or portion thereof,
4 from and after the due date thereof until the date of payment. Should there
5 be unusual or extenuating circumstances for not paying said rental on or
6 before the due date herein provided, upon written request, the District
7 Superintendent may recommend and the State in its discretion may waive the
8 late charge on the unpaid rental.

9

10 Concessionaire shall keep separate true and accurate books and
11 records showing all of Concessionaire's business transactions under this
12 contract in a manner acceptable to State, and the State shall have the right
13 through its representative and at all reasonable times, to examine such books
14 and records including all tax return records; and Concessionaire hereby agrees
15 that all such records and books are available to the State.

16

17 Concessionaire will submit to the State, no later than May 1st each
18 year during the term of this contract, a verified profit and loss statement
19 for the previous calendar year. Such statement shall be submitted on Form
20 DPR 86, "Concessionaire's Financial Statement", or in a format previously
21 approved by the State, and shall contain an appropriate certification that all
22 gross receipts during the yearly accounting period covered by said statement
23 shall have been duly and properly reported to the State.

24

25 Upon expiration or in the event this contract is terminated, a
26 profit and loss statement for the period of operation not previously reported,
27 ---

1 prepared in the manner stated above, shall be submitted by the Concessionaire
2 to the State within forty-five (45) days after the contract is terminated.

3

4 State further reserves the right to examine all such books and
5 records at any time during the one (1) year period following the termination
6 of this contract.

7

8 Concessionaire agrees that as part of Concessionaire's record-keeping
9 activity, Concessionaire shall at Concessionaire's own cost and expense install
10 and maintain such cash register equipment as may be deemed necessary by State.
11 Such cash register equipment shall contain a continuous registering tape.

12

13 The term "gross receipts", wherever used in this contract, is
14 intended to and shall mean all monies, property, or any other thing of value
15 received by Concessionaire and any subconcessionaire or operator, if other
16 than Concessionaire, through the operation of said concession or from any
17 other business carried on or upon said premises, or any portion thereof, or
18 from any other use of said premises or any portion thereof without any
19 deduction or deductions; it being understood, however, that the term "gross
20 receipts" shall not include any sales taxes imposed by any governmental entity
21 and collected by Concessionaire.

22

23 In the event Concessionaire is prevented from carrying on the
24 operations contemplated herein by reason of an Act of God, or other reasons
25 beyond Concessionaire's control, and when requested in writing by
26 Concessionaire, and when such is so determined by the Division Headquarters,

27 ---

1 then the rentals prescribed herein shall be abated for such period of
2 nonoperation.

3
4 6. USE OF PREMISES: The subject premises shall be used by the
5 Concessionaire for the following:

- 6
7 a. sale of prepackaged snack foods and non-alcoholic beverages;
8
9 b. sale of sundry items; i.e., aspirin, suntan lotions, first-aid
10 items;
11
12 c. sale of typical motorcycle replacement parts such as spark
13 arresters, brake and clutch cables and levers;
14
15 d. providing on-site minor motorcycle repair service, such as tire
16 changing, clutch and gas cable replacement;
17
18 f. sale of off-road motorcycle safety gear; i.e., helmets,
19 jerseys, boots, gloves, and any other motorcycle gear deemed to
20 be needed.
21

22 These services shall be provided a minimum of Saturdays, Sundays,
23 and holidays between the hours of 10:00 a.m. to 5:00 p.m. In the event State
24 deems the hours of operation inadequate for proper service to the public,
25 State may require Concessionaire to adjust the hours of operation to a
26 schedule provided by State. Concessionaire may remain open on other dates,
27 observing same hours, at Concessionaire's discretion with the concurrence of

1 the District Superintendent. In the event of adverse weather or other
2 operating conditions, the District Superintendent or District Superintendent's
3 authorized representative, may permit the concession to close at any time
4 during the term of this contract.

5
6 Concessionaire shall provide a temporary/mobile facility to house
7 the concession business at the location shown on Exhibit "A" attached and
8 hereby made a part of this contract. The minimum size of unit shall be twelve
9 (12) feet by thirty-six (36) feet. Unit is subject to State approval in
10 accordance with the plan approval procedure provided in Exhibit "B" attached
11 and hereby made a part of this contract, prior to installation.

12
13 Concessionaire shall comply with State's resource management and
14 preservation mandates in the conduct of all activities that impact cultural,
15 natural, or scenic resources. These mandates are found in Public Resources
16 Code Sections 5024, 5097, and 7050.5; the Department's Resource Management
17 Directives and the Secretary of the Interior's Guidelines for Historic
18 Preservation.

19
20 Concessionaire shall not use or permit the subject premises to be
21 used in whole or in part during the term of this contract for any purpose,
22 other than as herein set forth, without the prior written consent of the State
23 first had and obtained.

24
25 7. QUALITY OF SERVICE AND CONTROL OF RATES AND CHARGES: Service to the
26 public, with goods and merchandise of the best quality and at reasonable
27 charges, is of prime concern to the State and is considered a part of the

1 consideration for this contract. Therefore, Concessionaire agrees to operate
2 and manage the services and facilities offered in a first-class manner, and
3 comparable to other first-class concessions providing similar facilities and
4 services during the entire term of this contract. Where such facilities are
5 provided, Concessionaire shall and will furnish and dispense foods and
6 beverages (nonalcoholic) of the best quality and shall and will maintain a
7 high standard of service at least equal to that of other establishments in
8 State Parks and/or adjacent communities and to those prevailing in such areas
9 for similar products and services, and without discrimination.

