

**RECREATION AND CONSERVATION PLAN
APPENDIX 5**

**LAND AUTHORIZATION AND DOCUMENTATION SYSTEM (LANDS)
MANUAL**

Adopted by the Parks and Recreation Commission November 30, 2006

Note: This appendix includes Sections 1, 2, and 3 of the LANDS Manual, though the Table of Contents covers the whole manual.

Table of Contents: Volume One: Narrative and Data Tables

- I. Introduction**
- II. Property Acquisition, Sale and Exchange**
 - Acquisitions: Purchase, Donation and Condemnation
 - Exchange and Transfer
 - Less-than-fee Agreements
 - Purchase and Sale Agreements
 - Appraisal
 - RCO
 - Land Acquisition and Reduction Checklist
 - Field Inspection and Hazardous Materials Checklist
- III. Real Property Agreements: Leases, Easements and Permits**
 - A. Leases
 - B. Easements
 - C. Permits
- IV. Standards: Legal Description; Property Line Documentation**
 - Miscellaneous Agreements**
 - Fence Line Agreements
 - General and Multi-Party Agreements
- V. Compensation**
 - Fee Categories/Application Classes
 - Valuation Methods
 - Disposition of Funds Derived from Fees
- VI. Special Parklands Management Issues**
 - Trespass
 - Boundary Line Disputes
 - Deed Restrictions and Property Covenants
 - Adverse Possession
 - Rail Trails
 - Sale of Valuable Materials
 - Landlocked Properties
- VII. General Authority**
 - Federal Authority and Requirements for Real Property
 - Revised Code of Washington (RCW)
 - Washington Administrative Code (WAC)
 - Commission Policies
 - Authority Delegated by the Commission
 - Attorney General Advice and Opinions
- VIII. Definitions**
- IX. Real Property Authorities and Policies: the Data Tables**
 - A. Sale of State Parks' Resources – Property and Materials
 - Sale of Parklands
 - Transfer of Parklands
 - Sale of Valuable Materials
 - Sale of Resources through Leases, Easements or Permits
 - Other Disposal of Land or Valuable Materials

- B. Acquisition of State Parks' Land
 - Donation
 - Purchase
 - Appraisal
 - Condemnation
 - Other Regulations/Requirements Relating to Acquisitions
- C. Easements on State Parks' Lands
 - Term
 - Authorized Use
 - General Granting Condition
- D. Lease of State Parks' Lands
 - Term
 - Authorized Use
 - General Granting Conditions
 - Other Policy Requirements for Lease
- E. Permits for the Use of State Parks' Lands
 - Term
 - Authorized Use
 - General Granting Conditions
 - Other Regulations/Requirements Relating to Permits
- F. Boundary Identification, Trespass and Access: Parkland
 - Surveys and Monuments
 - Boundaries/Fencing
 - Trespass
 - Access
- G. Enabling State Parks' Real Property Transactions
 - Commission Actions
 - Agency Procedures
 - Lands Program Procedures
 - Federal Regulations and Procedures
- H. Policies Affecting State Parks' Miscellaneous Lands Transactions
 - Acquisition, Classification, Management and Development

APPENDICES

- Appendix One: Commission Policy 55-06-1
- Appendix Two: Commission Policy 55-06-2
- Appendix Three: Commission Policy 55-06-4
- Appendix Four: Commission Policy 55-06-5
- Appendix Five: Commission Policy 25-07-1
- Appendix Six: Delegations (General)
- Appendix Seven: Funding Acquisitions
- Appendix Eight: Fee Schedule

I. Introduction

The Washington state park system is comprised of 200 properties located on over 140,000 acres of land. An impressive statistic, but our state parks are much more than mere numbers; they are special places to take our children camping; they are our favorite weekend getaway. State parks enhance the quality of life of all who contribute to or visit these special places. Everyone who works for the Washington State Parks and Recreation Commission (Commission) contributes to the development, stewardship and management of the most beautiful and valuable public lands in Washington. Everyone who visits any Washington park belongs to it and benefits from the park system.

Managed by a seven-member Commission, our park system is guided by a mission that includes fostering outdoor education and providing a valued natural legacy to future generations. At the same time that we are offering quality outdoor recreation opportunities to all, we are also developing and protecting important historic and natural sites in our state. To support that mission, we construct, maintain, and manage thousands of buildings and facilities, together with the infrastructure systems necessary to a modern park system.

In the nearly 100 years since the inception of the Washington state park system in 1913, the Commission has created today's exceptional parklands through a variety of purchases, donations, land exchanges, leases and other real property transactions. Over time, these land transactions have resulted in an elaborate and extensive body of public policy, and a complex set of procedures by which to implement that policy.

In an effort to assure our stakeholders, business clients, park users and staff that our property decisions are appropriate, equitable and consistent with all current laws and previous actions, the Commission requested a comprehensive study of its land management duties and authorities, and a review of its policy and procedures. Through the study, the Commission wanted to empower staff to make knowledgeable decisions while better serving our customers.

What is the *LANDS Manual*?

The *Land Authorization and Documentation System (LANDS) Manual* is the result of that study. It represents over two years of staff research, and is a dedicated effort to improve how we manage parkland. Every policy documented in *Volume One: Narrative and Data Tables* and every procedure detailed in *Volume Two: Land Management Procedures* has been thoroughly reviewed for legal allowability and scrutinized against past Commission policy and precedent actions. In writing the manual, we attempted to incorporate all federal, state and local laws that guide us. We included information from the Attorney General's Office and considered how other government agencies manage land.

The *LANDS Manual* is a comprehensive catalogue of statutes, rules, policies, procedures, fee schedules, etc., gathered to guide staff as we conduct real property transactions. *Volume One*, which documents the existing policies for managing our recreational lands, is our foundation for making decisions that shape the future park system. *Volume Two*, which details procedures and guidelines, is our resource for improving our response to

requests for use of parklands. For example, before we wrote the *Manual*, easement applications took an average of 14 months to process; lease agreements an average of 16 months; and property purchases about 17 months. By using this manual, we've reduced the time required to offer, review and execute such agreements by an average of 40 percent.

Who is the *LANDS Manual* written for?

We wrote these volumes for our land management staff and those in region offices. Elements of this manual may also be useful background information for field staff in their conversations with our stakeholders, park neighbors and other interested parties.

How will the *LANDS Manual* help State Parks' staff?

The Commission faces increasing pressure to authorize non-recreational uses of park properties, and must reach their decisions on these requests solely on the basis of information provided to them by staff. Therefore, staff must provide timely, thorough and accurate background information, including analyses of legal and historic options, for every real property transaction. Along with documenting all land management transactions, Parks' staff is also managing the properties that make up the park system, while managing thousands of contracts, encumbrances and encroachments on park property. It can be a daunting workload.

The *LANDS Manual* is a necessary tool for streamlining these complex tasks. By consolidating the history of the Commission's real property transactions, policies and legal requirements, the manual enables staff to be more efficient in:

- Acquiring important properties
- Administering land-use agreements
- Assessing properties of low recreational value for potential disposal
- Consulting with non-agency parties on potential land transactions
 - Communicating real property data and policy issues to the Commission and other interested parties

And by providing this accurate information in a convenient, revisable format, the *LANDS Manual* will ensure our continual improvement in property management.

For specifics about authorization, see this volume, Section IX "Real Property Authorities and Policies." These data tables reference by topic all aspects of real property management. They include statutory (legal) guidelines, all existing Commission actions by title and date, Commission policy directives, legal guidelines and general reference materials for over 85 years of State Parks' land management activities. Since the Commission will certainly adopt future motions and generate additional directives on real property, State Parks' staff will update the tables accordingly.

The data tables answer such questions as:

- Can State Parks grant a requested use for [activity]?
- How long can a lease or easement term be, for the purpose of _____?
- What rules does the agency follow when buying or selling property?
- Where do I find the precedent for Commission authorization of the use of _____?

- How do agency rules and legal requirements affect an application for _____?

To find a particular land management topic, the reader should refer to the Section IX Table of Contents. The topics and their authorizations are in a user-friendly table format. The first page of each subsection footnotes general definitions, and the top of each page is clearly labeled by topic and sub-topic. The shaded bars to the left indicate a basis in law, policy or regulation for each topic. Pertinent land management cross-references will show as shaded right-columns or notations. Each page notes the date of the last revision. Readers may electronically review the full version of the controlling statute at <http://www.apps.leg.wa.gov>, see the complete summary of Commission action at N:\Director\Summary of Commission Action, or see the relevant policy statement at N:\Agency Overview\Policies-Procedures\Commission Policies. Readers may also contact the Lands Program staff for assistance.

Why is the *LANDS Manual* important to our stakeholders?

Competing interests impact or determine the size and character of our park system. The manual helps staff to understand the ground rules for adding, subtracting or using properties, by:

- Describing the legal and acceptable uses of parklands
 - Illustrating the Commission's processes for conducting property transactions
- Explaining the application processes for requesting use of parklands
- Making the Commission's property decisions accessible to staff

How reader-friendly is the *LANDS Manual*?

