

Diana Dupuis
Director



STATE OF WASHINGTON

WASHINGTON STATE PARKS AND RECREATION COMMISSION

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July 18, 2024

Item E-10: Palouse to Cascades State Park Trail – Ellensburg – Easement for Public Road and Utility Crossings – Requested Action

EXECUTIVE SUMMARY: This item reports to the Washington State Parks and Recreation Commission about the progress made with MLC Laird Holdings II LLC for a public road crossing and utility crossing on the Palouse to Cascades State Park Trail for the Foster Development, located in Kittitas County (Appendix 1: Palouse to Cascades State Park Trail Vicinity Map, Appendix 2: Palouse to Cascades State Park Trail Project Area). This item advances the Commission’s strategic goal: “Develop new parks and amenities and improve trails and park services that meet the needs of growing and increasingly diverse population; Increase outreach to trail users, improve trail conditions, build relationships with trail neighbors and engage partners to improve mobility and connections between communities.”

SIGNIFICANT BACKGROUND: The Palouse to Cascades State Park Trail (Trail) offers hikers, cyclists, and equestrians a chance to experience Washington State’s diverse landscapes, from the lush Cascade Mountains to the vast scrublands of eastern Washington. The 287-mile trail allows the discovery of various ecosystems, flora, and wildlife along its length.

The urban areas in Ellensburg are expanding, indicating a steady increase in development and population growth. The increase in population is due to factors like migration, job opportunities, and educational institutions. This plays a significant role in driving urban growth in Ellensburg.

The City of Ellensburg (City) adopted a Comprehensive Plan (Plan) in October 2008; this represents a long-term vision for the development and expansion of the community over a period of twenty (20) years. The Plan outlines the distribution, nature, and level of land utilization across the City, as well as the nature and capacity of public amenities and services such as roads and infrastructure. It acts as the foundation of the City’s implementation of rules governing development, including zoning directives and criteria for land division. The Plan recommends a future road crossing of the Trail in Ellensburg at Helena Avenue.

One of the newest companies to conduct business in Ellensburg is MLC Laird Holdings II LLC (MLC), working with the legal landowner St James Group LLC. MLC has a background specializing in land acquisition and market development in diverse locations like Arizona, California, Washington, Nevada, Texas, North Carolina, South Carolina, and Tennessee. Over the last two decades, MLC has aimed to foster collaborative relationships with stakeholders to ensure that their developments benefit the local community. Their main emphasis lies in residential developments like single family detached homes, build-for-rent units, and multifamily properties (Appendix 3: Palouse to Cascades State Park Trail MLC Laird Bio Sheet).

In 2023, MLC applied to Washington State Parks and Recreation Commission (Parks) for an easement for two road crossings over the Palouse to Cascades State Park Trail for the Foster North Development (Development). The Development property was annexed into the City and is included in the City's Comprehensive Plan consistent with the Plan's zoning. The proposed project originally consisted of a 296-lot single family residential development in Ellensburg, WA, which is bisected by the Palouse to Cascades State Park Trail.

Over the past year working collaboratively, MLC, the City, and Parks determined that only one public road crossing at a proposed new road named Buckaroo Drive will be necessary, along with one utility crossing at Helena Avenue (Helena) (Appendix 4: Palouse to Cascades State Parks Trail Helena Avenue Utility Crossing Map), and the overall number of parcels was reduced from 296 to 265. To ensure the safety of trail users, the crossing will be signed and painted as a crosswalk and will include flashing beacons to alert drivers. The Development will include a traffic circle leading to Buckaroo Drive. Underground utility crossings are proposed at Buckaroo Drive and Helena Avenue. The proposed utility crossings would be bored through the trail prism in order to limit settling and damage to the trail surfacing.

Additionally, MLC accommodated Parks' request for a new trailhead. The development of the Helena Crossing Trailhead will be located in a separate tract just off Helena Avenue and will be dedicated to Parks (Appendix 5: Palouse to Cascades State Park Trail Helena Avenue Trailhead Map). The overall square footage of the trailhead tract is 28,177.2 square feet, or .65 acre. It will provide a bike rack, ten (10) parking spaces, and the possibility of a fitted gate to close off the lot during Trail closed hours. The tract would have sufficient separation for underground utilities and enough ground space for amenities such as a picnic table.

