

Doc # 2004152665  
Page 1 of 15  
Date: 04/20/2004 04:41P  
Filed by: WASHINGTON STATE PARKS & REC  
Filed & Recorded in Official Records  
of SKAMANIA COUNTY  
J. MICHAEL GARVISON  
AUDITOR  
Fee: \$33.00

**AFTER RECORDING MAIL TO:**

Shannon Stevens, Lands Program  
WA State Parks and Recreation Commission  
P.O. Box 42650  
Olympia, WA 98504-2650

**Document Titles (s)**

SPECIAL USE LEASE 2001-10-476 BEACON ROCK STATE PARK (DTCG89-02-L-S-24-010)

**Reference numbers of related documents:**

NONE 2-6-35-201  
4-20-04

**Leasor(s):**

1. STATE OF WASHINGTON, WASHINGTON STATE PARKS AND RECREATION COMMISSION

**Lessee(s):**

1. UNITED STATES COAST GUARD

**Legal Description:**

That point at coordinates Northing 32903.3942 meters and Easting 381190.9092 meters, NAD 83/91 Washington south Zone, State Plane, withing Section 35, Township 2N, Range 6E.

Legal description is also attached to the Document.

**Assessor's Property Tax Parcel Account Number(s):**

none

STATE OF WASHINGTON  
PARKS AND RECREATION COMMISSION  
**BEACON ROCK STATE PARK**  
**LEASE**

Agreement No. 2001-10-476 (DTCG89-02-L-S-24-010)

BY THIS LEASE, (hereafter "Lease" or "Agreement") the State of Washington, acting by and through the WASHINGTON STATE PARKS AND RECREATION COMMISSION ("State") leases to UNITED STATES COAST GUARD acting on behalf of the United States Government ("Lessee") certain property in Skamania County, Washington. Said property is legally described in the attached **Exhibit A**.

**AUTHORITY**

The State is acting under those authorities granted to the State and described under chapter 79A.05 RCW and Commission delegated authority of May 3, 2001.

**1. OCCUPANCY**

- 1.1 Premises. In consideration of Lessee's promise to pay the rental and other conditions as described in this Agreement, State leases to Lessee and Lessee leases from State, the property described in **Exhibit A**, together with all existing rights of air, light and view, for Lessee and its invitees subject to easements and encumbrances of record.

Not included herein are any rights to remove any valuable materials including minerals timber, water, or other materials, except as specifically granted herein. State reserves reasonable access to its adjacent property, and the right to grant easements on property which is the subject of this Lease, provided such grants do not unreasonably interfere with Lessee's use of the Property.

- 1.2 Lease Term.  
The term of this Lease is 10 (ten) years, commencing on 07/01/2003 and ending on 06/30/2013, (or such earlier date in the event the Lease term is terminated prior to such date).
- 1.2 Extension. This Lease may be extended by mutual written agreement of the parties pursuant to applicable Commission authorities at the time of renewal, provided Lessee has not been in default during the Term and is not in default on the date of exercise. State reserves the right to change or modify terms and conditions of the original Agreement as needed.
- 1.4 Nontransferable Option. The Option to extend the Term is personal to Lessee, and may not be transferred to any assignee or sublessee of Lessee without the prior express written consent of State.

## 2. USE OF PROPERTY

### 2.1 Permitted Use. For this Agreement, the following uses and no other uses are permitted:

a. Install, construct, maintain, repair and replace an Aid to Navigation for the Columbia River.

b. The right of ingress and egress across the State's property for the Lessee, its agents and other duly authorized personnel, necessary for the inspection, operation, maintenance, repair and replacement of the subject aid to navigation. **Provided, however, that Lessee's duly authorized personnel notify the State three (3) working days in advance of periodic and scheduled inspection, operation, maintenance, repair and replacement of the subject aid to navigation, except in event of emergency, when same-day prior notification is acceptable to State. And provided, that Lessee's duly authorized personnel use a point of ingress and egress designated by State, in order that Lessee's activities do not negatively impact State's use of State's property.**

c. The right to maintain the range line of said aid to navigation over State's property free from all obstructions and debris, including but not limited to brush and trees. Provided, however, that no trees are to be cut or removed from the State's property without prior written consent of the State according to the policies of the Washington State Parks and Recreation Commission.