10

11 The State shall have access to and the right to inspect the schedule
12 of prices and rates for goods sold or services rendered or performed upon the
13 subject premises, and in the event that after Concessionaire has been advised
14 and given a reasonable opportunity to confer with the State and justify the
15 prices or portions mentioned above, if the State shall determine any price or
16 prices to be unreasonable or inappropriate for the services rendered, the item
17 sold, or any portion or portions to be inadequate, the same shall be modified
18 as directed by the State. Concessionaire shall post rates and prices for all
19 goods and services in such places as may be designated by State.

20

21 State reserves the right to prohibit the sale or rental of any item
22 which it deems objectionable, sexually explicit, offensive or of inferior
23 quality.

24

25 Concessionaire and State shall from time to time review items sold
26 and containers or utensils used or dispensed by Concessionaire and, whenever
27 possible, eliminate the use of non-returnable containers, plastics, etc.

1 State reserves the right to prohibit the sale or use of non-recyclable
2 containers or plastics. No styrofoam cups or other non-biodegradable cups are
3 to be used or sold by Concessionaire.

4
5 All pest control activities, chemical and non-chemical, shall be
6 approved by the Department prior to action by the Concessionaire. The
7 Concessionaire, or the pest control business acting on behalf of the
8 Concessionaire, must submit a Pest Management Recommendation & Control Report
9 DPR 191 (or equivalent) to the District Superintendent for approval. The
10 Department has fourteen (14) days to approve or deny the request.

11
12 The Concessionaire, or the pest control business acting on behalf of
13 the Concessionaire, must submit a report of completed work for each pest
14 management action to the District Superintendent no later than seven (7) days
15 after performance of the work. The report may be submitted on a Form DPR 191
16 (or equivalent information).

17
18 A competent person shall be on the premises at all times while the
19 concession is in operation. If the on-site manager is other than the
20 Concessionaire, State reserves the right to approve such manager.

21
22 8. BONDS: Concessionaire, at Concessionaire's own cost and expense,
23 shall furnish the State with a bond as follows:

24
25 (a) Performance Bond: Concessionaire agrees to obtain and deliver
26 to State prior to entering the premises, and shall maintain in force
27 throughout the term of this contract, a valid bond (may be renewed annually)

1 issued by a corporate surety licensed to transact surety business in the State
2 of California and in a form satisfactory to State, in the sum of Ten Thousand
3 Dollars (\$10,000.00) payable to the State. Said bond shall insure faithful
4 performance by Concessionaire of all the covenants, terms, and conditions of
5 this contract inclusive of, but not restricted to, the payment of all rentals,
6 fees, and charges. At least thirty (30) days prior to the expiration of said
7 bond, a signed endorsement or certificate showing that said bond has been
8 renewed or extended shall be filed with the State. In lieu of a bond, the
9 Concessionaire may substitute a deposit of funds acceptable to State.
10 Interest on the deposit shall accrue to the Concessionaire.

11

12 9. HOLD HARMLESS AGREEMENT: Concessionaire hereby waives all claims
13 and recourse against the State including the right to contribution for loss or
14 damage to persons or property arising from, growing out of, or in any way
15 connected with or incident to this agreement except claims arising from the
16 concurrent or sole negligence of State, its officers, agents, or employees.

17

18 Concessionaire shall indemnify, hold harmless, and defend State, its
19 officers, agents, and employees against any and all claims, demands, damages,
20 costs, expenses, or liability costs arising out of the development,
21 construction, operation, or maintenance of the property described herein
22 except for liability arising out of the concurrent or sole negligence of
23 State, its officers, agents, or employees.

24

25 In the event judgment is entered against State and Concessionaire
26 because of concurrent negligence of State and Concessionaire, their officers,
27 agents, or employees, an apportionment of liability to pay such judgment shall

1 be made by a court of competent jurisdiction. Neither party shall request a
2 jury apportionment.

3

4 In the event State is named as codefendant, the Concessionaire shall
5 notify State of such fact and shall represent State in such legal action
6 unless State undertakes to represent itself as codefendant in such legal
7 action, in which event State shall bear its own litigation costs, expenses,
8 and attorney's fees.