Staff believes that these changes mitigate the safety concerns of allowing additional vehicles to cross the trail while also providing additional access for trail users.

NEXT STEPS

Staff do not have delegated authority from the Commission to grant permanent property rights that could adversely affect natural, cultural, or historic park resources, so the decision to grant an easement lies with the Commission (Appendix 6: Palouse to Cascades State Park Trail Legal Authority).

In order to allow a road crossing of the Trail, a perpetual easement is needed for both the road crossing and utility crossings to satisfy long term use and maintenance (Appendix 7: Palouse to Cascades State Park Trail Draft Easement Agreement).

A State Environmental Policy Act (SEPA) determination has been completed for this project, as has a cultural resources survey of the project area. Staff is initiating tribal consultation on this proposal and anticipates bringing this item for Commission consideration at the August 21, 2024, or October 10, 2024, meeting.

SUPPORTING INFORMATION

Appendix 1: Palouse to Cascades State Park Trail Vicinity Map

- Appendix 2: Palouse to Cascades State Park Trail Project Area
- Appendix 3: Palouse to Cascades State Park Trail MLC Laird Bio Sheet
- Appendix 4: Palouse to Cascades State Park Trail Helena Avenue Utility Crossing Map
- Appendix 5: Palouse to Cascades State Park Trail Helena Avenue Trailhead Map
- Appendix 6: Palouse to Cascades State Park Trail Legal Authority
- Appendix 7: Palouse to Cascades State Park Trail Draft Easement Agreement

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Reviewers:

Kira Swanson, SEPA: On March 28, 2024, the City of Ellensburg's Community Development Department issued a State Environmental Policy Act (SEPA) Mitigated Determination of Significance (MDNS) for the proposed Foster North Subdivision. No further action or documentation is required according to the State Environmental Policy Act.

Van Church, Fiscal Impact Statement: Report only, no fiscal impact.

Andy Woo, Assistant Attorney General: June 13, 2024

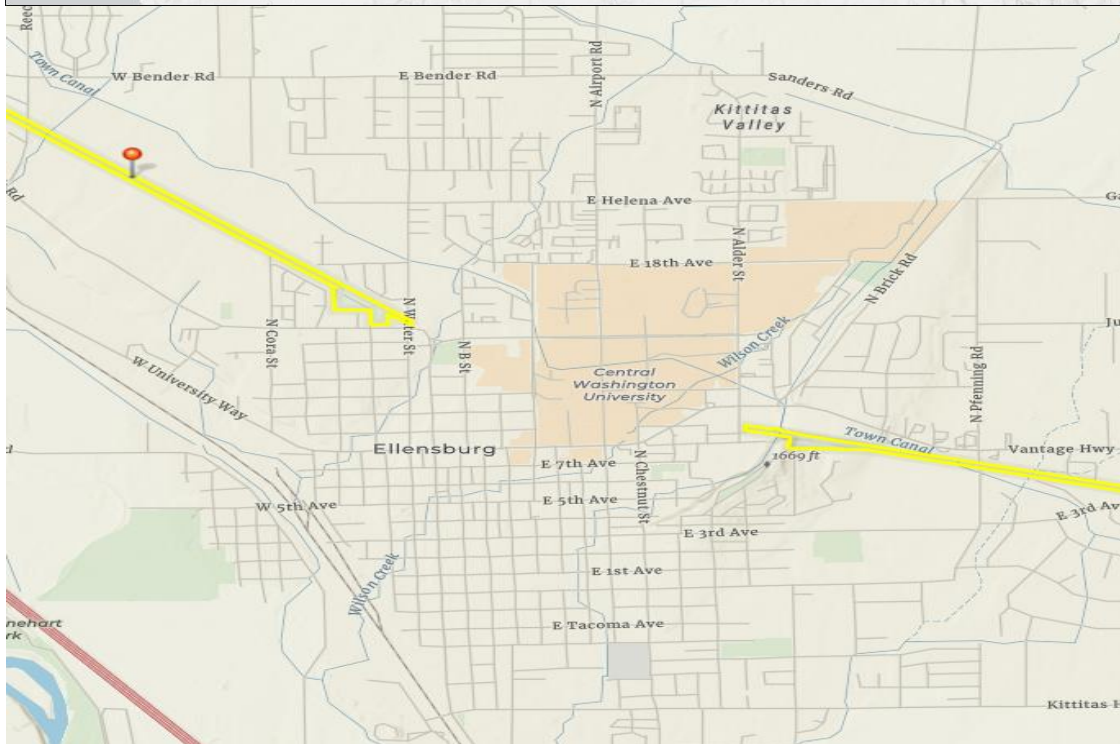
Heather Saunders, Parks Development Director

