

Doc # 2004153076
Page 1 of 11
Date: 05/24/2004 11:36P
Filed by: SKAMANIA COUNTY TITLE
Filed & Recorded in Official Records
of SKAMANIA COUNTY
J. MICHAEL GARVISON
AUDITOR
Fee: \$39.00

After recording return document to:

State of Washington
Department of Transportation
Real Estate Services Office
P O Box 47338
Olympia WA 98504-7338

Document Title: Easement

Reference numbers of related documents: None

Grantor: Washington State Parks and Recreation Commission

Grantee: State of Washington, Department of Transportation

Legal Description: A portion of the NW1/4 of the NE 1/4 of Section 35,
Township 2 N., Range 6 E.W.M., Skamania County.

Additional legal description is in Exhibit "A" of the document

Assessor's Property Tax Parcel Account Number: 02-06-35-0-0-0190-00

EASE 5-24-04 JMG

REAL ESTATE EXCISE TAX

N/A

MAY 24 2004

PAID

N/A

Vicki Orellana
SKAMANIA COUNTY TREASURER

**BEACON ROCK STATE PARK
EASEMENT
#2000-09-407**

THIS EASEMENT is made this 5th day of May, 2004, between the STATE OF WASHINGTON, WASHINGTON STATE PARKS AND RECREATION COMMISSION, ("Grantor", herein), and WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, ("Grantee" herein).

In consideration of \$ 500.00 and other good and valuable consideration in hand paid, receipt of which is hereby acknowledged, and in consideration of the performance by Grantee of the covenants, terms and conditions hereinafter set forth, Grantor hereby grants and conveys to Grantee the following:

A nonexclusive, nondivisible, perpetual easement across, along, in, upon and under Grantor's property as described and shown in Exhibit(s) A and B attached hereto and by this reference made a part hereof (hereinafter "Premises"), for the purpose of installing, constructing, operating, maintaining, removing, repairing, replacing structures to prevent scouring of certain areas of the bank of Woodard Creek (herein "Facilities"), together with the nonexclusive right of ingress and egress from said Premises for the foregoing purposes.

As the lead agency for SEPA review, Grantee completed the review under WAC 197-11-926 and made the determination of non-significance. Grantor's environmental staff has reviewed that determination, found no further documentation is required for this easement, and added the determination to the files for future reference.

This Easement is granted under authority of RCW 79A.05.070(5) and Commission authority of May 3, 2001. It is granted subject to and conditioned upon the following terms, conditions and covenants which Grantee hereby promises to faithfully and fully observe and perform.

1. **Cost of Construction and Maintenance.** Grantee shall bear and promptly pay all costs and expenses of construction and maintenance of the Facility.
2. **Compliance with Laws and Rules.** Grantee shall at all times exercise its rights herein in accordance with the requirements (as from time to time amended) and all applicable statutes, orders, rules and regulations of any public authority having jurisdiction.
3. **Utilities.** All irrigation lines authorized by this easement shall be placed underground except where it is absolutely necessary that they be above ground. This Easement does not authorize the placement of any other utility lines or appurtenances other than those that serve the Facility on Premises without the prior written consent of the Grantor, which consent shall not be unreasonably withheld or delayed

4. **Tree Removal.** No trees are to be cut or removed from the Premises without prior approval of the Grantor according to the policies of the Washington State Parks and Recreation Commission.
5. **Weed Control.** Grantee shall provide noxious weed control, in accordance with local county requirements, on any portion of the Premises that Grantee disturbs.
6. **Control of Park Gates, Roads and Lands.** Control of park gates, roads and lands, other than those needed for this Easement, shall remain with Grantor at all times.
7. **Approval of Plans.** Prior to any construction, alteration, replacement or removal of the Facilities authorized by this Easement by Grantee on the Premises, Grantee shall submit to Grantor a written notification and plans for such work on the Premises. No such work by Grantee shall be commenced without Grantor's prior written approval of the plans, which approval shall not be unreasonably withheld or delayed; PROVIDED, HOWEVER, that in the event of an emergency requiring immediate action by Grantee for the protection of its Facilities or other persons or property, Grantee may take such action upon notice to Grantor as is reasonable under the circumstances. Any changes or revisions in the plans approved by Grantor shall also be subject to Grantor's prior approval, which shall not be unreasonably withheld or delayed. The plans and specifications for the existing Facility were approved by the Grantor. Nothing in this Easement shall be deemed to impose any duty or obligation on Grantor to determine the adequacy or sufficiency of Grantee's plans and designs, or to ascertain whether Grantee's construction is in conformance with the plans and specifications approved by Grantor.
8. **Coordination of Activities.** Grantee shall coordinate the dates of its construction on the Premises with the local State Park Manager, or such other employee of Grantor as Grantor may from time to time designate, and Grantee shall provide said employee with at least five (5) days' prior notice of its intent to enter upon the Premises to commence such activity; PROVIDED, HOWEVER, that in the event of an emergency requiring immediate action by Grantee for the protection of its Facilities or other persons or property, Grantee may take such action upon such notice to Grantor as is reasonable under the circumstances.
9. **Work Standards.** All work to be performed by Grantee on the Premises shall be in accordance with the plans submitted to and approved by Grantor and shall be completed in a careful and workmanlike manner to Grantor's reasonable satisfaction. The Grantee shall at all times indemnify and hold harmless the Grantor from all claims for labor or materials in connection with Grantee's construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on or within the Premises, and from the cost of defending against such claims, including attorney fees. Upon completion of any