### 2.2 Rules and Regulations. Lessee shall comply with all applicable governmental laws, ordinances and rules relating to the use and occupancy of the Property. Lessee will not permit any objectionable action, which would constitute a nuisance occur on the property

## 3. PAYMENT

### 3.1 Annual Rent. Lessee agrees to pay State, at State's address set forth in the Section of this Lease governing Notices, rent in the amount of One hundred and eighty and no/100 Dollars (\$180.00), per year, if Congress grants appropriations, in arrears.

ANTI-DEFICIENCY ACT (31 USC §1341 as amended). Nothing in this Lease shall constitute an obligation of funds of the United States in advance of an appropriation thereof. Lessee must pay for all services, utilities, assessments, and other charges attributable to Lessee's use. Lessee must submit, upon demand by State, proof that said services, utilities, charges, or assessments have been paid.

## 4. RESERVATIONS

### 4.1 Compliance. State and its agents and representatives will have the right to enter and inspect the Property at all reasonable times to determine and secure compliance with this Agreement.

4.2 Access. State reserves the right to grant easements on the Property. The State also reserves the right for utility franchise and permit holders to enter upon the Property to maintain, repair and enhance existing facilities and install new utilities and, for itself, to grant utility franchises and/or permits across the Property.

4.3 Restrictions on Use, Conformance with Laws

a. Permits and Conformance with Laws. At its sole cost and expense, Lessee must do the following:

1) Lessee must obtain all applicable building permits and other required permits, licenses, permissions, consents, and approvals from governmental agencies or third parties in connection with this Agreement. If obtained, Lessee must provide copies of such permits, licenses, permissions, consents, and approvals to State on its request.

2) Lessee must take all reasonable precautions to protect the land and improvements on the Property from fire, make every reasonable effort to report and suppress such fires as may affect the Property, and shall be subject to applicable fire laws affecting the Property.

3) Lessee must prevent accumulation of debris or refuse on the Property.

4.4 Roads. During the term of this Agreement, Lessee is permitted, subject to rights previously granted, access to Moorage Road on the Property only for the permitted use(s) under this Agreement.

4.5 Road Repair. Lessee must repair or cause to be repaired at its sole cost and expense damage directly caused or permitted by it to any roads on the Property which is in excess of that which would result from normal and prudent usage of said road.

4.6 Non-Default Termination. State may, at its sole discretion, terminate all or part of this Agreement upon written request by Lessee for surrender of leasehold upon satisfaction by Lessee of all outstanding rents, duties, and obligations. State may terminate this Agreement upon one hundred eighty (180) days' written notice in the event State determines that any or all of the Property may be put to a higher and better use or decides to exchange or sell any or all of the Property.

**5. REQUIREMENTS**

5.1 Lessee's Maintenance; Utilities. Lessee shall, at its sole cost and expense, maintain the Property and improvements whether now existing or hereafter installed.

During the Term, Lessee will pay for all water, gas, electricity, light, heat, telephone, power, and other utilities and communications services used by Lessee on the Property, whether or not such services are billed directly to Lessee.

During the Term, Lessee will pay for all water, gas, electricity, light, heat, telephone, power, and other utilities and communications services used by Lessee on the Property, whether or not such services are billed directly to Lessee.

**5.2 Taxes and Assessments.**

To the extent provided by federal law, Lessee must pay during the term of this Agreement all taxes and assessments and other governmental charges of any kind applicable or attributable to the Property, Lessee's leasehold interest therein, improvements thereon, and Lessee's use and enjoyment.

- 5.3 Lessee Liens.** Lessee must not suffer or permit any lien to be filed against State's interest in the Property, or improvements thereon by reason of work, labor, or services performed thereon or materials supplied to, by or through the Lessee, and may not in any other manner bind the interest of State in the Property.