Approved for transmittal to Commission by:

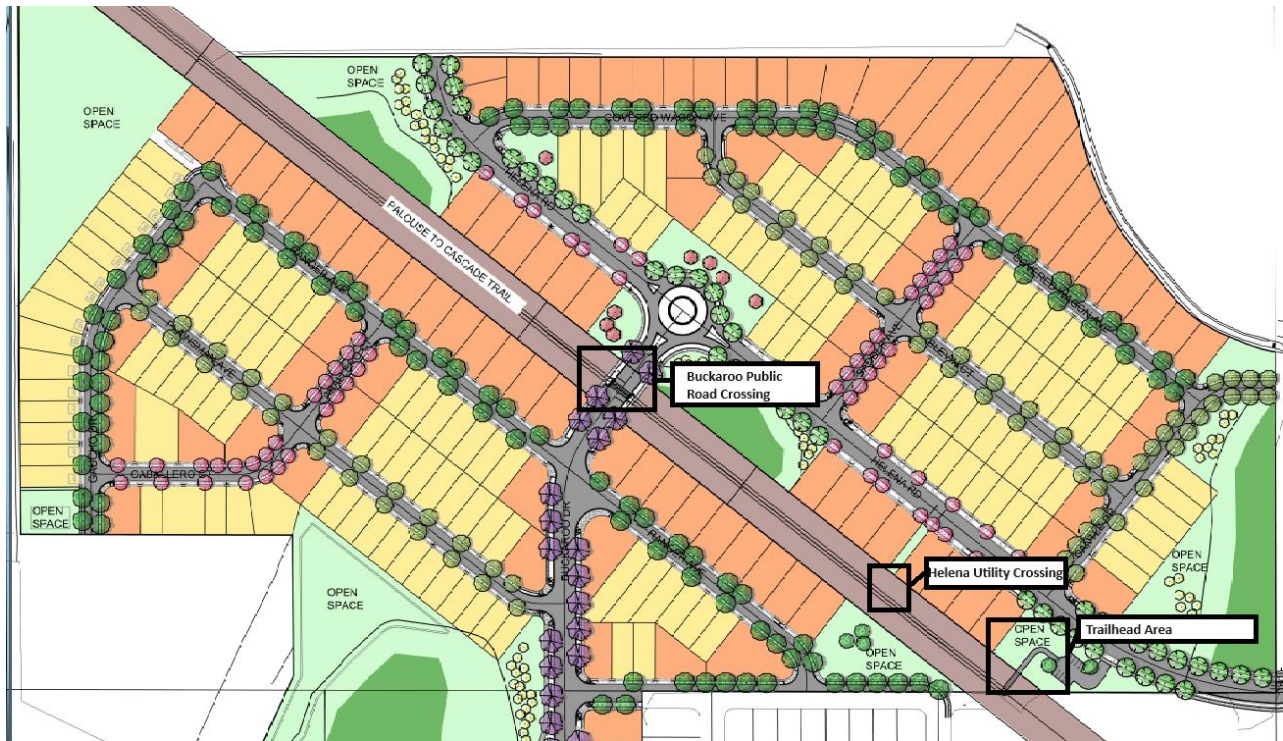


Diana Dupuis, Director

APPENDIX 1 PALOUSE TO CASCADES STATE PARK TRAIL VICINITY MAP



APPENDIX 2 PALOUSE TO CASCADES STATE PARK TRAIL PROJECT AREA



APPENDIX 3
PALOUSE TO CASCADES STATE PARK TRAIL
MLC LAIRD BIO SHEET



Overview

MLC Laird specializes in land acquisition and development primarily in California and Washington state. The company takes a strategic approach to investments that includes extensive data analysis of market metrics. Our primary objective is to foster collaborative relationships in the communities that we invest with a focus on creating long term value for landowners, future homeowners and the communities we serve. In addition, we look to navigate the complex entitlement process effectively by tapping into established relationships with a network of industry experts.