9

10 10. LIABILITY INSURANCE: Concessionaire shall provide before entering
11 the premises and shall maintain in force during the term of this contract
12 public liability insurance in the sum of Three Hundred Thousand Dollars
13 (\$300,000) for injury to or death of any one person; and Five Hundred Thousand
14 Dollars (\$500,000) for injury to or death of more than one person; and
15 property damage and products liability insurance in the sum of One Hundred
16 Thousand Dollars (\$100,000). The policy or policies of liability insurance
17 shall contain the following special endorsement:

18

19 (a) State of California, its officers, employees, and servants are
20 included as additional insured but only insofar as operations under this
21 contract are concerned;

22

23 (b) The insurer will not cancel or reduce the insured's coverage
24 without thirty (30) days prior written notice to State;

25

26 No cancellation provision in any insurance policy shall be construed
27 in derogation of the continuous duty of Concessionaire to furnish insurance

1 during the term of this contract. Said policy or policies shall be
2 underwritten to the satisfaction of the State. A signed and complete
3 certificate of insurance, with all endorsements required by this paragraph,
4 shall be submitted to State concurrently with the execution of this contract.
5 At least thirty (30) days prior to the expiration of any such policy, a signed
6 and complete certificate of insurance, with all endorsements required by this
7 paragraph, showing that such insurance coverage has been renewed or extended,
8 shall be filed with State.

9

10 Upon request, insurer shall furnish State a certified copy of the
11 policy within fifteen (15) days.

12

13 11. WAIVER OF CLAIMS: The Concessionaire hereby waives any claim
14 against the State of California, its officers, agents, or employees for damage
15 or loss caused by any suit or proceeding directly or indirectly attacking the
16 validity of this contract, or any part thereof, or by any judgment or award in
17 any suit or proceeding declaring this contract null, void, or voidable, or
18 delaying the same, or any part thereof from being carried out.

19

20 12. AGENT FOR SERVICE OF PROCESS: It is expressly agreed and understood
21 that if the Concessionaire is not a resident of this State or is an
22 association or partnership without a member or partner resident of this State,
23 or is a foreign corporation, then in any such event, the Concessionaire shall
24 file with the State, upon Concessionaire's execution of the contract, a
25 designation of a natural person residing in the State of California, giving
26 said person's name, residence, and business address, as Concessionaire's agent
27 for the purpose of service of process in any court action between

1 Concessionaire and the State arising out of or based upon this contract, and
2 the delivery to such agent of a copy of any process in any such action shall
3 constitute valid service upon such Concessionaire; and it is further expressly
4 agreed, covenanted, and stipulated that if for any reason service of such
5 process upon such agent is not possible, then in such event Concessionaire may
6 be personally served with such process out of this State and that such service
7 shall constitute valid service upon such Concessionaire; and it is further
8 expressly agreed that Concessionaire will accept the process so served,
9 submits to the jurisdiction of the court so acquired, and waives any and all
10 objection and protest thereto.

11

12 13. RIGHT OF ENTRY AS AGENT: In any case in which provision is made
13 herein for the termination of this contract by the State or in the case of
14 abandonment or vacating of the premises by Concessionaire, the State, in lieu
15 of declaring a forfeiture, may enter upon the premises. To such end,
16 Concessionaire hereby irrevocably appoints the State as Concessionaire's agent
17 to remove any and all persons or property on said premises and place any such
18 property in storage for the account of and at the expense of Concessionaire
19 and to relet the premises. In such case, the State may relet the premises
20 upon such terms as it may deem proper, and if a sufficient sum shall not be
21 realized thereby, after paying expenses of such reletting, to satisfy the rent
22 and other sums herein agreed to be paid by Concessionaire, such rent and
23 expenses shall be paid by Concessionaire. Concessionaire agrees to save the
24 State harmless from any loss or damage or claim arising out of the action of
25 the State in pursuance of this paragraph.

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1 14. TAXES: This concession agreement may create a possessory interest
2 in public property which is subject to property taxation. In the event that
3 such possessory interest is created, Concessionaire agrees to be subject to
4 the payment of and to pay property taxes levied on such interest.
5 Concessionaire agrees to pay the above and all other lawful taxes,
6 assessments, or charges which at any time may be levied by the State, County,
7 City, or any tax or assessment levying body upon any interest in this
8 contract, or any possessory right which Concessionaire may have in or to the
9 premises covered hereby, or the improvements thereon by reason of
10 Concessionaire's use or occupancy thereof, or otherwise, as well as all taxes,
11 assessments, and charges on goods, merchandise, fixtures, appliances,
12 equipment, and property owned by Concessionaire in or about said premises.

13

14 Concessionaire shall comply with all laws, regulations, and
15 ordinances regarding the collection of taxes due a local government agency,
16 and otherwise administer the same.

17

18 15. TYPE AND APPROVAL OF IMPROVEMENTS: Concessionaire shall, without
19 cost to State, provide a mobile/temporary unit in accordance with the
20 specifications set forth in paragraph 6 above. Said concession shall contain
21 all service facilities and equipment complete and ready for use.

22

23 Preliminary plans for concession design and installation must be submitted to
24 State for approval in accordance with Exhibit "B", within six (6) weeks after
25 the execution of this contract. Temporary/mobile facility must meet all state
26 and local codes and is subject to State approval before installation.

27 Concessionaire shall be responsible for obtaining all necessary licenses and

1 permits. If the State disapproves any drawings, plans, or specifications,
2 Concessionaire shall submit necessary modifications and revisions. The State
3 shall not unreasonably withhold such approval. Once approved, no changes or
4 alterations shall be made in working drawings, plans, or specifications
5 without prior written approval of State.