**6. LESSEE'S INDEMNITY; INSURANCE REQUIREMENTS**

- 6.1 Indemnity.** To the extent provided for by the Federal Tort Claims Act (28 USC 2367-2680 as amended) Lessee does hereby release, indemnify, and promise to defend and save harmless State from and against any and all liability, loss, damage, expense, actions, and claims, including costs asserted or arising directly on account of or out of acts or omissions of State and State's servants, agents, employees, and contractors in the exercise of the right granted herein; PROVIDED, HOWEVER, this paragraph does not purport to indemnify State against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of State or State's agents or employees.

**7. MANAGEMENT**

- 7.1 Repairs/Acceptance of Property.** Lessee accepts the Property and any improvements thereon as is and in the condition they are in on the date this Lease is executed without the obligation of State to make any repairs, additions, or improvements thereto.
- 7.2 State's Repairs.** State will not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Property, or any part thereof, during the Term of this Lease or any extension thereof.
- 7.3 Hazardous, Toxic, or Harmful Substances.**
- a. **Deleterious Material.** Lessee will not make, or suffer to be made, any filling in of the Property or any deposit of rock, earth, ballast, refuse, garbage, waste matter, chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or upon the Property, except as approved in writing by State, or unless permitted by subsection 2.1 (Permitted Use). If Lessee fails to remove all non-approved fill material,

refuse, garbage, wastes or any other of the above materials from the Property, Lessee agrees that State may, but is not obligated to, remove such materials and charge Lessee for the cost of removal and disposal.

**b. Hazardous, Toxic, or Harmful Substances.**

1) Lessee will not keep, use, generate, treat, store or dispose of on or about the Property any Hazardous Material unless such are necessary to carry out Lessee's permitted use under subsection 2.1 (Permitted Use) and unless Lessee fully complies with all federal, state and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended. Lessee must undertake all preventive, investigatory, or remedial actions (including emergency response, removal, and containment) that are either: (a) required by any applicable Environmental Law or governmental authority; or (b) necessary to prevent or minimize property damage, personal injury, damage to the environment, or the threat of any such damage or injury, arising from the presence of Hazardous Material. Lessee must:

a.) Immediately notify State of (i) all spills, releases or disposal of any Hazardous Substance, or imminent threat thereof, on the Property or any properties adjacent to the Property, (ii) all failures or potential failures to comply with any federal, state, or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended, (iii) all inspections of the Property by, or any correspondence, orders, citations, or notifications from any regulatory entity concerning Hazardous Substances or Environmental Law and the Property, (iv) all regulatory orders, complaints, lawsuits or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party relating to Hazardous Material or Environmental Law and to the Property or to Lessee's operations; and

b.) On request, provide copies to State of any and all correspondence, pleadings, and/or reports received by or required of Lessee.

If Lessee fails to perform any of its obligations under this Section, State may perform such obligations at Lessee's expense.

STATE MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE CONDITION OF THE PROPERTY OR WITH RESPECT TO COMPLIANCE WITH ANY ENVIRONMENTAL LAW. LESSEE ACKNOWLEDGES THAT LESSEE HAS FULLY INSPECTED THE PREMISES AND IS NOT RELYING ON ANY STATEMENT OR REPRESENTATION MADE BY STATE OR STATE'S AGENTS WITH RESPECT TO THE CONDITION OF THE PROPERTY, AND LESSEE ASSUMES THE RESPONSIBILITY AND RISKS OF THE SAME, INCLUDING ANY DEFECTS OR CONDITIONS THAT CANNOT BE OBSERVED BY CASUAL INSPECTION.



The foregoing provisions relating to the environmental condition of the Property and Lessee's representations and warranties relating thereto will survive the expiration or earlier termination of this Lease.

- 7.4 Weed Control. Lessee must control all weeds on the Property. Lessee will be responsible for, or shall immediately reimburse State, for any weed control cost incurred, as a result of Lessee's failure to control weeds on said Property.
- 7.5 Archaeology. In the event archaeological resources are found or unearthed during any work or construction authorized through this Lease, Lessee must comply with the provisions of Chapter 27.44 RCW, Chapter 27.53 RCW and the rules and regulations of the Office of Archaeology and Historic Preservation. If any cultural or suspected cultural resources are discovered, Lessee will cease work and immediately contact State at the address provided for under Section 10.3 (Notice).