Kelly Foster

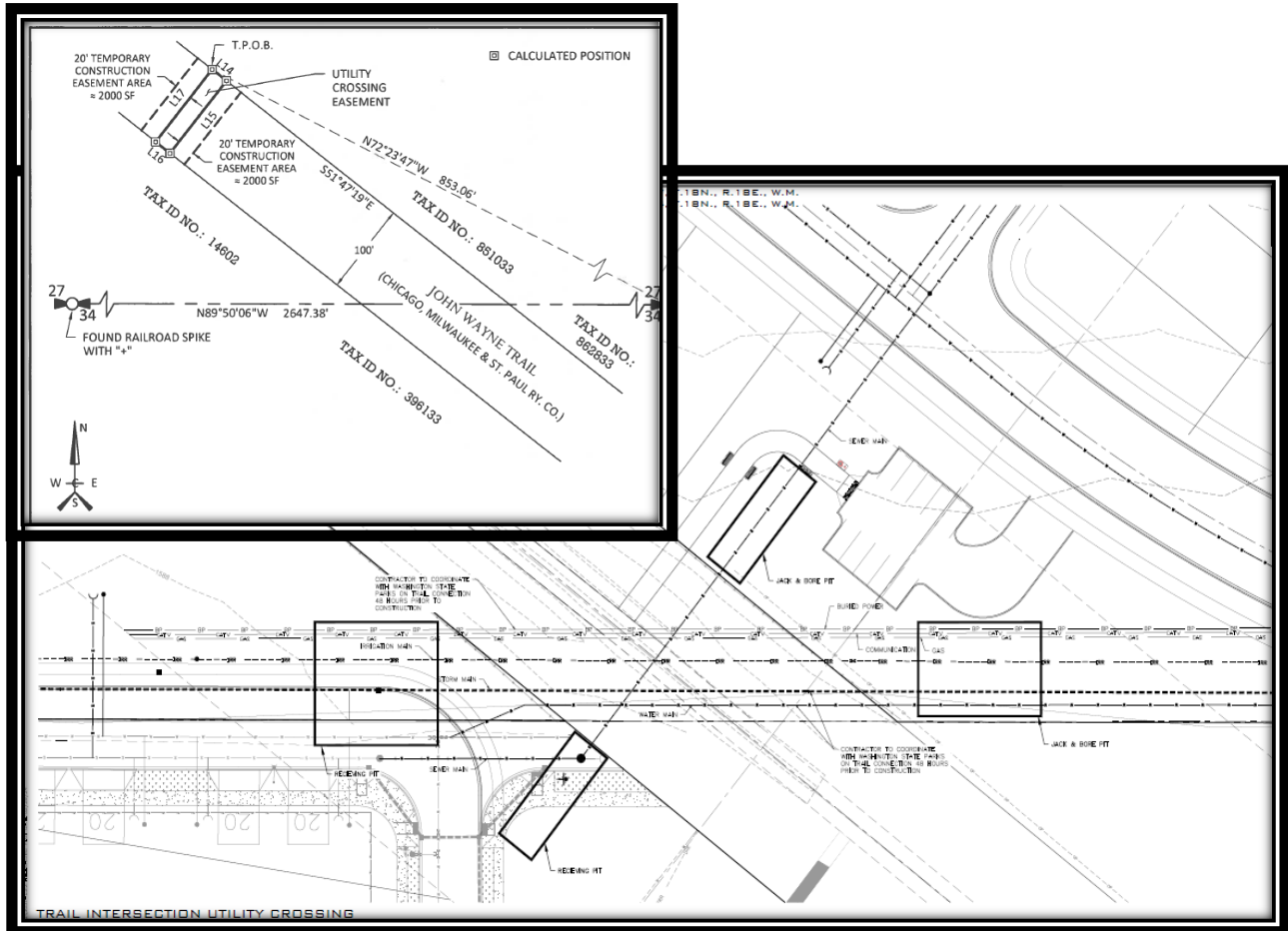
Kelly Foster is a native of Washington State growing up in Marysville, WA where his family operated a small family business. Kelly currently resides in Bellevue, WA with his wife and 4 children. He has over 20 years of experience of residential and commercial development experience in the Puget Sound market most recently as the Managing Member of Laird Holdings, a land development and brokerage firm. Prior to that, Kelly spent 6 years starting the Seattle office of UCP, Inc. a residential developer (NYSE: UCP) and ultimately becoming the President of UCP's homebuilding division in the Puget Sound market. Prior to UCP, Kelly was a principal at Foster Penner, a developer and builder focused on the Seattle infill market, and he held project management positions at Howland Homes and Polygon.