Although this manual deals with legal agreements and statutory law, we write to a staff audience with a general and practical background in real property management. We often use a Q-and-A format so you can easily find clear descriptions of procedures and straightforward answers to commonly asked questions. We do not cover all possible applications and requirements, but discuss routine real property transactions such as:

- Purchasing, exchanging and accepting donated lands for the park system
- Permitting the use of parklands for legal access to private lands
- Leasing parklands for compatible activities
- Obtaining utility easements
- Setting standard fees for use of park property
- Reviewing the Commission's position on the appropriate uses of park property
- Selling and transferring parklands for private or other public uses

With manual in hand, land management staff or park rangers can locate basic information on how our Commission evaluates use requests and decides land management issues; can find the procedure for processing a request for use of Parks' lands or resources; and can more confidently discuss use requests with private-party interests or other governmental entities.

Why is the *LANDS Manual* important to the Commission?

Acquiring and managing real property are among the Commission's most important responsibilities, and by each decision the Commission impacts future land management policy. Based on staff's recommendations, Commission decisions must balance others' use of and access through park properties against the public's need for outdoor recreation -- while still being mindful of its mission to protect and maintain park resources. In reviewing archival records, we found that taking action on the use of park property has been the Commission's most time-consuming and continuously evolving activity.

The *LANDS Manual* illustrates that the Commission's decisions are made in compliance with state laws and regulations, and with other rules relating to real property. It also documents and provides consistent interpretation of previous Commission decisions, so as to guide future ones.

How will the *LANDS Manual* support the Commission's real property management goals?

The *LANDS Manual* considers Commission actions and policies as they relate to five management goals for parklands; it provides practical and effective guidance to staff in achieving these goals:

1. Optimize environmental, social and economic values of real property.
 - Develop and implement property management and stewardship programs.
 - Take a leadership role in fostering partnerships with outside entities.
2. Provide prudent and timely responses to public requests for access to parklands.
 - Take a proactive approach to communications.
 - Empower staff to initiate and carry out certain real property transactions.
3. Bring State Parks' land records and systems into the 21st century.
 - Establish and foster partnerships with sister agencies to benchmark and consolidate databases.
 - Upgrade and maintain Lands Inventory and Contract Management Systems.
 - Provide property records and other information in an electronic format.
4. Protect State Parks' land assets.
 - Resolve ownership disputes, trespasses and unauthorized uses in a timely, fair and businesslike manner.
 - Provide clear Commission criteria for property decisions.
5. Investigate revenue opportunities which are consistent with agency goals and objectives.
 - Evaluate all opportunities to generate revenue from non-traditional sources.
 - Charge fair market rates for those activities consistent with Commission land use policies.

II. Property Appraisal, Acquisition, Sale and Exchange

Why does State Parks increase or decrease the land holdings in the park system?

Land systems are dynamic. All land system owners make changes to their land base over time, buying and selling land in response to outside forces impacting them. For public land managers, these forces include public pressures, political influences and changes to agency direction or to natural ecosystems.

In order to create and operate a park system, the Washington state legislature authorized the Commission to: "... *select and purchase or obtain options upon, lease or otherwise acquire for and in the name of the state such tracts of land, including shore and tide lands, for park and parkway purposes as it deems proper.*"¹ To ensure that the park system is not burdened with lands unsuited for park use, the legislature granted further authority as follows: "*Whenever the State Parks and Recreation Commission finds that any land under its control cannot advantageously be used for park purposes, it is authorized to dispose of such land.*"²

Along with this broad authority to manage State Parks' property, the legislature also requires the Commission to acquire and manage specific properties and property suited for specific recreational, historical, and cultural or other purposes, such as:

- Cross-state trails
- Urban state parks
- Underwater parks
- Tidelands
- Seashore Conservation Area

The Commission's mission to provide a diverse system of recreational, cultural, historical, and natural sites requires a seemingly never-ending sequence of land transactions. Property is continuously added to or deleted from the park system in order to meet specific agency objectives:

- Maximize value through donation of private property
- Increase accessibility of potentially significant park property
- Dispose of lands not suited for park use
- Exchange parcels with public or private property owners for mutual benefit
- Reflect identified changes in the public's recreational interests
- Bring recreational opportunities into balance with the population's geographic distribution and mobility
- Meet increasing demand for both urban and wilderness recreation

What authorizes acquisition and disposal of State Parks' property?

Most of that authority has been granted by the legislature to the Commission, which has retained the authority for itself. *See* list below for relevant statutes. The Commission has delegated certain authority to the Director, but adds other authority to complete transactions only after a public meeting on specific staff requests. *See* this volume,

¹ RCW 79A.05.030 Powers and duties - Mandatory.

² RCW 79A.05.175 Disposal of land not needed for park purposes.

Appendix Five for complete text of Commission Policy 25-07-1 “Delegations of Authority for Real Estate Transactions & Services.”

What process guides these transactions?

Prior to performing any real property transaction, State Parks’ staff conducts comprehensive property research and review: ownership records, legal encumbrances, management plans, records of survey, hazardous waste inspection, etc. Staff can obtain much information about a property being considered for acquisition by requesting a property profile through a title company or consulting the appropriate county website. For more specific title details, staff orders a preliminary title report. If the title report identifies encumbrances or "clouding" issues, staff can usually work to have certain items removed before closing and receipt of title policy. If the Commission has determined that a property is not advantageous for park purposes, staff will conduct similar analyses and reviews on the surplus parkland to decide its appropriate disposal method: fee or non-fee transfer to local government; direct sale to resolve trespass; sale at public auction. By statute, staff first notifies local governments of all proposed land dispositions. *See* House Bill 1940, 2007 Regular Session for details.

The primary tool used in documenting these review steps is the Land Acquisition and Reduction Checklist; it itemizes over 35 process reviews and actions that staff must complete prior to completing the transaction. A partial listing includes:

- Fiscal impact assessment of revenue potential and operating costs
- SEPA analysis
- Title report(s)
- Legal description
- Appraisal
- Property inspection(s)
- Public involvement

How does State Parks acquire land?

The Commission acquires new properties by the following, or by combinations thereof:

- Fair market purchase
- Property donation
- Property exchange
- Less-than-fee grants or agreements
- Transfers from other governmental entities

Prior to acquiring any new property, State Parks’ staff completes or coordinates a comprehensive hazardous materials review and site inspection to document:

- Hazardous materials
- Land use impacts
- Environmental/public health concerns
- Waste storage or disposal structures
- Construction debris
- Vegetation, water and geologic features
- Observations of suspected environmental hazards

Land acquisitions require first a formal designation by the Commission that the parcel is “advantageous for State Parks’ purposes.” Acquisition funds must also be available. Next, State Parks’ staff determines the owner’s interest and willingness to sell. For those parcels that make it through these initial steps, staff will research the property for encumbrances, encroachments, liens, environmental hazards or restrictions and legal access rights. Staff must complete this entire checklist and review items and conditions, including a site inspection, before proceeding further.

What is a Purchase and Sale Agreement (PSA)?

The PSA is the standard contract used in property acquisition or disposal transaction, and it is an essential tool for processing property purchases, sales, exchanges and transfers.

These agreements typically contain:

- Description(s) of the property(ies) to be transferred
- An agreed-upon purchase price or a statement to the effect that purchase will be at the appraised and reviewed fair market value
- Closing date, proration and general escrow/closing instructions
- Listing of commitments applicable to each party (preliminary commitments)
- Legal conditions for acceptance or disposal by State Parks
- Addresses and miscellaneous responsibilities of parties involved

The PSA can be used either when State Parks is the acquiring agency or is the seller (*e.g.*, in a surplus parcel sale). The document has many optional clauses which allow it to reflect various second-party needs while still remaining within the operating guidelines set by the Commission. Variants are the Property Donation Agreement (PDA) and Property Exchange Agreement (PEA), which follow the same format as the PSA, but are tailored to the specific conditions of these transactions.

For those properties which successfully reach the point of a signed PSA, staff opens escrow and gives the escrow company title policy instruction and conditions, and then coordinates the closing process.

Finally, staff documents the transaction and enters the vital statistical information on the subject parcel into State Parks’ records systems; then the new parcel is either incorporated into an existing park, or developed as a new stand-alone facility. Via email, staff formally announces the acquisition to the agency.

Whether parklands are acquired through purchase, donation, transfer or exchange, State Parks’ staff follows the same basic policy and procedures for non-fee title acquisitions as for fee acquisition. However, non-fee acquisitions are usually less complex and may not require a PSA, appraisal, title insurance, etc.

Commission Policy 25-07-1 delegates to the Director or designee the authority to accept leases, easements, permits and other non-fee-simple agreements for Parks’ purposes. *See* Appendix Five for complete text.

Fair Market Purchase

Parks acquires most properties through fair market purchase, through the classic “willing seller, willing buyer” relationship. These purchases can be initiated by State Parks’ staff, a potential seller, or through an intermediary (e.g., land trusts or real estate brokers.)