work by Grantee on the Premises, , Grantee shall remove all debris and restore the surface of the property as nearly as possible to the condition in which it was at the commencement of such work, and shall replace any property corner monuments, survey references or hubs which were disturbed or destroyed during such work.

10. **Archaeology.** In the event archaeological resources are found or unearthed during the work allowed by this Easement, the Grantee shall comply with applicable provisions of Chapter 27.44 RCW, Chapter 27.53 RCW and the rules and regulations of the Office of Archaeology and Historic Preservation, including compliance with all applicable archaeological excavation permit requirements. If cultural resources are discovered on the Premises, Grantee shall cease work immediately and contact State Parks' Archaeologist, Daniel Meatte at (360) 902-8637, or such other employee of Grantor as Grantor may from time to time designate.
11. **Grantee's Use and Activities.** Grantee shall exercise its rights under this Easement so as to minimize, and avoid if reasonably possible, interference with Grantor's use of the Premises for park purposes. Grantee shall at all times conduct its activities on the Premises so as not to interfere with, obstruct or endanger Grantor's operations or facilities.
12. **Hazardous Substances.** Grantee shall not, without Grantor's prior written consent, keep on or around the Premises , for use, disposal, treatment, generation, storage or sale, any substance designated as, or containing components designated as hazardous, dangerous, toxic or harmful (collectively referred to as "Hazardous Substances"), and/or which is subject to regulation, by federal, state, or local law, regulation statute or ordinance. Grantor expressly authorizes the use of Hazardous Substances commonly used by Grantee in the installation, construction, operating, maintaining, removing, repairing, and replacing the Beacon Rock Woodard Creek permanent bank protection.
13. **Termination for Breach.** In the event Grantee breaches or fails to perform or observe any of the terms and conditions herein, and fails to cure such breach or default within ninety (90) days of Grantor's giving Grantee written notice thereof, or, if not reasonably capable of being cured within such ninety (90) days, within such other period of time as may be reasonable in the circumstances and agreed to in writing by the parties, Grantor may terminate Grantee's rights under this Easement, and the failure of Grantor to exercise such right at any time shall not waive Grantor's rights to terminate for any future breach or default.
14. **Termination for Cessation of Use.** In the event Grantee ceases to use the Facilities for a period of three (3) years, this Easement shall be deemed abandoned and all of Grantee's rights hereunder shall terminate and revert to Grantor.

15. **Release of Obligation on Termination.** No termination of this Easement shall release Grantee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release Grantee from its obligation and liability to remove the Facilities authorized by this Easement from the Premises and restore the surface of the Premises to as near as possible the condition in which it was prior to construction of the Facility.
16. **Third-Party Rights.** Grantor reserves all rights with respect to the Premises, including, without limitation, the right to grant easements, licenses and permits to others subject to the rights granted in the Easement. The reservation of right to grant such interests excludes the granting of any use of occupancy of the Facility.
17. **Release and Indemnity.**
- A. To the extent authorized by law, Grantee does hereby release, indemnify and promise to defend and save harmless Grantor from and against any and all liability, loss, damage, expense, actions and claims, including costs and reasonable attorneys' fees incurred by Grantor in defense thereof, asserted or arising directly on account of or out of acts or omissions of Grantee and Grantee's servants, agents, employees and contractors in the exercise of the rights granted herein; PROVIDED, HOWEVER, this paragraph does not purport to indemnify Grantor against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the acts or omissions of Grantor or Grantor's agents, employees, officers, servants, contractors, licensees, permittees, lessees or other third parties Grantor grants the right to use the Premises.
- PROVIDED FURTHER, that if the claims or damages are caused by or result from the concurrent acts or omissions of (a) Grantor, its authorized agents, officers or employees and (b) Grantee, its authorized agents, contractors or employees, or involves those actions covered by Ch. 4.24.115 RCW, this indemnity provision shall be valid and enforceable only to the extent of the acts or omissions of Grantee or Grantee's authorized agents, contractors or employees.
- B. To the extent authorized by law, Grantor does hereby release, indemnify, and promise to defend and save harmless Grantee from and against any and all liability, loss, damage, expense, actions and claims, including costs and reasonable attorneys' fees incurred by Grantee in defense thereof, asserted or arising directly on account of or out of acts or omissions of Grantor and Grantor's servants, agents, employees and contractors on or adjacent to the Premises; PROVIDED, HOWEVER, this paragraph does not purport to indemnify Grantee against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the acts or omissions of Grantee or Grantee's agents, employees, servants, or contractors; PROVIDED FURTHER, that if the claims or damages are caused by or result from the concurrent acts or omissions of (a) Grantor, its authorized agents, officers, contractors, or employees and (b) Grantee, its authorized agents, contractors, or

employees or involves those actions covered by Ch. 4.24.115 RCW, this indemnity provision shall be valid and enforceable only to the extent of the acts or omissions of Grantor or Grantor's authorized agents, contractors or employees.