Shawn Milligan

Shawn Milligan is a 4th generation Californian and a 2nd generation residential real estate developer. He currently resides in San Jose, CA with his wife and four children. Shawn has a proven executive management track record and over 20 years of experience in the real estate and technology industries. Prior to MLC Laird, he was a partner at KT Urban responsible for acquisitions, product development, and land sales. Prior to joining KT Urban, Shawn was Senior Vice President of UCP, Inc., a residential developer (NYSE: UCP), and was a member of the senior executive team that took the Company public in July 2013. Previously, he served as Vice President with KT Properties and Land Acquisitions Manager with Duc Housing Partners. He started his career in public accounting with a focus on early-stage technology companies and the venture capital industry. He graduated cum laude and earned a BS degree in accounting at Santa Clara University. He is a former Certified Public Accountant.

APPENDIX 4
PALOUSE TO CASCADES STATE PARK TRAIL

HELENA AVENUE UTILITY CROSSING MAP



**APPENDIX 5
PALOUSE TO CASCADES STATE PARK TRAIL
HELENA AVENUE TRAILHEAD MAP**



APPENDIX 6
PALOUSE TO CASCADES STATE PARK TRAIL
LEGAL AUTHORITY

RCW 79A.05.070

Further powers – Director of parks and recreation – Salaries.

The commission may:

- (1) Make rules and regulations for the proper administration of its duties;
- (2) Accept any grants of funds made with or without a matching requirement by the United States, or any agency thereof, for purposes in keeping with the purposes of this chapter; accept gifts, bequests, devises and endowments for purposes in keeping with such purposes; enter into cooperative agreements with and provide for private nonprofit groups to use state park property and facilities to raise money to contribute gifts, grants, and support to the commission for the purposes of this chapter. The commission may assist the nonprofit group in a cooperative effort by providing necessary agency personnel and services, if available. However, none of the moneys raised may inure to the benefit of the nonprofit group, except in furtherance of its purposes to benefit the commission as provided in this chapter. The agency and the private nonprofit group must agree on the nature of any project to be supported by such gift or grant prior to the use of any agency property or facilities for raising money. Any such gifts may be in the form of recreational facilities developed or built in part or in whole for public use on agency property, provided that the facility is consistent with the purposes of the agency;
- (3) Require certification by the commission of all parks and recreation workers employed in state aided or state-controlled programs;
- (4) Act jointly, when advisable, with the United States, any other state agencies, institutions, departments, boards, or commissions in order to carry out the objectives and responsibilities of this chapter;
- (5) 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;
- (6) Charge fees for services, utilities, and use of facilities as the commission shall deem proper. The commission may utilize unstaffed collection stations to collect any fees or distribute any permits necessary for access to state parks, including discover passes and day-use permits as those terms are defined in [RCW 79A.80.010](#);
- (7) Enter into agreements whereby individuals or companies may rent undeveloped parks or parkway land for grazing, agricultural, or mineral development purposes upon such terms and conditions as the commission shall deem proper, for a term not to exceed forty years;
- (8) Determine the qualifications of and employ a director of parks and recreation who must receive a salary as fixed by the governor in accordance with the provisions of [RCW 43.03.040](#) and determine the qualifications and salary of and employ such other persons as may be needed to carry out the provisions hereof; and
- (9) Utilize such other powers as in the judgment of a majority of its members are deemed necessary to effectuate the purposes of this chapter. However, the commission does not have power to supervise directly any local park or recreation district, and no funds shall be made available for such purpose.

APPENDIX 7
PALOUSE TO CASCADES STATE PARK TRAIL
DRAFT EASEMENT AGREEMENT



STATE OF WASHINGTON
PARKS AND RECREATION COMMISSION
Diana Dupuis, Director

Palouse to Cascade State Park Trail
St James Group LLC & MLC Laird Holdings II LLC
Easement Agreement # E988501MLC1

This Easement Agreement (“Agreement”) is made between the State of Washington, acting through the **WASHINGTON STATE PARKS AND RECREATION COMMISSION**, as Grantor (“State”) AND **St James Group LLC and MLC Laird Holdings II LLC** located in Kittitas County, Washington, (“Grantee”). The date of this Agreement is the date of last signature below (“Effective Date”).