What if the seller is not willing? By custom, State Parks does not acquire lands by asserting eminent domain or condemnation authority, even though the legislature has authorized the Commission to acquire property under the following conditions from a landowner unwilling to sell:

“If the Commission cannot acquire any tract at a price it deems reasonable, it may, by majority vote of its authorized membership, obtain title thereto, or any part thereof, by condemnation proceedings conducted by the attorney general as provided for the condemnation of rights of way for state highways.”³

The Commission has used condemnation powers only infrequently to acquire real property essential for park purposes. (The last such acquisition occurred in the late 1970s.) Rather, State Parks values and promotes the “willing seller, willing buyer” relationship. In cases where the landowner is a willing seller, but there are unwilling tenants involved, those tenants may be eligible for relocation assistance. In these cases, State Parks’ staff follows federal and state guidelines and Commission policy to aid relocated parties, or with assistance and direction from the Washington State Department of Transportation. Note: For a good example of how State Parks processes acquisition through condemnation/eminent domain, see the Lands Program file on Ebey’s Landing. The file contains useful references to court and Commission action.

Appraisals

- **How does State Parks use property appraisals to determine the fair market value of property?**

Property appraisal is the primary tool used by staff in determining the value of any parcel of real property. State Parks staff has performed appraisal services to value less than fee interests in lands for decades. We have performed limited-scope appraisals “in-house” to establish fee simple values for direct sales under 79A.05.178 and to establish minimum bids for surplus properties sold at public auction. A December 20, 2006 memo from the AAG detailed the types of appraisals staff may perform under 79A.05.175 and .178. Also, pursuant to RCW 79A.05.175: “...The equal value of all lands exchanged shall first be determined by the appraisals to the satisfaction of the commission...”

The majority of State Parks’ land transactions require a formal third-party appraisal. A third-party appraisal is simply a report provided by an unbiased professional certified to meet certain industry standards for appraisal services. The report details the fair market or “across the fence” value of a parcel(s) of real property. Typically, State Parks may

³ RCW 79A.05.030 Powers and duties - Mandatory.

purchase property only at its appraised fair market value. Examples of this requirement being waived include transfers involving partial donation, and properties acquired under lease agreements.

Most funding sources require State Parks to meet specific appraisal standards. The standard most often required incorporates the Uniform Standards of Professional Appraisal Practice (USPAP) criteria. The format and level of documentation required for an appraisal depend on the complexity of the project.

For transactions which, by virtue of their simplicity or low value, do not require the in-depth analysis and presentation format necessary in a detailed formal appraisal, agency staff will nevertheless follow appraisal standards consistent with established and commonly accepted practices. Staff appraisal standards comply with Commission policy 55-81-1. Per Commission policies 55-06-1 and 72-86-1, staff may use in-house appraisal methods to establish value for non-recreational uses of park property, and for establishing minimum bids for surplus property to be sold at public auction. Land purchases, exchanges and transfers also qualify for in-house appraisals, if estimated values do not exceed \$50,000, and in order to resolve boundary line issues, trespass situations, or when no complex or difficult appraisal issues are present.⁴

A detailed, professional, third-party appraisal prepared in conformance with USPAP standards is required for all other property transactions involving the transfer of deeds or specialty services (e.g., timber cruise, mineral values, etc.) State Parks' staff will ensure the following steps are completed prior to accepting any third-party appraisal:

- * Appraisals are solicited from a list of qualified appraisers. Solicitations include a term for delivery and explanations/background information for the parcel to be appraised.

- * Qualified bids contain information on the qualifications of the appraiser and a quote on the cost of his or her services.

- * An appraisal services contract will be offered and executed prior to the appraisal. The standard contract will detail the services to be provided and any special appraisal instructions that are specific to the parcel being evaluated.

- * All appraisal tasks are to be completed and submitted to staff within the agreed-upon period.

- **Who reviews the appraisals?**

Once an appraisal is submitted, State Parks' staff reviews the report for completeness and to ensure that the relevant facts are correct. Once approved by staff, the original appraisal may need to be submitted for review by a USPAP-certified review appraiser. This review serves as a check on the original appraiser's work and confirms that any conclusions detailed in the report are supported by the facts.

- * **What purchase-sale negotiations follow appraisal and appraisal review?**

State Parks' staff presents an initial offer to the Seller, who either accepts it or counter-offers. Staff may then accept the Seller's counter, present Parks' counter-counter offer, or terminate the transaction.

⁴ RCW 18.140.020 (5) takes government employees out of the appraiser certification and licensing requirements.

If acquiring the property is vital to achieving agency goals, the Lands Program Manager has the authority to pay above the appraised value (subject to funding guidelines), if the additional cost is within reason (10-20 percent above appraised value); if it can be supported by sales comparisons; or if “added value” can be substantiated. “Added value” can quantify the importance of the public owning the property for recreational, environmental or cultural/historical purposes, or it can refer to cost-savings to the agency over time if it were to own the property (e.g., to survey, cure trespass, repair vandalism, etc.) Value added can increase a property’s appraised value by as much as 20-100 percent.

Using such rationale and current market data, the Lands Program Manager prepares the agency’s Final and Best Offer for review by the Parks Development Service Center Manager, who shall either approve this offer, or seek approval or direction from the Director or Commission.

- **What fund sources does the Commission use to purchase property?**

The Commission applies for and receives funding from a variety of public and private sources to purchase and develop property. One source is the Washington State General Fund, derived from the combined tax revenue of the state. Federal and other state government agencies administer additional sources of funding dedicated to the purchase of park and recreation lands. These fund sources are derived from outdoor recreation-related revenue, such as user fees or dedicated excise tax. Funding also can be made available to the Commission from private sources through donations or matching grants.

Although the Commission has been authorized by the legislature to acquire land, it does not have the discretionary funding authority to purchase additional properties without an appropriation or spending authority from the legislature. Traditionally, the Commission receives the necessary appropriation of funds in the biennial or supplemental capital budget

RCO -- Funding and Conversion

In addition to biennial appropriations, funding is authorized by the legislature to support the Commission’s land acquisition program. Each biennium, funding is appropriated to the Recreation and Conservation Office (RCO) through the Washington Wildlife and Recreation Program (WWRP), from bonds, NOVA, and BFP. State Parks competes against other state and local public agencies for funding through the grant process specified in Chapter 79A.15 RCW.

Currently, the RCO funds 60 to 80 percent of all State Parks’ real property purchases.⁵ The RCO publishes a detailed manual to aid State Parks and other funding applicants in fund source management. The RCO manual details the guidelines for conducting appraisals; for negotiating PSAs; for reporting costs associated with property purchases and deed restrictions; and for submitting forms required by the RCO. The manual is available electronically at www.RCO.wa.gov.

⁵ 2003-05Biennium Report on land acquisition

Each project approved by RCO has twelve months to be completed. (The director may grant some extensions.) In order for an acquisition request to receive final approval, RCO must be presented with a complete environment assessment that includes clean-up costs and clear evidence that clean-up of toxic or hazardous substances can be completed expeditiously. (For details, refer to RCW 70.015D and RCO Manual, Sections 3, 7, and 8.)

Property that State Parks acquires with RCO funds must remain "recreational"; if use changes after Parks exchanges or surpluses the property, then RCO considers it to have been converted. Land acquired *or developed* with most federal and state money includes a restriction that the land is exclusively for recreational use. The most common source of federal dollars is the National Park Service (NPS) from the Land and Water Conservation Fund (LWCF). These dollars usually pass through the RCO to administer and to provide a state match.

Any change of use or disposal of any interest in such land (fee or less-than-fee) may trigger a conversion. Even if restricted dollars were used on only one specific development or acquisition at any specific park, the associated "project boundary map" may encompass the entire park boundary. *Consequently, any action within the entire park boundary becomes subject to conversion policies.*

Therefore, since any real estate transaction may trigger a conversion, Parks' staff should first identify the source of money used to acquire or develop the property. Some points to keep in mind about conversions:

- Conveying property rights is considered a conversion by RCO policy, even if it is not considered to be one by federal agencies.
- For any conversion, the sponsor must provide an appraisal of the land to be conveyed.
- Federal and state development funds carry conversion requirements similar to those for acquisition funds.
- RCO staff would not recommend federal or RCO Board approval of options that could have significant impact upon a property's future recreational utility.
- There is an exception in the federal conversion policy: "underground utility easements that do not have significant impacts upon the recreational utility of the park will not constitute a conversion."
- Federal policies require converted land and developments to be replaced by the sponsor with land of similar recreational utility in the same geographic region, at or exceeding the market value of the land being converted. (*See LWCF Grants Manual Release 151, Chapter 675.9.*) RCO policies require converted land to be replaced with land of similar recreational utility in the same geographic region, and converted developments to be replaced with developments of similar utility and location (*See RCO Manual #7.*) The replacement land must be approved by RCO and the NPS before the conversion.
- RCO can issue administrative approval for some conversions; those would not have to go to the Board.