## 8. TRANSFER OF LESSEE'S INTERESTS

- 8.1 Transfer. As used herein, "Transfer" includes (a) any assignment of Lessee's interest in this Lease, whether under the leasehold estate or under any covenantal promises, (b) the subletting of all or a portion of the Property, (c) any mortgaging or encumbering of Lessee's interest in this Lease, or (d) any transaction the immediate or cumulative effect of which is to change the ownership structure or effective control of Lessee. Lessee will not engage in a Transfer without obtaining the prior written consent of State.
- 8.2 Approval of Transfer. In granting such approval, State reserves the right to change the terms and conditions of this Agreement as it may affect the sublessee/assignee. State may require reimbursement for any additional administrative costs resulting from the Transfer. The acceptance by State of payment or performance following a Transfer will not constitute consent to any Transfer, and State's consent will be evidenced only in writing.
- 8.3 Assignment by Landlord. If State sells or otherwise transfers the Property, or if State assigns its interest in this Lease, such purchaser, transferee or assignee thereof will be deemed to have assumed State's obligations hereunder which arise on or after the date of sale or transfer.

## 9. IMPROVEMENTS

- 9.1 Authorized Improvements. No improvement will be placed on the Property without the prior written consent **or request** of State. Any such consent will be granted only through either this Agreement or written letters of authorization ("Letter of Authorization") issued by State.
- 9.2 Pre-construction. At least thirty days prior to any construction or reconstruction by Lessee on the Property, Lessee must submit to State a written plan of construction

outlining the construction or activity for State's written approval which will not be unreasonably withheld. In the event of an emergency requiring immediate action to protect person or property, Lessee may take reasonable corrective action without prior notice to State. All construction or reconstruction must comply with applicable state and local laws.

- 9.3 Unauthorized Improvements. All improvements not included in the original or amended plan of development and operation as approved by State or not provided for by Letters of Authorization issued by State, made on or to the site, without the written consent of State will immediately become the property of State or at State's option, may be required to be removed by Lessee at Lessee's sole cost.

## 10. DEFAULT, REMEDIES & NOTICE

- 10.1 Nonwaiver. Any waiver by State to enforce or comply any provision of this Agreement will not be a waiver of the State's right to require strict performance of the same provision in the future.
- 10.2 Attorney Fees and Venue. Each party will be responsible for their own attorney fees and court costs in the event of a dispute arising out of this agreement except as set forth in subsections 5.4 (Lessee Liens), 7.1 (Hazardous, Toxic, or Harmful Substances), 10.6 (Remedies) (Default), and 11.1 (No Partnership). Venue for resolving such disputes will be in the Superior Court for Thurston County, state of Washington.
- 10.3 Notices and Submittals. All notices, demands, and requests by Lessee to State must be in writing and be sent by United States registered or certified mail, postage prepaid, addressed to State at:

To State:  
WASHINGTON STATE PARKS AND RECREATION COMMISSION  
LANDS PROGRAM  
P.O. BOX 42650  
OLYMPIA WA 98504-2650

To Lessee:  
UNITED STATES COAST GUARD  
COMMANDER (SRS) MAINTENANCE & LOGISTICS COMMAND PACIFIC  
COAST GUARD ISLAND – BUILDING 54D  
ALAMEDA, CA 94501-5100

or at such other place as State may from time to time designate by notice to Lessee.

- 10.4 Survival. All obligations of Lessee to be performed prior to the expiration or earlier termination will not cease upon the termination or expiration of this Agreement, and will continue as obligations until fully performed.



- 10.5 State's Right to Cure Defaults. If Lessee fails to perform and is in default of any undertaking or promise contained herein, including those set forth in any plan of development and operation, State will have the option, but is not obligated, to make such performance after giving ten (10) days written notice to Lessee. State's costs and expense to correct Lessee's failure to perform will be reimbursed by Lessee.
- 10.6 Remedies Cumulative. The specified remedies to which State may resort under the terms of the Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which State may lawfully be entitled in case of any breach or threatened breach by Lessee of any provision of this Agreement.
- 10.7 Force Majeure. Lessee's failure to comply with any of the obligations under this Agreement will be excused only if due to causes beyond Lessee's control and without the fault or negligence of Lessee, including acts of God, acts of the public enemy, acts of any government, fires, floods, epidemics and strikes.