6
7 16. MODIFICATION OF IMPROVEMENTS: In the event that modifications or
8 additions to concession improvements are desired, the approval in writing of
9 the State shall first be had and obtained prior to such modification or
10 addition. The plan approval procedure prescribed in Exhibit "B", attached and
11 hereby made a part of this contract, will be followed for any such
12 modification or addition.

13
14 17. TITLE TO IMPROVEMENTS: Concessionaire hereby acknowledges the title
15 of State in and to the premises described in this contract, except mobile
16 unit, including real property improvements existing or hereafter erected
17 thereon, by Concessionaire, State, or others and hereby covenants and agrees
18 never to assail, contest, or resist said title.

19
20 18. PERSONAL PROPERTY: Title to all personal property provided by
21 Concessionaire, including mobile unit, and additions and betterments thereto
22 made by Concessionaire shall remain in Concessionaire.

23
24 19. HOUSEKEEPING AND MAINTENANCE OF IMPROVEMENTS: The term maintenance,
25 for the purposes of this contract, is defined as all repair and preservation
26 work necessary to maintain concession facilities in a good state of repair, as
27 well as to preserve them for their intended purpose for an optimum useful

1 life. Housekeeping activities are defined as all those activities concerned
2 with keeping facilities clean, neat, and orderly, and includes, but is not
3 limited to, raking, sweeping, vacuuming, mopping, stripping, waxing, dusting,
4 wiping, washing, hosing, and other general cleaning of interior and exterior
5 floors, walls, ceilings, doors, windows, facility fixtures, and all adjacent
6 grounds and walks.

7

8 (a) Maintenance: Concessionaire agrees to maintain any and all
9 concession facilities on the subject premises and area immediately adjacent to
10 in good order and repair at Concessionaire's own cost and expense during the
11 entire term of this contract. Such maintenance shall include structural and
12 landscape maintenance, and shall conform to the same standards and schedule as
13 the State provides in its Facility Maintenance Program for the subject park
14 unit. Should Concessionaire fail, neglect, or refuse to do so, the State
15 shall have the right to perform such maintenance or repairs for the
16 Concessionaire. In this event, the Concessionaire shall promptly reimburse
17 the State for the cost thereof, provided however, that the State shall first
18 give Concessionaire ten (10) days written notice of its intention to perform
19 such maintenance or repairs for the Concessionaire for the purpose of enabling
20 Concessionaire to proceed with such maintenance or repairs at Concessionaire's
21 own expense. The State shall not be obligated to make any repairs to or
22 maintain any improvements on the subject premises. Concessionaire hereby
23 expressly waives the right to make repairs at the expense of the State and the
24 benefit of the provisions of Sections 1941 and 1942 of the Civil Code of the
25 State of California relating thereto if any there be.

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1 (b) Housekeeping: Concession housekeeping shall conform to State
2 Park standards and schedules as the State provides in its Facility Maintenance
3 Program for the subject park unit.
4

5 In regard to maintenance and housekeeping, Concessionaire expressly
6 agrees at all times during the term of this contract, at Concessionaire's own
7 cost and expense, to maintain and operate such premises and areas adjacent to
8 a distance of not less than fifty (50) feet, in a clean, safe, wholesome, and
9 sanitary condition free of trash, garbage, or obstructions of any kind and in
10 compliance with any and all present and future laws, general rules, or
11 regulations of any governmental authority now, or at any time during the term
12 of this contract, in force relating to sanitation or public health, safety, or
13 welfare; and Concessionaire shall at all times faithfully obey and comply with
14 all laws, rules, and regulations applicable thereto, adopted by Federal,
15 State, or other governmental bodies or departments or officers thereof. This
16 contract is expressly subject to regulations and policies of the Off-Highway
17 Motor Vehicle Recreation Commission and the Director of Parks and Recreation.
18 Concessionaire shall remedy without delay any defective, dangerous, or
19 unsanitary conditions.
20

21 20. UTILITIES AND SERVICES: Concessionaire shall be responsible for all
22 utilities used in connection with the concession facilities shown on
23 Exhibit "A" and hereby made a part of this contract. When installing
24 facilities, no trees shall be trimmed or cut without permission of the
25 District Superintendent. Concessionaire shall be responsible for the payment
26 of all utility charges, including furnishing all necessary refuse and garbage
27 containers and removal and disposal of all rubbish, refuse, and garbage

1 resulting from concession's operations. All such rubbish, refuse, and garbage
2 removed shall be disposed of outside the park unit and in accordance with
3 applicable laws and local ordinances. All trash containers and/or trash bins
4 shall be adequately screened to the satisfaction of the District
5 Superintendent. For the purpose of this paragraph, sewage disposal shall be
6 construed as a utility.

7

8 21. EQUIPMENT: Concessionaire, at Concessionaire's own expense, shall
9 completely equip the concession improvements described herein and shall keep
10 the same equipped in a safe and first-class manner throughout the term of this
11 contract.

12

13 22. SIGNS, ADVERTISING, AND APPROVAL OF NAME: No signs, names,
14 placards, or advertising matter shall be inscribed, painted, or affixed upon
15 said premises, circulated, or published without written consent of the State
16 first had and obtained.

17

18 23. INSPECTION OF PREMISES: The State hereby reserves the right to
19 enter upon the premises occupied by Concessionaire at any reasonable time to
20 inspect the same.