C. The indemnification provisions contained in this section shall survive the termination of this Easement.

18. Title. The rights granted herein are subject to permits, leases, licenses and easements, if any, heretofore granted by Grantor affecting the property subject to this Easement, Grantor does not warrant title to its property and shall not be liable for defects thereto or failure thereof.

19. Notices. Notices required to be in writing under this Easement shall be given as follows:

If to Grantor:

Washington State Parks & Recreation Commission
Lands Program
P.O. Box 42668
Olympia, WA 98504-2668
(360) 902-8500
FAX: (360) 902-8840

With Copy to:

Beacon Rock State Park, Manager
34841 State Route 14
Skamania, WA 98646
(509) 427-8265

If to Grantee:

Washington State Department of Transportation
Real Estate Services
PO Box 47338
Olympia, WA 98504-7338
PH: (360) 705-7309
FAX: (360) 705-6811

With Copy to:

Southwest Region Manager
11838 Tilley Road South
Olympia, WA 98512-9167
(360) 753-7143
FAX 586-4272

20. Assignment. Except as otherwise provided herein, Grantee shall not assign its rights and obligations hereunder, and no such assignment shall be valid, without the prior written consent of Grantor, which consent shall not be unreasonably withheld or delayed. Grantor's consent need not be obtained in the event of a transfer of property to which this Easement is appurtenant.

21. Successors. Subject to the preceding paragraph, the rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors and assigns.

DOC # 2004153076
Page 6 of 11

22. **Recording.** Upon full execution, Grantee shall promptly have this easement recorded in Skamania County and shall provide a copy of the recorded Easement to the Grantor.

EXECUTED as of the date hereinabove set forth.

GRANTEE

By [Signature]
Title DIRECTOR, REAL ESTATE SERVICES

GRANTOR

By [Signature]
Rex Derr, Director, WA State
Parks & Recreation Commission

APPROVED AS TO FORM ONLY:
CHRISTINE GREGOIRE
Attorney General

By /s/Joseph Shorin III 8/22/95
Joseph Shorin III
Assistant Attorney General

APPROVED AS TO FORM

DATE: April 27, 2004

[Signature]
Assistant Attorney General
for the Washington State
Department of Transportation
(Grantee) only

Grantee 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 Gerald L. Gallinger to me known to be the Director, Real Estate Services of the **Washington State Department of Transportation** that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said **Department**, 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 30th day of April, 2007.



[Signature]
Notary Public in and for the State of Washington
residing at SHERIDAN
My commission expires 9-5-2008

Grantor Acknowledgment

STATE OF WASHINGTON)

County of THURSTON)

) ss.

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 Dir. 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 5th day of May, 2004.



Sreytouch Rysen
Notary Public in and for the State of Washington
residing at Tumwater
My commission expires 6-4-07

DOC # 20004153076
Page 9 of 11

EXHIBIT A
Legal Description
Permanent Bank Protection Easement
Parcel No. 4-06731

All that portion of Section 35, Township 2 North, Range 6 East, Willamette Meridian, Skamania county, Washington lying within a tract beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 14+25 on the SR 14 Line Survey of SR 14, Woodard Creek to Beacon Rock and 60 feet northwesterly therefrom, said point being on the northwesterly right of way line of SR 14; thence northwesterly to a point opposite HES 14+25 on said line survey and 150 feet northwesterly therefrom; thence northerly to a point opposite HES 15+00 on said line survey and 300 feet northwesterly therefrom; thence northerly to a point opposite HES 15+25 on said line survey and 350 feet northwesterly therefrom; thence northerly to a point opposite HES 15+39.82 on said line survey and 364.60 feet northwesterly therefrom, said point being on the north line of Section 35; thence easterly along the north line of Section 35 to a point opposite HES 16+50 on said line survey and 243.69 feet northwesterly therefrom; thence southeasterly to a point opposite HES 16+00 on said survey and 60 feet northwesterly therefrom, said point being on the northwesterly right of way line of SR 14, thence southwesterly along said right of way line to the point of beginning.

The lands herein described contain 56,600 square feet, more or less, the specific details concerning all of which are to be found in that certain map of definite location now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval March 16, 1927, and revised January 25, 2002

EASE
2-6-35-190
5-24-04
Atr

DOC # 20004153076
Page 10 of 11

T. 2N., R. 6 E. W.M.

SWV4 SEV4 - Sec. 26