## 11. GENERAL PROVISIONS

- 11.1 Quiet Enjoyment. State covenants and agrees that Lessee, upon performance of all of Lessee's obligations under this Lease, will lawfully and quietly hold, occupy and enjoy the Property during the term of this Lease without disturbance by State.
- 11.2 Condemnation. If any public authority under the power of eminent domain takes all of the Property, this Lease will terminate as of the date said public authority pursuant to such condemnation takes possession. If any part of the Property is so taken and, in the opinion of either State or Lessee, it is not economically feasible to continue this Lease in effect, either party may terminate this Lease. All damages awarded for the taking or damaging of all or any part of the Property shall belong to and be the property of State.
- 11.3 Interpretation and Numbering. This Agreement has been submitted to the scrutiny of all parties hereto and their counsel if desired, and shall be given a fair and reasonable interpretation, without consideration or weight given to it being drafted by any party hereto or their counsel.
- 11.4 Amendments. Except for Lessee's annual payment authorization documentation, any amendments, revisions, supplements, or additions to this Agreement or the attached exhibits must be made in writing, executed by the parties hereto, and neither State nor Lessee will be bound by verbal or implied agreements.
- 11.5 Entire Agreement. This written Agreement or its successor or replacement contains the entire agreement of the parties hereto with respect to the matters covered hereby.
- 11.6 Invalidity. If any term or provision of this Agreement proves to be invalid, unenforceable, or illegal, the remainder of this Agreement, will be not affected.

rights and anti-discrimination requirements, including but not limited to chapter 49.60 RCW.

- 11.8 Exhibits. All conditions appurtenant to this Agreement and said Property are contained within said exhibits as follows:  
Exhibits: ["A" Legal Description; "B" map and photo] and, during the term of this Agreement, any additional exhibits that may be added, as provided for in this Agreement.
- 11.9 Holdover. If Lessee lawfully holds over after the expiration of the term of this Lease, Lessee will remain bound by all the terms and conditions hereof, except that such tenancy will be a month to month tenancy. During such tenancy Lessee agrees to pay State the same rate of rental as provided herein, and to be bound by all of the terms, covenants and conditions herein specified.
- 11.10 Emergency Action. The State may take such emergency action as is necessary to protect the public health and welfare, including, but not limited to, temporary closing or otherwise restricting Grantee's use of State's property.

## 12. MISCELLANEOUS

- 12.1 Governing Law. GOVERNING LAW AND VENUE This Lease shall be construed in accordance with and governed by applicable federal law. If federal law is silent in any relevant area, then the Lease may be interpreted in accordance with the laws of the State of Washington. This Lease is governed by the law of the state of Washington.
- 12.2 Conflict of Provisions. In case of conflict, the more specific provision of this Lease will control.
- 12.3 Remedies Cumulative. The specified remedies to which State may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which State may lawfully be entitled in case of any breach or threatened breach by Lessee of any provision of this Lease.
- 12.4 Light, Air, and View. State does not guarantee the continued present status of light, air and view over any portion of the Property adjoining or in the vicinity of the Property.
- 12.5 Liability. Lessee agrees that no trustee, officer, employee, or agent of State will be personally liable for any obligation of State hereunder.
- 12.6 Mortgages, Deeds of Trust. State may mortgage the Property or grant deeds of trust with respect thereto. This Lease is subject and subordinate to any mortgage or deed of trust which is now a lien upon the Property.
- 12.7 Non-applicability of Relocation Assistance. The Lessee acknowledges that this Lease does not at any time entitle the Lessee to assistance under the Uniform Relocation and Real Property Acquisition Policy (Ch. 8.26 RCW).