- RCO will not give administrative approval to conversions that exceed a \$25,000 value limit (*e.g.*, to the goods and services that State Parks receives in exchange for easements).
- State Parks' staff must submit a letter to RCO either seeking an exemption from RCO and federal policy, or requesting permission for a conversion.

Property Donation

State Parks historically acquired a good percentage of real property through parcel donation. Though to a lesser degree today, donations still are offered by families who want their property protected in a natural condition. Prior to acceptance, the value of a proposed donation parcel is evaluated against the Commission's management goals and objectives, similar to any other acquisition. By Commission Policy 25-07-1, the Director has been delegated the authority to accept donations of real property or partial interests in real property, provided the donation is adjacent to existing park property. All other donations must be approved by the Commission. *See* Section IX, the Data Tables, Acquisition of State Parks' Land.

Property Exchange

Property exchange had been the main method for State Parks to acquire land without purchase, until the legislature modified the laws dealing with sales proceeds from property transfers.⁶ The exchange is seldom used today, but the Commission has approved exchanges in which real property was transferred for a partial interest in other real property (*e.g.*, land for access rights).

The exchange involves lands of equal value (as confirmed through independent market appraisal). The sizes of the exchange parcels may be different, but the values must be equal. Exchanges require a decision by the Commission that the parklands being considered for exchange are not needed for State Parks' purposes.

Similar to a direct purchase, land exchanges usually require an exchange agreement to be executed prior to staff investing a substantial amount of time and resources. Once the lands being considered for exchange have been appraised and the values have been balanced, the exchange progresses through escrow, title and closing much like a fee purchase does.

A related issue is covered by this informal opinion in Assistant Attorney General e-memo of 12-12-97:

You have asked whether RCW 43.51.210, [79A.05] which authorizes the exchange of lands for "lands of equal value" would prohibit the exchange of fee lands for an easement. While the statute is not absolutely clear on this, I believe that such an exchange would probably be permissible. I base this, in part, on the fact that the Commission's authority in RCW 43.51.040 (7) [79A.05] to condemn "land" for park and recreation purposes has been applied to the condemnation of a pipeline easement: Parks & Recreation Commission v. Schluneger, 3 Wn. App. 536 (1970). Other statutes authorizing the condemnation of land have been extended to authorize condemnation of easements as well. See e.g., Polson Logging Co. v Superior Court, 11 Wn.2d 545, 555

⁶ RCW 79A.05.178 was modified to allow State Parks to deposit the proceeds from property sales into the Parkland Acquisition Account. Funds had previously been placed into the state's general fund.

(1941). While there are other cases in other jurisdictions which have held that the term "lands" does not include easements, I believe that a very good argument can be made that an exchange of land for an easement is authorized under Chapter 43.51.

Of course, nothing requires that easements be competitively sold or exchanged, as RCW 43.51.060 (5) [79A.05] authorizes the Commission to grant easements for any legitimate purpose, and for such terms as the Commission shall deem appropriate.

Property Transfer

The land transfer is typically made between State Parks and another governmental entity. Federal and state laws provide for the direct transfer of lands to benefit State Parks' purposes. Most of the high-priority recreational lands held in federal or another state agency's ownership have already been transferred to State Parks, but this method of acquisition is still viable as the agency continues to reposition its recreational land base.

State Parks will occasionally transfer recreational lands to city or county agencies, usually in response to a local government request or through direction by the state legislature. All parkland transfers processed under RCW 79A.05.170 require that the lands transferred be subsequently used for recreational purposes, or the property will revert to State Parks' ownership.

At their workshop on June 13, 2007 in Pullman, WA the Commission provided staff with policy-level guidance: the Commission prefers to consider all property transfers to other governmental entities on a case-by-case basis. They wish to evaluate a project's merits on the particular facts and circumstances inherent in and unique to specific transfer proposals.

Some government-to-government transfers do not involve payment by the accepting agency. Others, such as those through the Department of Natural Resources (DNR) Trustland Transfer program, require the lands under consideration to be appraised, and any funds received to be applied to the appropriate DNR trust account to offset the loss to DNR's revenue base.

Less-than-fee Acquisition

State Parks also acquires non-fee interest in land via leases, permits, easements and donations granted to the agency for park purposes. These agreements can be permanent or temporary, and they may be purchased, donated or exchanged. Agreements have included: short-term, temporary rights of access; long-term leases of large tracts of parkland; and conservation easements. Most commonly, State Parks has leased large tracts of federal lands for park purposes.

As of February 2002, approximately five percent of the park system acreage was under lease or other non-fee simple agreement. This includes lands adjacent to existing state parks (e.g., Bridgeport, Cape Disappointment, Columbia Hills and Steamboat Rock) as well as entire parks (e.g., Fort Simcoe, Lincoln Rock and Maryhill State Parks). This figure does not include the Banks Lake and Potholes Agreement areas, which total over 142,000 acres and are jointly managed with the Washington Department of Fish and Wildlife.

What are non-fee acquisitions?

- A special category of acquisition, for a **right of use**, is the Deed of Dedication of Accreted Lands. Over one hundred such oceanfront dedications were accepted by the Commission for public recreation use from the owners of the accretions. *See the Seashore Conservation Area Administrative Manual* for additional details about these unique agreements.
- Another example of the non-fee acquisition is the Conservation Easement. A conservation easement is simply a partial interest in land acquired for conservation purposes. Just like any other type of easement, a conservation easement can be perpetual, or for a specific term. The critical modifier is “conservation.” Conservation easements typically allow the easement holder to limit or prohibit certain types of development in order to protect sensitive plant or animal species, or to protect visual corridors or other scenic values.

There are many kinds of conservation easements, including those which limit the amount of residential or commercial development (self-imposed down-zoning), those which provide additional protections for scenic views and corridors, and those which retain a community’s rural characteristics. Most provide additional restrictions on the subject property beyond current zoning regulations.

A conservation easement is sometimes used by land conservancies to stretch property acquisition funds. In this scenario, funds which would purchase fee acquisition of 100 acres of real property may instead be stretched to provide a conservation easement over 500 acres of land. State Parks’ staff also finds the conservation easement to be a useful tool to provide a “buffer” from adjacent development, or to protect a scenic view corridor for an established park.

Conservation easements initiate:

In response to an individual or family who wishes to gift to State Parks a partial interest in the family farm or estate. (Grantors’ motivations vary, but a conservation easement may mean tax-reduction benefit to the grantor.)

OR, through an inquiry from State Parks’ staff requesting a partial interest in private lands to protect natural value(s).

State Parks typically processes a conservation easement as if we were to purchase the parcel in fee. A formal appraisal is usually required, specifying the estimated total value of the conservation easement. Depending on the easement restrictions, its value may range from 20 to 80 percent of the fair market value of the property. The appraiser usually compares the value of the subject property as a “clean” parcel to its value as an “encumbered” parcel. The easement may then be purchased or donated.

How does State Parks dispose of parkland?

The Planning Program staff must first evaluate that property’s long-term value to the park system and request a formal decision by the Commission that a parcel “...cannot advantageously be used for park purposes...” (RCW 79A.05.175 Disposal of Land Not Needed for Parks’ Purposes) or that they find it “...to be surplus to the needs of the state for development for state park purposes and which the commission proposes to deed to a

local government or other entity...” (RCW 79A.05.170 Transfer of surplus land – Reversionary clause required – Release – Parkland acquisition account.)

Once the Commission designates a parcel as surplus to State Parks’ needs, the Lands Program staff follows Commission policies relating to property disposal/sales, and determines if the parcel needs any development work (zoning, sub-division, access, etc.) prior to disposal.

Additional statutory authority regarding disposal was provided in 2000 (RCW 79A.05.178 Real property disposal – Disputed land – Manner – Notice and hearing – Suit for Noncompliance). The Commission may dispose of up to ten acres of real property directly to adjacent landowners in order to resolve trespass and boundary line issues. *See* Commission Policy 55-06-2 “Parkland Acquisition Account” for funding acquisitions with proceeds from disposals; *see LANDS Manual Volume Two, Land Management and Procedures*, Sections I. F., G., and I. of this for disposal methods.

What statutes, rules and policies apply to State Parks’ property acquisition and disposal?

Property Acquisition

- RCW 79A.05.030 Powers and Duties – Mandatory.
- RCW 79A.05.095 Donations of Land for Park Purposes.
- RCW 79A.05.100 Bequests and Donations of Money.
- RCW 79A.05.300 Declaration of Policy – Lands for Public Park Purposes.
- Chapter 39.32.070 RCW Purchase of Property from Federal Government Authorized.

Property Disposal

- RCW 79A.05.170 Transfer of Surplus Lands – Reversionary Clause Required – Parkland Acquisition Account.
- RCW 79A.05.175 Disposal of Land Not Needed for Parks’ Purposes
- RCW 79A.05.178 Real Property Disposal
- RCW 79A.05.180 Exchange of state land by commission – Public notice – News release
- RCW 79A.05.210 Sale of State Trust Lands – Terms and Conditions.
- RCW 79A.05.300 Establishment of Urban Area Parks by Parks and Recreation Commission.
- Chapter 39.33 RCW Intergovernmental Disposition of Property
- RCW 39.33.010 Sale, exchange, transfer, lease of public property authorized -- Section deemed alternative.
- RCW 47.12.040 Acquisition of property from a political subdivision.