21

22 State also reserves the right of ingress and egress to inspect,
23 investigate, and survey said premises as deemed necessary, and the right to do
24 any and all work of any nature necessary for preservation, maintenance, and
25 operation of this State Unit in any areas within the confines of said unit.
26 Concessionaire will be given reasonable notice when such work may become

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1 necessary and shall adjust concession operations in such a manner that State
2 may proceed expeditiously.

3

4 24. BREACH OF CONTRACT: This contract is made upon the condition that
5 if the rents or other sums which Concessionaire herein agrees to pay or any
6 part thereof shall be unpaid on the date on which the same shall become due,
7 or if breach be made in any of the terms, agreements, conditions, or covenants
8 herein contained on the part of the Concessionaire, or should Concessionaire
9 become insolvent or bankrupt either voluntarily or involuntarily, then, and in
10 such event at the option of the State, this contract shall cease and
11 terminate, and the State may enter upon and take possession of the premises
12 and Concessionaire shall vacate the premises within 30 days after this
13 contract is terminated, and Concessionaire agrees to pay all costs incurred by
14 State in its taking possession of the premises.

15

16 Notwithstanding any of the above breach of contract provisions,
17 should Concessionaire create or allow to be created a nuisance on the premises
18 described herein, State, at its discretion, may immediately declare this
19 contract and all rights therein terminated.

20

21 25. CONTRACT NOTICE: Except for rent, as provided for herein, any
22 notices herein provided to be given, or which may be given by either party to
23 the other, shall be deemed to have been fully given when made in writing and
24 deposited in the United States mail, postage prepaid, and addressed as follows
25 (with duplicate copy to District Superintendent):

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To the Concessionaire at: Robert and Marie Horne
Post Office Box 800
Tracy, California 95376

To the State at: Department of Parks and Recreation
Concession Programs Division
Post Office Box 942896
Sacramento, California 94296-0001

With a copy to the: Coyote Hills District Office
7800 Cienega Road
Hollister, California 95023

The address to which notices shall or may be mailed as aforesaid by either party, shall or may be changed by written notice given by such party to the other as hereinbefore provided, but nothing herein contained shall preclude the giving of any such notice by personal service.

26. INTERPRETATION OF CONTRACT: This contract 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.

27. WAIVER OF CONTRACT TERMS: No waiver by either party at any time of any of the terms, conditions, or covenants of this contract 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 the State to re-enter the premises or to

1 exercise any right, power, or privilege or option arising from any breach, nor
2 any subsequent acceptance of rent then or thereafter accrued shall impair any
3 such right, power, privilege, or option or be construed as a waiver of such
4 breach or a relinquishment of any right or acquiescence therein. No notice to
5 the Concessionaire shall be required to restore or revive time as of the
6 essence after the waiver by the State of any breach. No option, right, power,
7 remedy, or privilege of the State shall be construed as being exhausted by the
8 exercise thereof in one or more instances. The rights, powers, options, and
9 remedies given to the State by this contract shall be deemed cumulative.

10

11 28. MODIFICATION OF CONTRACT: Notwithstanding any of the provisions of
12 this contract, the parties may hereafter, by mutual consent, agree to
13 modifications thereof, additions thereto, or termination thereof, in writing,
14 which are not forbidden by law. The State shall have the right to grant
15 reasonable extensions of time to Concessionaire for any purpose or for the
16 performance of any obligation of Concessionaire hereunder.

17

18 29. ASSIGNMENTS: No transfer, assignment, or corporate merger by the
19 Concessionaire that affects this contract or of any part thereof or interest
20 therein, directly or indirectly, voluntarily or involuntarily, shall be made
21 unless such transfer, assignment, or corporate merger is first consented to in
22 writing by State.

23

24 In the event that State does consent to the assignment of
25 Concessionaire's interest in the concession, the State may prescribe the
26 conditions of assignment, including the price therefor. Such assignment and
27 price shall be subject to the following, as well as other considerations:

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- (1) The value of stock in trade shall not be more than its cost to the Concessionaire, as verified by invoices.

- (2) The value of equipment shall be not more than the value established by straight-line depreciation on a ten (10) year schedule.

Subconcessions: With the prior written consent of State, portions of this concession may be operated by others. The following conditions must be met:

- (1) The subconcessionaire must be fully qualified.

- (2) The subconcessionaire's interest is taken under this contract.

30. TERMS BINDING ON SUCCESSORS: All the terms, covenants, and conditions of this contract shall inure to the benefit of and be binding upon the subconcessionaire and the successor and assigns of the parties hereto. The provisions of this paragraph shall not be deemed as a waiver of any of the conditions against assignment hereinbefore set forth.

In the event this paragraph becomes operative, the selection by the Concessionaire of a manager for the concession shall be subject to the consent of State.

1 31. DURATION OF PUBLIC FACILITIES: By entering into this contract,
2 State makes no stipulation as to the type, size, location, or duration of
3 public facilities to be maintained at this unit, or the continuation of State
4 ownership thereof, nor does the State make any guarantee regarding the
5 tentative projections in any prospectus furnished to the Concessionaire at any
6 time.