AUTHORITY

State is acting under those authorities granted to State by RCW 79A.05.070, and Washington State Parks and Recreation Commission action of March 22, 2018, Policy 55-06-1; Less Than Fee Simple Real Estate Transactions and November 21, 2019, Policy 25-07-1; Delegations of Authority for Real Estate Transactions and Services.

Agreement is granted under authority of RCW 79A.05.070(5) and Washington State Parks and Recreation Commission action of March 22, 2018, Policy 55-06-1; Less Than Fee Simple Real Estate Transactions and November 21, 2019, Policy 25-07-1; Delegations of Authority for Real Estate Transactions and Services. It is granted subject to and conditioned upon the following terms and conditions, which Grantee hereby promises to observe and perform faithfully and fully.

SEPA

On March 28, 2024, the City of Ellensburg’s Community Development Department issued a State Environmental Policy Act (SEPA) Mitigated Determination of Significance (MDNS) for the proposed Foster North Subdivision. No further action or documentation is required according to the State Environmental Policy Act.

EXHIBIT LIST

Exhibit A – Legal Description of Easement for Public Road Crossing
Exhibit B – Map of Easement Area for Public Road Crossing
Exhibit C – Legal Description of Utility Crossing
Exhibit D – Map of Easement Area for Utility Crossing
Exhibit E – Inadvertent Discovery Plan
Exhibit F – Additional Provisions
Exhibit TBD – Access Route

1.0 EASEMENT

The parties agree as follows:

- 1.1 Grant. State hereby grants to Grantee two (2) non-exclusive, non-divisible easements over a parcel of land in Kittitas County legally described in Exhibit A – Legal Description of Easement for Public Road Crossing and Exhibit C – Legal Description of Utility Crossing, located approximately as shown on Exhibit B – Map of the Easement Area for Public Road Crossing and Exhibit D – Map of Easement Area for Utility Crossing (“Easement Area”), for the use(s) set forth in Section 2.1 Permitted Use and Exhibit F – Additional Provisions, and only such use(s). State hereby grants to Grantee a non-exclusive, non-divisible temporary construction easement legally described as set forth in Exhibits A and C, Legal Description as is reasonably necessary for construction within the Easement Area (“Temporary Easement Area”).
- 1.2 Access Route. Agreement granted by State to Grantee includes a route by which Grantee may access the Easement Area for purposes consistent with the Permitted Use (“Access Route”). Use of the Access Route is not exclusive to Grantee. The Access Route is legally described in Exhibit TBD and located approximately as shown on Exhibit TBD. State will at all times have the right to use Access Route, or any part thereof, provided, however, that if State’s use of the Access Route interferes with Grantee’s use, State shall provide an alternate access route to Grantee.
- 1.3 Term. Agreement commences on the Effective Date and is perpetual unless terminated as set forth in this Agreement, except the Temporary Easement Area, which terminates upon completion of construction and restoration by Grantee as specified in Section 4.3 Timing and Duration.
- 1.4 Consideration
 - (a) Consideration. Grantee shall pay to State the sum of \$ TBD as consideration for this Agreement; this sum represents the fair market value of the Agreement as of the Effective Date.
 - (b) Annual Installments. Said sum must be paid in equal annual installments of TBD. The first installment must be made on the Effective Date. Grantee shall

pay in advance and without demand subsequent annual installments on or before each anniversary of the Effective Date (“Anniversary Date”).

- (c) **Late Charge for Failure to Pay.** Pursuant to RCW 43.17.240, failure to pay any installment or interest payment required in this Agreement will result in a late charge equal to one percent (1%) per month or fraction thereof that the payment is late.

1.5 **Appurtenant Easement.** This Agreement is appurtenant to real property in Kittitas County, Washington, located approximately as shown in Exhibit ___ and legally described in Exhibit ___, attached hereto, and known as the Foster Development, a residential development (“Benefited Parcel”). The rights attached to the Benefited Parcel are indivisible.