The Commission has adopted only one administrative rule related to acquisitions and disposal: WAC 352-32-295 Land Exchange Fee. The Commission has not adopted specific rules expressed through WAC to govern the acquisition and disposal processes.

The Commission has adopted several policies relating to land acquisition and disposal. Many of the Commission's acquisition policies prior to 1980 are largely statements of intent, stipulating a long-term philosophy related to land acquisition. In general, these policies serve as a historical reference regarding the Commission's attitude toward the kind of land preferred for inclusion in the park system. Those listed below form the basis for the Lands Program core functions. For a complete list, *see* N:\Agency Overview\Policies-Procedures\Commission Policies.

- 55-65-1 Acquisition of Federal Surplus Lands
 - 72-67-1 State Trails Program
 - 55-68-1 Land Acquisition
 - 72-69-1 Underwater Marine Parks
 - 15-71-1 Cooperative Programs
 - 72-73-2 Acquisition and Development – Public Reservoir
 - 55-74-1 Inholding Policy
 - 55-76-1 Relocation Assistance and Real Property Acquisition
 - 55-81-1 Appraisal and Relocation Policy
 - 55-97-1 Lands-Related Public Notice
 - 55-99-1 Sale of Surplus Property
 - 55-06-1 Real Estate Transactions & Non-recreational Uses of Parkland
 - 55-06-2 Parkland Acquisition Account
 - 55-06-4 Communication Facilities in State Parks
 - 55-06-5 Sale of Sand and Gravel from Parklands
- 25-07-1 Delegations of Authority for Real Estate Transactions & Services

III. Real Property Agreements: Leases, Easements and Permits

Why does State Parks authorize private use of park property?

Simply put, the property owned and managed by State Parks is in demand. State Parks' properties often hold considerable value to neighboring private landowners who need to cross parkland for utilities or to access their property. The Commission controls access to waterfront, mountain tops, transportation and utility routes and scenic views. Also, most parks possess significant resources, such as right-of-way corridors, valuable materials, and buildings or facilities that lend themselves to a variety of commercial uses. Like most other large public or private sector landowners, State Parks is receptive to requests to cross or otherwise use its property and will cooperate in managing those uses.

To manage the park system effectively and serve the public need, the Commission is authorized to: "*Grant franchises and easements for any legitimate purpose on parks or parkways, for such terms and subject to such conditions and considerations as the Commission shall specify.*"⁷

The legislature has charged the Commission with deciding how to authorize private use of parklands. For a summary of the Commission's policies and the RCWs and WACs pertaining to leases, easements and permits, refer to those topics in *LANDS Manual Volume One: Narrative and Data Tables*, Section IX, Real Property Authorities and Policies.

The Commission's policies for granting private use of park property honor pre-existing access rights, and are generally responsive to changing needs for access by adjacent landowners. These policies also attempt to protect and improve the public's benefits derived from parkland while accommodating legitimate and compatible public utility, industrial and commercial activities. However, authorizing multiple private uses and access rights could impair the Commission's ability to manage a park's resources or to ensure the safety and enjoyment of park visitors. In processing each request for private use of parkland, the Commission staff must consider public needs along with the integrity and value of the park system. Because these requests are at times complex or may conflict with existing policies, the Commission has retained the authority to decide most land-use requests during open public meetings. See N:\Director\Summary of Commission Action and N:\ Agency Overview\ Policies - Procedures\ Commission Policies.

The Commission has adopted various policy statements to specify the Commission's intentions in the granting of leases, permits and easements involving facilities:

*"The Commission is firmly opposed to the placement on parklands of any facility, utility line, improvement or commercial facility that will have a significant adverse effect on the public recreation or natural environment. Protection of park values and the provision of public recreation needs is paramount to any other use..."*⁸

With approval of Agenda Item E-6 on September 27, 2007 the Commission delegated to the Director or designee certain authority for issuing or accepting leases, permits and easements necessary for State Parks' purposes on State Parks' property, or across others' property. See *LANDS Manual Volume One: Narrative and Data Tables*, Appendix Four.

How does someone obtain permission or rights to use State Parks' property?

The Commission offers a straightforward process to request private use of parklands, through application for a real property agreement (RPA). This application requires most or all of the following, supported by an environmental checklist and non-refundable application and processing fees:

- *The use requested (industrial, commercial, agricultural, single-family, multi-family, etc.)*
- Description of the proposed land use or project and any rights-of-way required
- Construction requirements, methods, permits, equipment access and timeframe

⁷ RCW 79A.05.070 Further powers - Director of Parks and Recreation - Salaries.

⁸ Commission Policy 55-06-1 Real Estate Transactions and Non-Recreational Uses of Parklands

- Legal description of parklands affected *
- Natural resources likely to be disturbed, lost or impacted
- Mitigation required in order to minimize potential or actual impact to parkland
- Existing or new road use
- Utilities to be placed
- Cost and hardship to the applicant from any alternatives to park property use.
- Benefit to State Parks and the public.

* For minor activities that do not involve alteration to parkland and/or which are temporary uses, the description can be simple (section, township, and range), and illustrated by a vicinity and exhibit maps. For requests for roads, pipes, and other linear uses, the use area must be legally described and illustrated (location of centerline; length, width, depth, square footage). Applicants should follow plat or exhibit map standards as appropriate.

* For longer-term leases and easements, and for any use which involves major alterations to parkland, a more formal description is required. Some transactions require a formal survey, stamped and signed by a Washington state-registered land surveyor as prescribed in RCW 18.43.070. Applicants' maps must follow the survey platting guide standards. Surveys may cost from one thousand to several thousand dollars, depending on the amount of area and the existence (or non-existence) of known points and corners.

* Documenting the legal boundaries of the authorized use area protects both State Parks and the applicant, and is prudent land management.

How does State Parks use bonds and security forms?

Generally, uses require payment of fees, charged once or periodically (such as annual rental payments). When periodic fee payments are scheduled, State Parks typically requires the authorized user to secure and provide a security or bond to guarantee future payments. Bonds and securities are also used to ensure authorized users of parklands are financially capable of meeting the terms and conditions of their contractual obligations.

Bonds are attached to the executed legal agreement (usually a lease); four types are acceptable:

- Cash Bond--usually one or two years' rent held in trust
- Savings Account Assignment—bank-issued account assignment enabling State Parks to draw on it for cause
- Obligation Bond--similar to the savings account assignment; essentially a promissory note
- Construction/Performance Bond

How does State Parks determine whether a request should be a lease, permit or easement?

The three types of use agreements are distinguished by a few standards of real property authority and by numerous situational variables. However, land use or access requests can be broadly separated according to whether they are for short-term permissive use, or for long-term property rights.

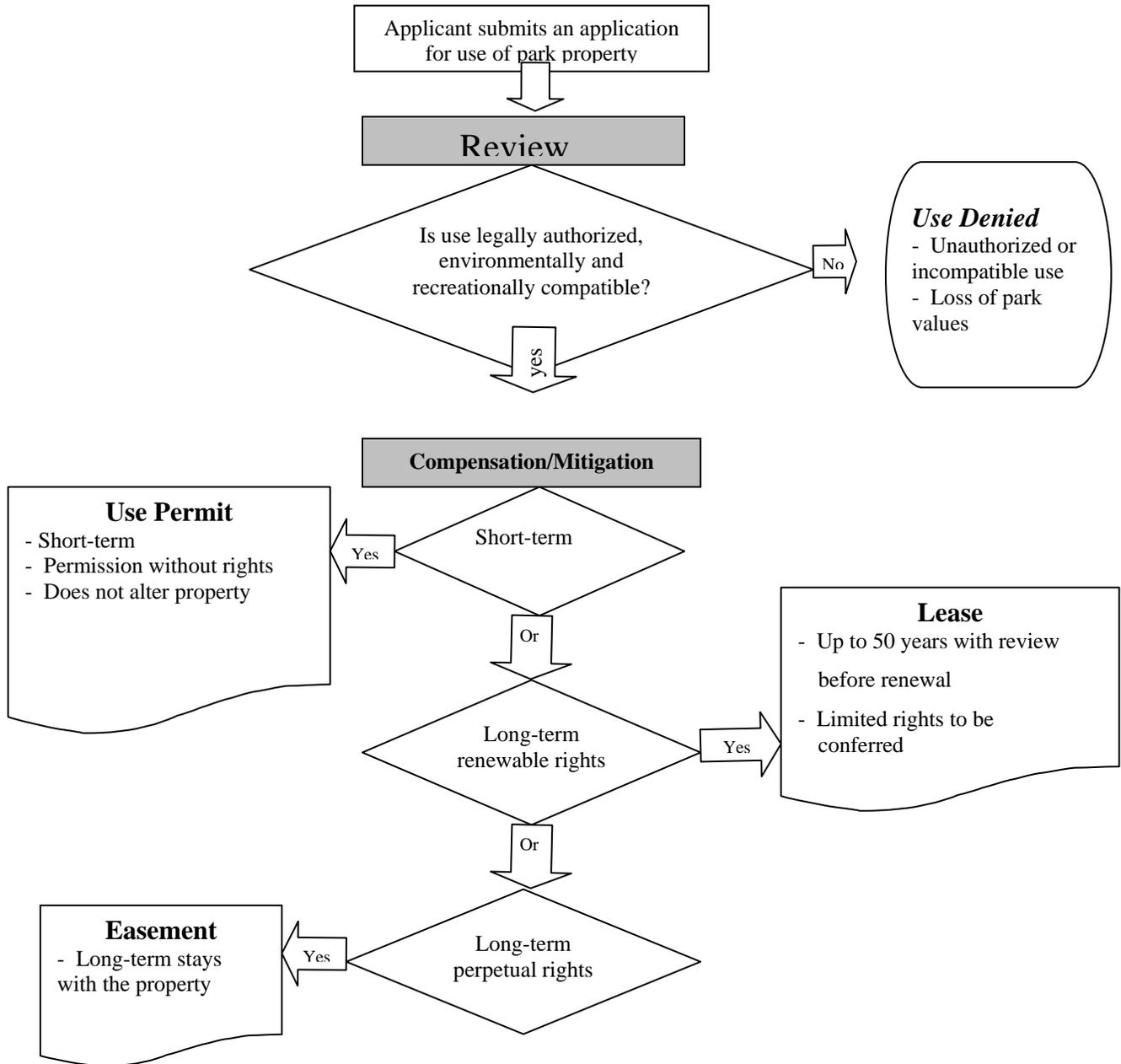
What specific factors does State Parks consider in reviewing RPA requests?