7
8 32. TIME OF ESSENCE: Time shall be of the essence in the performance of
9 this contract.

10
11 33. EMINENT DOMAIN: If, during the term of this contract, any property
12 described herein or hereinafter added hereto, is taken in eminent domain, the
13 entire award shall be paid to State.

14
15 34. CONFLICT OF INTEREST: Concessionaire warrants and covenants that no
16 official, employee of State, or any person associated with employee of State
17 by blood, adoption, marriage, and/or cohabitation, nor any business entity in
18 which an official, employee of State, or associated person with employee of
19 State is interested: (1) has been employed or retained to solicit or aid in
20 the procuring of this contract; (2) will be employed in the performance of
21 this contract without the immediate divulgence of such fact to State. In the
22 event State determines that the employment of any such official, employee,
23 associated person, or business entity is not compatible with such official's
24 or employee's duties as an official or employee of the State of California,
25 Concessionaire, upon request of State, shall terminate such employment
26 immediately. For breaches or violation of this paragraph, State shall have
27 the right both to annul this contract without liability and, in its

1 discretion, recover the full amount of any such compensation paid to such
2 official, employee, or business entity.

3
4 35. PHOTOGRAPHY: State may grant permits to persons or corporations
5 engaged in the production of still and motion pictures and related activities,
6 for the use of said premises for such purposes when such permission shall not
7 interfere with the primary business of Concessionaire.

8
9 36. HAZARDOUS SUBSTANCES: No goods, merchandise, or material shall be
10 kept, stored, or sold in or on said premises which are in any way explosive or
11 hazardous; and no offensive or dangerous trade, business, or occupation shall
12 be carried on therein or thereon, and nothing shall be done on said premises,
13 other than as is provided for in this contract, and no machinery or apparatus
14 shall be used or operated on said premises which will in any way injure said
15 premises or adjacent buildings, provided however, that nothing in this
16 paragraph contained shall preclude Concessionaire from bringing, keeping, or
17 using on or about said premises such materials, supplies, equipment, and
18 machinery as are appropriate or customary in carrying on Concessionaire's said
19 business or from carrying on Concessionaire's business in all respects as is
20 generally usual. Gasoline and oils shall be stored, handled and dispensed as
21 required by present or future regulations and laws.

22
23 37. NONDISCRIMINATION: The Concessionaire and Concessionaire's
24 employees shall not discriminate because of race, religion, color, ancestry,
25 sex, age, national origin, physical handicap, or sexual preference against any
26 person by refusing to furnish such person any accommodation, facility,
27 service, or privilege offered to or enjoyed by the general public. Nor shall

1 the Concessionaire or Concessionaire's employees publicize the accommodation,
2 facilities, services, or privileges in any manner that would directly or
3 inferentially reflect upon or question the acceptability of the patronage of
4 any person because of race, religion, color, ancestry, sex, age, national
5 origin, physical handicap, or sexual preference.

6
7 In the performance of this contract, the Concessionaire will not
8 discriminate against any employee or applicant for employment because of race,
9 color, religion, ancestry, sex, age, national origin, physical handicap, or
10 sexual preference. The Concessionaire will take affirmative action to ensure
11 that applicants are employed, and that employees are treated during employment
12 without regard to their race, color, religion, ancestry, sex, age, national
13 origin, physical handicap, or sexual preference. Such action shall include,
14 but not be limited to, the following: employment, upgrading, demotion, or
15 transfer; recruitment or recruitment advertising; layoff or termination; rates
16 of pay or other forms of compensation; and selection for training, including
17 apprenticeship. The Concessionaire shall post in conspicuous places,
18 available to employees and applicants for employment, notices setting forth
19 the provisions of Government Code Sections 12970 and 12974. Such notices may
20 be obtained from the Department of Fair Employment and Housing.

21
22 The Concessionaire will permit access to Concessionaire's records of
23 employment, employment advertisement, application forms, and other pertinent
24 data and records by the State Fair Employment and Housing Commission, or any
25 other agency of the State of California designated by the awarding authority,
26 for the purpose of investigation to ascertain compliance with the State Fair
27 Employment and Housing Section of this contract.

1 The State may determine a willful violation of the State Fair
2 Employment and Housing Act to have occurred upon receipt of a final judgment
3 having that effect from a court in an action to which Concessionaire was a
4 party, or upon receipt of a written notice from the State Fair Employment and
5 Housing Commission that it has investigated and determined that the
6 Concessionaire has violated the State Fair Employment and Housing Act and has
7 issued an order, under Government Code Section 12970, which has become final,
8 or obtained an injunction under Government Code Section 12974. In the event
9 of violation of this paragraph, the State will have the right to terminate
10 this contract, and any loss of revenue sustained by the State by reason
11 thereof shall be borne and paid for by the Concessionaire.

12
13 38. PARAGRAPH TITLES: The paragraph titles in this contract are
14 inserted only as a matter of convenience and for reference, and in no way
15 define, limit, or describe the scope or intent of this contract or in any way
16 affect this contract.

17
18 39. CONTRACT IN COUNTERPARTS: This contract is executed in
19 counterparts, each of which shall be deemed an original.