- 12.8 Vacation of Leased Premises. Upon termination of this Lease, the Lessee must cease its operations on and use of the Leased Premises. In the event the Lessee fails to vacate the Leased Premises on the date of termination, the Lessee will be liable for any and all costs to the State arising from such failure.
- 12.9 Personal Property. The State will not be liable in any manner for or on account of any loss of damage sustained to any property of whatsoever kind stored, kept, or maintained in or about the Leased Premises, except for such claims or losses which may be caused by the State or its authorized agents or employees. Upon termination of this Lease or upon abandonment of the Leased Premises by the Tenant, the State or its agent may remove all personal property of the Tenant from the Leased Premises at the Tenant's expense and dispose of it in any manner the State deems appropriate.

The Lessee expressly agrees to all covenants herein and binds himself for the payment of the rental hereinbefore specified.

EXECUTED as of the date last written below.

LESSEE

By

J.P. Poling, LCDR, USCG

J.P. Poling, LCDR, USCG  
Chief, Programs & Budget Branch

Date

3/26/04

WASHINGTON STATE PARKS AND  
RECREATION COMMISSION

By

Rex Derr

Rex Derr  
Director

Date

3/22/04

APPROVED AS TO FORM:

CHRISTINE GREGOIRE  
Attorney General

By /s/Robert J. Fallis 8/27/01

Robert J. Fallis  
Assistant Attorney General

## Lessee's Acknowledgment

STATE OF ~~OREGON~~ California )  
County of Alameda ) ss.

THIS IS TO CERTIFY that on this day, before me the undersigned Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared J. P. Poling, LLOR, VSCB to me known to be the individual who executed the foregoing document and acknowledged to me that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal this 26<sup>th</sup> day of March, 2007



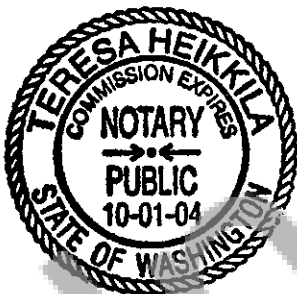
[Signature]  
Notary Public in and for the State of ~~Oregon~~ California  
residing at Alameda County, CA  
My commission expires January 22, 2007

## Washington State Parks & Recreation Commission Acknowledgment

STATE OF WASHINGTON                    )  
  ) ss.  
County of THURSTON                    )

THIS IS TO CERTIFY that on this day, before me the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Larry Fairleigh to me known to be the Assistant Director of the Washington State Parks and Recreation Commission that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said Commission, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal this 22<sup>nd</sup> day of March, 2004.



Teresa Heikkila  
Notary Public in and for the State of Washington  
residing at Finno, WA  
My commission expires 10/1/04

## EXHIBIT A -- LEGAL DESCRIPTION

That point at coordinates Northing 32903.3942 meters and Easting 381190.9092 meters, NAD 83/91 Washington South Zone, State Plane, within Section 35, Township 2N, Range 6E.

Also described as: Northing 107950.55260 and Easting 1250623.84130, NAD 83/91 Washington South Zone, State Plane, US Feet.

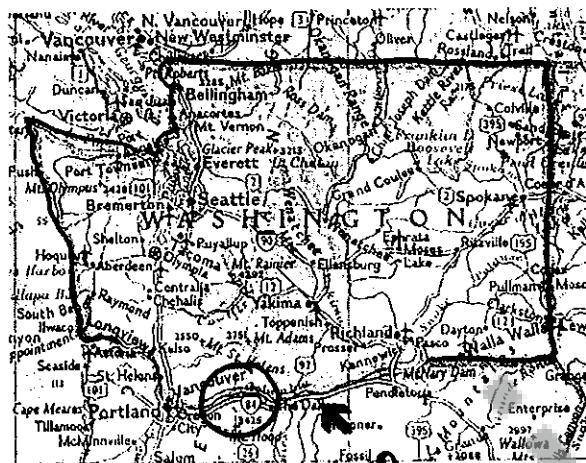
Also described as: Latitude 45°37'08.51583"N and Longitude 122°01'24.01094"W

Unofficial  
Copy



## EXHIBIT B

### Maps and Photo



**SUBJECT**