- Beneficiaries and nature of benefits, *e.g.*, to private landowners; corporate development
- The extent of impact to the park environment, *e.g.*, from grazing; major utility line burial
- The significance and immediacy of need, *e.g.*, for private title, bank loans
 - The loss or gain of public/park benefits and the present or future value of those benefits to the public/park
- The financial gain for the applicant to having the permission

- Whether the submitted application materials are complete and satisfactory

After staff review, successful applications are recommended to the Director, the Director's designee or the Commission for approval, pursuant to current policy. Approval will depend on the extent of the environmental and recreational impacts, the compatibility with existing park management plans, available alternatives, fees or rents returned, benefits to park property and other factors unique to each application. *See LANDS Manual, Volume Two: Lands Management Procedures, Section II.A. and II.B.*

RPA Application Process



Note: See sample lease, permit and easements at M:\Forms & Templates\AG Approved Documents.

III. A. LEASES

This section summarizes the general requirements and policies for granting leases for the use of State Parks' property. You can find specific procedures in the *LANDS Manual, Volume Two: Land Management Procedures*, Section II, Real Property Agreements. Sample forms are at M:\Forms & Templates.

What is a lease?

It's an agreement between the Commission and one or more parties that authorizes the temporary or perpetual use of parkland (property). A lease gives rise to the relationship of landlord and tenant.

What leases does State Parks issue?

We issue leases under two general categories: commercial (executed with parties that are for-profit, including communication sites, concessions, commercial business facilities and commercial housing) and non-commercial (executed with parties that are not-for-profit, including home site, life estates, aquatic lands and special use.)

Commercial Leases

- **What are the requirements for a commercial lease?**

The lessee is a for-profit business or an individual engaged in generating profits, but this condition is not sufficient in itself for a commercial lease to be granted by the Commission; the lease must also advance agency purposes. For example, a commercial hay-cutting lease may be issued in an area where it will support the agency's interests in planned management of vegetation. This additional value will be documented in the lease language.

Commercial leases typically are complex and require the exclusive use of the leased area. Generally, they contain language referencing payment schedules, insurance, liability and management of hazardous materials.

- **How are commercial leases managed, and rates determined?**

The Business Development & Service Center (BDSC) manages leases issued to for-profit parties, as well as concessions. The Parks Development Service Center (PDSC) manages leases issued for communication sites and master tenant agreements.

Policy and practice governing the leasing of parkland have evolved over time, from that of uncompensated cooperation with outside interests, to one of active revenue-generation, in order to fund services and outdoor recreation opportunities. The Commission's Centennial Vision 2013, in support of a more self-sufficient financial structure for the agency, places a greater emphasis on capturing market value for the use of park properties.

Lease rates cover a period of five years with an adjustment at the end of the term. As described in the lease agreement, rents and adjustments are either negotiated (by market

value, value in use and lessee gross income) or calculated using the relevant consumer- or producer-price index. Rent is typically due in advance of the anniversary date of the lease. Rent can be fixed annually or set as a percentage of lessee income.

Non-Commercial Leases

- **Home Site Leases**

There are two types of lease for a home and its immediate property. The first, characterized as State Parks ownership, is issued to a Parks employee, usually a ranger, for a residence. The second is a term lease issued to a private individual or family.

The BDSC manages home sites leased to Parks employees. Home sites leased to private-sector individuals or families are typically acquired as a condition of a property purchase. Occasionally, new leases are issued to these individuals, but only after confirming that no staff need could be filled by the residential home site. In these cases, PDSC staff negotiates the initial lease and all renewals; interim management is by BDSC.

Home site rents are negotiated, ranging from none to fair-market rent. Leases to private parties are charged area market rental rates. No rent is charged in cases where the underlying property is acquired as a donation, and where the home site is reserved by the donor as a condition of the donation. When no rent is charged, staff negotiates maintenance and administrative fees for the lease period.

- **Life Estate (Lease Interest)**

A life estate lease is an estate in real property for the life of a person reserving such a right. Upon the occupant's death, or if the occupant moves or releases that right, the lease is extinguished, and the property becomes State Parks'. In rare circumstances the estate may transfer to an heir/survivor.

The lease term in a life estate is indefinite. When a life estate lease expires, the residence and associated property will usually be managed as a home site lease. Staff responsibilities for negotiation and management are the same as for home site leases.

Life estate lease rents are negotiated, ranging from none to fair market value. Generally, no rent is charged where the underlying property is acquired as a donation, and in which the donor, as a condition, reserves a life estate and/or the residence. If no rent is charged, staff negotiates maintenance and administrative fees for the period of the lease, or conditions the life estate such that the lessee must maintain premises.

- **Special Use Lease**

This most commonly used lease can be issued for a wide range of permitted uses:

- Educational and environmental learning facilities
- Seasonal (longer than five-year terms)
- Recreational management agreements (issued to counties or other governmental entities)
- Non-profit organizations

- Research or scientific testing facilities

Special use leases allow State Parks' staff the flexibility to build a document specific to Parks' and the applicant's needs. If an applicant has requested a permitted use which poses low risk and provides park benefits through improved access, facilities, trail work, etc., the lease document can be modified to reflect those conditions.

Rental rates are market-driven. Staff will consider benefits to State Parks as a means to reduce lease costs when appropriate. Further, if the purpose of the special use lease is determined to be compatible with State Parks' uses, or if it allows for multiple uses, the lessee is eligible for reduced rental considerations.

- **Aquatic Lands Lease**

Aquatic land leases are normally issued over tidelands or bedlands by the DNR. However, they may be issued by State Parks where Parks holds a management interest. At present, only recreational use is authorized through the aquatic land lease. Leases issued for recreational purposes are generally issued as no-fee agreements.

Parks may transfer management responsibilities to another governmental entity by way of an aquatic lands lease. For example, the Commission may issue a lease to a county when the county owns tidelands adjacent to a county park, and the bordering tidelands are owned or managed by State Parks.

What is State Parks' authority to issue leases?

The Washington state legislature granted the Commission the authority to lease State Parks' land, and to lease other lands for State Parks' use.⁹ The legislature also granted the Commission the discretionary authority to delegate to the Director such powers and duties of the Commission, as they may deem proper.¹⁰ The Commission retains the authority for leasing lands perpetually and has delegated limited authority to the Director.

What statutes, rules and policies apply to lease agreements?

State Parks is directed by legislative statute to take care and charge of, control and supervise all parklands for park purposes.¹¹ To effectively manage the park system, the Commission is directed to grant concessions or leases, purchase, lease or otherwise acquire land, issue permits, rent undeveloped parks or parkway land, and grant franchises and easements for any legitimate purpose on parks or parkways.¹²

⁹RCW 79A.05.030: Powers and duties - Mandatory.

(5) Grant concessions or leases in state parks and parkways, upon such rentals, fees or percentage of income or profits and for such terms, in no event longer than fifty years, and upon such conditions as shall be approved by the Commission:...

(7) By majority vote of its authorized membership select and purchase or obtain options upon, lease or otherwise acquire for and in the name of the state such tracts of land,...

¹⁰RCW 79A.05.075: Delegation of commission's powers and duties to Director.

¹¹ RCW 79A.05.030: Powers and duties - Mandatory.

¹² Ibid. and RCW 79.A.05.070 - Further powers.