20
21 40. ALCOHOLIC BEVERAGES: Notwithstanding anything to the contrary, the
22 sale of liquor, beer, or other alcoholic beverages on the subject premises is
23 expressly forbidden.

24
25 41. EMPLOYEE TRAINING: All concession employees are to receive an
26 orientation on the State Park System, the park unit in which the concession is
27 located, and local points of interest which will be sufficient to permit such

1 employees to reply adequately to inquiries from the visiting public. The
2 employee Orientation Program is subject to the approval of the District
3 Superintendent.

4
5 42. STATE'S DISTRICT SUPERINTENDENT: For purposes of this contract, the
6 "District Superintendent" is the State representative in direct charge of
7 Carnegie SVRA and other units of the State Park System as may be assigned.
8 The District Superintendent is charged with the day-to-day administration of
9 this contract and is the Concessionaire's initial contact with the State for
10 information, contract performance, and other problems as might arise.

11
12 43. AGREEMENT IN WRITING: This concession contract contains and
13 embraces the entire agreement between the parties hereto and neither it nor
14 any part of it may be changed, altered, modified, limited, or extended orally,
15 or by any agreement between the parties unless such agreement be expressed in
16 writing, signed, and acknowledged by the State and the Concessionaire, or
17 their successors in interest.

18
19 44. APPROVAL OF CONTRACT: It is understood and agreed that neither this
20 contract, amendments, modifications, or termination thereof shall be effective
21 until approved by the Department of General Services and the Attorney General.

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27 ---

1 IN WITNESS WHEREOF, the parties hereto have caused these present to
2 be executed the day and year first above written.

3
4 APPROVED:
5 DEPARTMENT OF GENERAL SERVICES

CONCESSIONAIRE:

6 By: [Signature]

7 Title: OWNER

8 Date: 5-7-91

9 By: _____

10 Title: _____

11 Date: _____

12
13 STATE OF CALIFORNIA
14 DEPARTMENT OF PARKS AND RECREATION
15 HENRY R. AGONIA, DIRECTOR

16 By: [Signature]

17 Title: Chief Deputy Director

18 Date: 8/26/91

19
20 Approved as to legal sufficiency in accordance
21 with the requirements of Sections 5080.02-
5080.21 of the Public Resources Code.

22 DANIEL E. LUNGREN, Attorney General of the
23 State of California

24 By: [Signature]
25 Deputy Attorney General
26 **WALTER E. WUNDERLICH**

DATED: SEP 5 1991

DB
FORM
D. 113
APPROVED
SEP 20 1991
BY [Signature]
Ass't. Chief Counsel

27 (0084X PERM) (Rev. 5/90)
G-9864X

OFF-HIGHWAY VEHICLE USE
MAY BE DANGEROUS

YOUR USE OF PROTECTIVE APPAREL,
SKILL LEVEL, VEHICLE CONDITION,
TERRAIN, WEATHER, COMING TRAFFIC,
AND FOLLOWING PARK RULES
ALL AFFECT YOUR SAFETY

REPORT ALL ACCIDENTS TO RANGER STATION

RIDE AT YOUR OWN RISK

Most users of this map orient themselves to the park while looking into
the hills from Corral Hollow Road. For your convenience, this map has
been turned upside down. Notice that the north arrow points straight
down!