The Commission has adopted administrative rules governing leases including:

- WAC 352-24, Concessions and Leases.
- WAC 352-32, Public Use of State Park Areas.
- WAC 352-32-300 Easement, franchise, license and special use permit application and fees.

The Commission has adopted several policies related to leasing parklands and properties:

- Commission Policy 98-26-1 Concession Policy
- Commission Policy 55-06-4 Communication Facilities in State Parks
- Commission Policy 55-06-1 Real Estate Transactions and Non-recreational Uses of State Parklands
- Commission Policy 25-07-1 Delegations of Authority for Real Estate Transactions and Services

Why does State Parks issue leases?

We issue leases to provide controlled access to the natural resources, land features or facilities of a park in exchange for a fee, service or other benefit to the public. By definition, a lease provides a greater right or interest in a property or facility than does a permit. In general, staff considers leases only when the applicant can show a direct benefit to State Parks. We also offer leases when a permit cannot sufficiently manage the use, or if a permit cannot adequately protect State Parks' interests.

The four most common conditions under which State Parks issues leases:

1. The property had a lease agreement in place prior to its acquisition by State Parks.

Examples:

- The Columbia Plateau Trail acquired from Burlington Northern Railroad has prior lease arrangements for commercial buildings.
- A life estate lease interest was granted as a condition of acquisition.

2. The parkland has a unique commercial value.

Examples:

- The mountain top at Mount Spokane State Park is an important site for television transmission towers and communication systems, and the use of parklands for transmission facilities is specifically authorized by Commission Policy 55-06-4.
- The rock strata beneath Matilda Jackson, Lewis and Clark, and Jackson House State Parks in Lewis County provide for underground natural gas storage.

3. Facilities within the park have a commercial value.

Examples:

- The Long House at Blake Island State Park provides for visitor entertainment through a concession lease.
- The tunnel at Snoqualmie Pass offers commercial utility opportunities.

- 4. The land can be managed most efficiently through a lease for the harvest of a natural resource.**

Examples:

- The agricultural lease at Olmstead Place State Park provides benefits for weed and pest control and an interpretive program.
- The grazing lease at Ginkgo-Wanapum State Park enhances wildlife habitat on parkland.

How does someone obtain a lease?

A private party is interested in obtaining a right to access or to use a specific parcel or facility within a state park. The interested party must complete an application for use which, if approved, will be authorized through execution of a lease agreement. Parks may issue a lease for the use of parkland under a wide variety of terms, management conditions, requirements and exchange of payment or benefit. The lease is a legally binding document, approved as to form by the Office of the Attorney General.

How does State Parks evaluate a lease application?

A complete lease application, which includes application and processing fees, is reviewed and evaluated at several levels within the agency; it usually involves a site evaluation. If PDSC staff identifies no immediate issues or objections, the review process continues through the appropriate field offices. Staff applies current evaluation criteria to the reviewed lease request and forwards its recommendations to the Director or Director's designee.

A lease application is evaluated and processed by PDSC staff to ensure that:

- The historical records review of the site (*e.g.*, deeds, reservations) show no restrictions
- The lease area is within the legal boundaries of the park property, and that no trespass or encroachment exists
- The proposed use is compatible and aligned with the current Commission policies for park use
- Any environmental impacts to Parks' and adjacent properties, and any recreational-use impacts to the general public, do not significantly reduce park resources or recreational opportunities
- Any requests that have expected or potential impacts to adjacent parklands, public benefits or recreational opportunity are processed such that:
 - Requests with no negative impacts will be processed forward
 - Requests with negative impacts that can be readily mitigated will be conditioned in writing by Planning Program staff
 - Requests with negative impacts that cannot be adequately mitigated are noted; denial is recommended
- A lease is the appropriate land use agreement (*i.e.*, a use permit may be appropriate when short-term permission is needed; an easement may be appropriate when significant, long-term rights are needed)

- Appropriate lease rates apply: in cases where the lease proposal provides for additional or enhanced public benefit or opportunity, the use fee may be reduced or conditioned to the applicant's benefit
- Lease conditions, terms, rate and limitations will be finalized satisfactorily to both parties

How can a lease be modified?

Assignment and amendment are the two primary methods we use to authorize a material change to an executed lease document. On occasion, staff has used other real property management provisions to alter the language and arrangement of a lease (*i.e.*, cancellation, partial surrender, waiver of claim.) Assignments and amendments require that staff charge a processing fee. See Appendix Five, Fee Schedule.

Lease Assignment

A lease assignment authorizes an existing agreement to transfer from the leaseholder to a second party. Assignment requests are usually initiated by a company or individual who has sold or transferred interest in a business or partnership.

Requirements:

- The leaseholder must make an assignment request to State Parks in writing, explaining relevant facts driving the request, identifying the assignee, and detailing any new conditions under which the assignee may wish to operate the lease.
- The leaseholder must comply with the assignment provisions of the existing lease (*e.g.*, assignment processing fee. *If no amount is specified, see Appendix Five "Fee Schedule".*)
- State Parks must approve the assignment request in writing, usually by the assignment document supplied by the leaseholder or assignee.
- The existing lease must be brought up to current standards. (*e.g.*, if an insurance or hazardous waste clause has recently been adopted or modified by Parks and/or State Parks' Attorney General, use this window of opportunity to incorporate this or other updates to the agreement as a condition of the approval of the assignment request.)
- State Parks determines whether the leaseholder owes any rent, and whether to negotiate new rental rates as a condition of any assignment.
- State Parks may modify lease area boundaries or require a revised legal description and/or survey as a condition of any assignment.

Lease Amendment

We make amendments when a material change to an existing lease agreement will carry over the remainder of its term. (The notice letter is sufficient for temporary or minor requests, like changes to mailing address, billing or rent adjustments, etc.) Amendments are most often used to modify lease:

- term

- area, acreage or legal description
- permitted use

State Parks' Field and Planning staff will evaluate all amendment requests in the light of any expected impacts to adjacent parklands, public benefit or recreational opportunity.

Requests which negatively impact State Parks' values and which cannot be adequately mitigated will be denied. Requests with no negative impacts or impacts which can be readily mitigated will be conditioned and/or approved in writing, then processed through to execution by PDSC staff.

In cases where the amendment request provides for additional or enhanced public benefit or opportunity, the annual rent may be reduced or conditioned to the applicant's benefit. Any reduction in lease rent shall be proportional and directly related to the increase in public benefit or opportunity.

As with assignments, a request for lease amendment will be managed as an opportunity to update any contract language in the document. *See* Appendix Five, Fee Schedule, for costs associated with processing amendment requests.

See Commission Policy 25-07-1 "Delegations of Authority for Real Estate Transactions & Services" Section D for conditions under which the Director or designee may renew, replace, assign or amend existing agreements.

Lease Cancellation

Either party to an in-force lease can initiate its cancellation.

State Parks may initiate a lease cancellation as authorized through existing sections of the standard lease agreement. Typically, one of the following conditions is needed:

- A material breach of the lease has occurred (*e.g.*, non-payment of lease rent, failure to provide a surety, failure to provide insurance, etc.) Material breaches are described in the lease document. If any occur, State Parks' staff will notify the lessee -- detailing the breach(es); providing direction on how to cure the breach; and setting timelines for the cure period. In those cases where the lessee fails or is unable to cure the breach within the given time period, State Parks may cancel the lease or perform an involuntary lease assignment. Cancellations must always refer to language of the lease at issue; the language of the lease generally controls.
- The property under lease is designated by State Parks for a higher/better use (*e.g.*, State Parks' planned facility development is scheduled; or a State Park parcel is sold, transferred or exchanged to a second party.

The leaseholder may also cancel leases for a variety of reasons. To process a cancellation request, State Parks' staff shall determine whether the lease is considered in good standing:

- Require the request to be submitted in writing
- Evaluate all existing terms and conditions of the lease for completeness
- Detail in writing any conditions or breaches which require correction and/or payment prior to offering cancellation forms to the lessee
- Agree on the disposition of any authorized, lessee-owned improvements

Only then will staff forward standard cancellation forms for lessee review and execution.

Partial Surrender of Leasehold

State Parks' staff will follow similar review processes in consideration of requests for Partial Surrender of Leasehold. Partial surrenders are typically used when:

- A management activity divides a property, leaving a fragment that can no longer be used for the intended lease purpose
- The leaseholder desires to reduce the lease area to better meet management objectives, reduce annual rent, etc.
- Lowering the total amount of the lease area

Partial surrenders are not used to modify the permitted use clause of a lease.

Waiver of Claim for Reduced Value

We use the Waiver of Claim when State Parks needs to authorize a new request for non-recreational use or crossing of parklands already encumbered by lease or other agreements. Staff will use professional judgment to determine whether or not the two uses are compatible. If the two uses can mutually occupy the property, we will forward the waiver form to the current leaseholder for signature approval. If the leaseholder doesn't approve and return the waiver within a reasonable time period, staff may grant the proposed use.