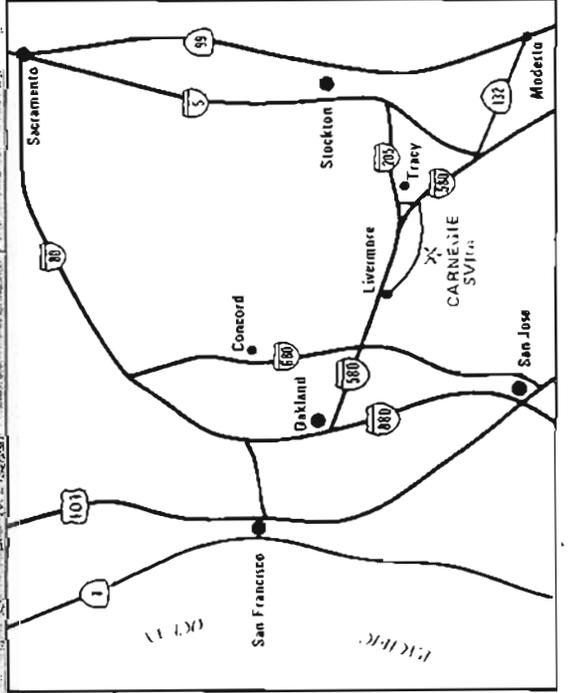
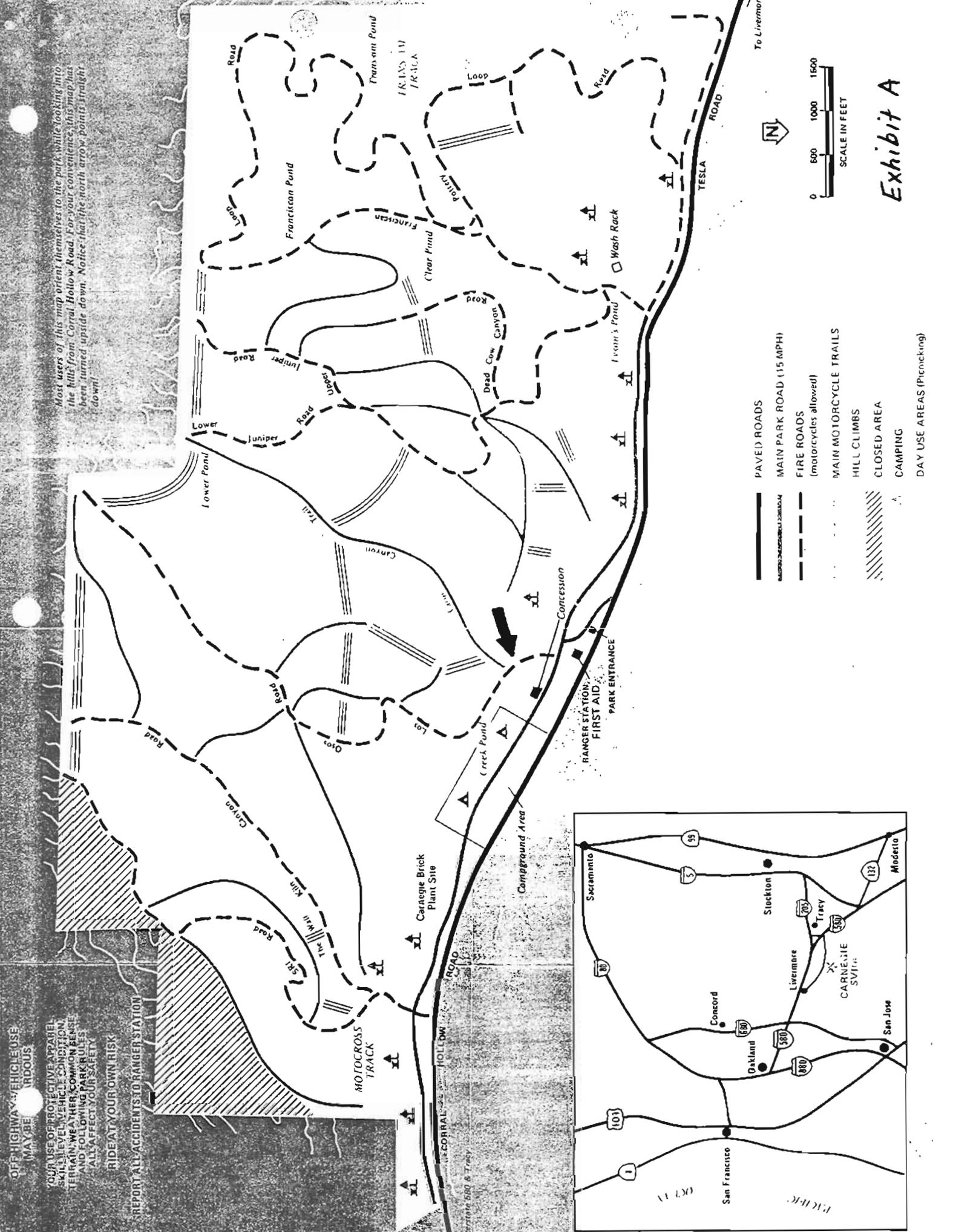


Exhibit A

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

DEFINITIONS AND PROCEDURES FOR APPROVAL OF
SCHEMATICS, PRELIMINARY PLANS, AND WORKING DRAWINGS

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 and address 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 major spaces and their proposed uses and individual or special features or support needed. 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 relationships of Project Components. These components shall include (but are not limited to) location, parking, roads, topography, utilities, and other major features.
 - c. Floor plans of all of the principal areas labeling the major spaces and functions at 1/4" scale.
 - d. Two elevations showing major materials and features at 1/4" scale.
 - e. Statement of Probable Project Construction Cost.

C. Design Development Phase

1. Definition: Preliminaries shall consist of:
 - a. Outline specifications of all 16 of the C.S.I. sections (if necessary) indicating materials, equipment, and special features or items.
 - b. A floor plan drawn at 1/4" scale with dimensions and notes that clearly show the scope of the work and individual materials.
 - c. A section through the building 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. Two elevations drawn at 1/4" scale of the exterior of the building or buildings indicating materials, heights, and other related information.
 - e. A site plan showing location, orientation, utilities, parking, roads, and other related information. Note: If only interior work is to be accomplished, then a project location map can be submitted for a site plan requirement.
 - f. A further Statement of Probable Construction Cost.

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. Plans and elevations shall be drawn at a minimum scale of 1/4"=1'-0". Sections shall be drawn at a minimum scale of 1/2"=1'-0". 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 architect, and other consultants as needed. It is the responsibility of the submitter to obtain such permits as: Coastal permits, Handicap Accessibility, Fire Marshal, State Police, and others as necessary prior to proceeding with construction.

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
Development Division
Architecture Section
ATTN: (Project Manager)

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 Project Manager. 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.

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STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION
CONCESSION CONTRACT
CARNEGIE STATE VEHICULAR RECREATION AREA

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