III. B. EASEMENTS

This section summarizes the general rules and policies related to the granting of easement interests over State Parks' property. Refer also to *LANDS Manual, Volume Two: Land Management Procedures*, Section RPA. Sample forms are at M:\Forms & Templates.

What is an easement?

It's a legal instrument that grants a party a right to use land owned by a second party for specific purpose(s). Easements always imply an interest in the land over which they are granted, and imply a greater right of use than does a permit. Unlike leases, easements typically apply to the land, and not to a person or party. Usually the holder of an easement is granted the right to use the land in exchange for providing some compensation or benefit to the landowner. The property owner, subject to the limitations granted through the easement document, retains the right of possession.

What easements does State Parks issue?

Like leases, our easements are generally either commercial or non-commercial. We execute commercial easements with for-profit parties where the for-profit party needs access to parklands to provide services to non-Parks customers. Non-commercial easements routinely involve private property owners needing to cross State Parks' lands for personal use, including road or utility access.

In addition to those economic classifications, Parks also executes conservation easements. This type of easement is a relatively new opportunity for property owners to grant the Commission partial interest in their land, usually for a specific conservation purpose, and in exchange for certain tax benefits. *See* this volume, Section II, Property Acquisition, Sale and Exchange. State Parks may also issue easement exchanges.

Commercial Easements

- **What are the requirements?**

Most commercial easements have a major impact on State Parks' property and our ability to manage the surrounding, underlying or adjoining parklands, buildings and facilities. Examples of commercial easements include power lines placed on parklands by public utility districts; fiber-optics, oil and sewer lines placed underground by commercial interests; irrigation ditches dug across parklands by water districts; and sewer lines buried within parklands by local governments.

As a result of these impacts, commercial easements usually contain restrictive language on liability, insurance, hazardous materials and authorized improvements. Conditions of commercial easements generally include requirements to mitigate any impact and restore the land to a pre-development condition. Market rates are negotiated as a condition of granting any commercial easement request.

The PDSC staff manages all commercial easement requests; however, coordination among all affected programs is critical for an efficient, thorough and accurate review. A

commercial easement applicant is typically required to compensate State Parks for time and costs to process the request through to the Commission for approval.

- **How are the rates determined?**

We will review Commission policies and program requirements to determine that the physical impact of the easement is acceptable and appropriate for the park property. For those requests that meet Commission review criteria, we negotiate the fair market value of the easement area, based upon:

- Analysis of the applicant's compensation and mitigation proposal
- Analysis of area market trends and comparable market rates for the proposed use
- Evaluation of the costs for the applicant to locate the improvement at a non-park alternative site
- Assessment of ancillary impacts on the Commission's ability to achieve its mission, goals and objectives

As in considering other requests for non-agency parkland uses, staff may consider that full or partial compensation for the easement derives from values or benefits that the easement may bring to the park site. For example, a proposed road easement requiring new construction may provide a needed and planned emergency vehicle access road within an existing park. With this secondary benefit, the applicant is not charged severance rates for parklands, which will have become segregated by the road easement.

Certain easements (*e.g.*, utility) may be exempt from leasehold taxes. *See* RCW 82.29A and Chapter 458-29A WAC.

Non-Commercial Easements

The majority of non-commercial easements are granted to neighboring property owners, frequently in those cases when the applicant can exhibit an ownership interest for an extended term (over ten years). The most common easement request is for a residential road or utility access. Typically a lending agency/bank requires that, in order to obtain title insurance, a property owner must first prove that s/he possesses legal access or development rights.

Non-commercial easements include:

- Ingress and egress to a residential or other adjacent property
- Underground utilities to residential or other adjacent property

- Legal access or crossing easement over a rail-trail or other State Parks' property
- Water well restrictive covenant on State Parks' property

Staff determines which use document is appropriate. For example, when the request for use of parkland is short-term (under five years), a permit may be more appropriate than an easement, which is typically granted for longer periods. For applications that provide direct benefit to State Parks' property, or which are reciprocal easements, State Parks may grant a perpetual easement, which runs with the ownership of the property. Granting a perpetual easement requires Commission approval.

Conservation Easement

These grant a partial interest in land for conservation purposes. Just like any easement, a conservation easement can be perpetual, or for a specific term. The critical modifier is "conservation."

Contact the Lands Program staff of the PDSC regarding conservation easements, or *see* this volume, Section II, Property Acquisition, Sale and Exchange for further details.

Easement Exchange

An Easement Exchange can benefit both parties to the transaction. The classic example: an existing or proposed road services and provides access to two or more landowners; this single document details the segments of road over which each party grants or "exchanges" an easement interest. Where the road segments aren't equal (party A grants a use over four miles of road, while party B grants a use over only two miles), other benefits may be contributed. The Easement Exchange for Road Access also details how each party contributes to the road's maintenance.

State Parks' staff will review for exchange opportunities when evaluating second-party easement requests.

What policies authorize State Parks to issue or accept easements to serve Parks' purposes?

Through Policy 25-07-1, the Commission delegated to the Director or designee certain authority for issuing or accepting easements necessary for State Parks' purposes on park property, or across others' property.

Generally, the Commission is opposed to providing any easement that does not provide a direct benefit to the park site. However, the Commission recognizes that, as the owner of valuable property, it bears responsibility for being a good neighbor. To protect agency interests while serving the public good, the Commission has specified several conditions that must be met prior to granting any easement.

See Appendix One, Commission Policy 55-06-1, for those general conditions and criteria; also for details to guide State Parks' staff and the public in determining the appropriateness of granting an easement over parklands.

What statutes and rules apply to easement agreements?

Under the statutory powers granted in RCW 79A.05.070(5), the Commission may grant easements for any legitimate purpose over parklands for such terms and subject to such conditions and considerations as the Commission shall specify. Additional statutory powers and duties are granted for general application on parklands as well as specific to certain properties. These easement authorities and limitations are specified in Chapter 79A.05 RCW under the following sections:

- RCW 79A.05.035 Additional Powers and Duties
- RCW 79A.05.070 Further Powers – Director of Parks and Recreation - Salaries
- RCW 79A.05.325 Milwaukee Road Corridor - Additional Duties
- RCW 79A.05.630 Sale, lease and disposal of lands within the Seashore Cons. Area
- RCW 79A.05.655 Areas Reserved for Pedestrian Use - Exception
- RCW 79A.05.710 Acquisition of Real Property, Easements or Rights Authorized

The Commission has adopted administrative rules governing easements including:

- WAC 352-28-010 Cutting and Removal Criteria (Natural Resource Removals/Harvesting).
- WAC 352-28-020 Timber Sales.
- WAC 352-32-300 Easement, Franchise, License and Special Use Permit Applications/Fees.

Why does State Parks issue easements?

We issue easements to grant parkland use rights that cannot effectively be managed through permit. (*e.g.*, ingress and egress over parklands; placement of utilities on, over or under parklands.) Easements can be as simple as a thirty-year crossing for a driveway access, or as complex as a perpetual easement for eight miles of commercial fiber-optic cable along a trail system.

An easement implies a greater right of use of parkland than a permit does. Because of the higher degree of rights granted through an easement, the Commission has adopted various policy statements to specify the Commission's intentions to control the granting of easements. In addition to general policy principles, the Commission specifies those principles pertaining to facilities:

“The Commission is firmly opposed to the placement on parklands of any facility, utility line, improvement or commercial facility that will have a significant adverse effect on the public recreation or natural environment. Protection of

park values and the provision of public recreation needs are paramount to any other use... ”¹³

How does someone obtain an easement?

A private party requests a long-term or permanent right of access or use of a specific area within parkland. The interested party must submit the Application for Real Property Agreement (RPA) to State Parks’ staff for consideration.

Considerations for approval of the RPA include:

- Review of prior requests on this property, and of this type statewide
- Completed easement application
- Receipt of payment in advance of a non-refundable application fee
- Determination of the term (length of time) of the easement

In compliance with Commission policy, State Parks’ staff will also evaluate an easement application prior to recommending an easement to the Commission, to ensure that the following criteria are met:

- The proposed easement route will not negatively impact parklands
- The requested easement area, road or utility route cannot be physically located in any alternative site¹⁴
- All physical, financial, legal or potential damages to natural systems are identified and evaluated by State Parks’ staff
- Adequate public notice has been provided to address the impact of the proposed easement
- The proposed project will provide significant benefits to State Park

If the application is in full compliance with Commission policy, applicant will be granted the appropriate real property rights through an easement agreement.

How can an easement be modified?

Easements granted by State Parks are always non-divisible and non-exclusive. Although it rarely happens, easements may be modified through assignment and amendment, in the same way that leases are. *See* this volume, Section III A., lease assignment and amendment, for these general provisions. Upon its expiration, an easement may be renewed, although it would more likely be replaced at that time by the then-current AAG-approved form.

¹³ Commission Policy 55-06-1 Real Estate Transactions and Non-recreational Uses of Parklands.

¹⁴ Staff will use professional judgement as to “reasonableness” of secondary easement sites. Evaluation criteria may include expected cost to the applicant when those costs are greater than 200 percent, as compared against the route utilizing state land.