1.6 **Title/Disclaimer.** The rights granted in this Agreement are subject to permits, leases, licenses, and easements, if any, previously granted by State affecting the property subject to this Agreement. Further, State does not warrant or imply that the Easement Area is suitable for Grantee’s intended use.

2.0 USE AND MAINTENANCE OF EASEMENT AREA PROHIBITED ACTIVITIES

2.1 **Permitted Use.** Agreement is for the purpose of a temporary construction easement and easement for **one (1) public road crossing ingress/egress for the Foster Residential Development at the to be built road known as “Buckaroo Drive” and one (1) utility crossing for underground utilities at Helena Avenue** and is limited to constructing, installing, operating, maintaining, repairing, replacing, and using Easement Area as defined and provided herein, (“Facilities”) subject to Grantee obtaining and at all times possessing all applicable federal, state, and local permits. Any changes outside of the permitted use will require a written amendment.

- (a) **Constructing.** The act to build, erect, or devise using specified materials as per an approved plan by the State. Grantee must notify the State Parks Area Manager provided in Section 7.9 of this Agreement prior to any construction.
- (b) **Installing.** The installation of particular or specified items for the purposes of construction as outlined in this Agreement and an approved plan reviewed by the State.
- (c) **Operating.** The grantee is allowed to operate or perform as necessary in the normal day-to-day capacity within the terms outlined and granted in the Agreement.
- (d) **Maintaining.** Maintenance should be completed on a schedule and written notification should be transmitted to the State Park Area Manager two (2) weeks prior to conducting maintenance.
- (e) **Repairing.** Grantee is allowed to mend, patch, or rebuild any damaged or defective components used to construct in the original granted purposes

outlined in this Agreement. Prior to making any repairs, plans of the proposed repairs shall be transmitted to the State Park Region Manager prior to any repair may take place.

- (f) Replacing. Grantee may replace or substitute one item for another item, “like for like.” If this item is outside of the permitted use, it will require a written amendment to the Agreement prior to any replacement. Any proposed amendment must be submitted to the State Park Region Manager and the Real Estate Department as provided in Section 7.9 for State’s review and consideration.
- (g) Using. The permitted use and area of use as outlined in this Easement Agreement.

2.2 Grantee’s Use and Activities. Grantee shall exercise its rights under this Agreement so as to minimize, and avoid if reasonably possible, interference with State’s use of the Easement Area and adjoining park property for park purposes. Grantee shall at all times conduct its activities on the Easement Area so as not to interfere with, obstruct, or endanger the public or State’s operations or Facilities.

2.3 Unauthorized Improvements. Any improvements not included in the original permitted use of the Easement Area, or as otherwise approved in advance in writing by State, are prohibited and may be cause for termination of this Agreement. Improvements placed within the Easement Area without State’s prior written consent immediately become the property of State or, at State’s option, must be removed by Grantee at Grantee’s sole cost.

2.4 Monitoring. Grantee shall test and monitor the Facilities as required by the appropriate regulatory authority or by State. Grantee shall provide test results to State at State’s request. State reserves the right to perform testing at any time on any portion of the Facilities.

2.5 Waste; Appearance and Condition of the Easement Area. Grantee shall not deposit refuse, garbage, or other waste matter in or on the Easement Area. Grantee shall keep the Easement Area in a neat, clean, sanitary, and safe condition, and shall keep the Easement Area, the Facilities, and all items installed by Grantee in or on the Easement Area or Facilities in good condition, except only for reasonable wear and tear. Grantee shall store all trash, refuse, and waste material on the Easement Area so as not to constitute a nuisance, in adequately covered containers that are not visible to the public.

2.6 Hazardous Substances. Grantee shall not, without State’s prior written consent, use, store, generate, process, transport, handle, treat, release, or dispose of any hazardous substance or other pollutant in or on the Easement Area. The term “hazardous substance” means any substance or material as those terms are now or are hereafter defined or regulated under any federal, state, or local law including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et. seq.), or the Washington Model Toxic Control Act (MTCA, RCW 70.105D). Grantee shall immediately notify

State if Grantee becomes aware of any release or threatened release of a hazardous substance or other pollutant on the Easement Area or adjoining property. If a release of any hazardous substance or other pollutant occurs in, on, under, adjacent to, or above the Easement Area or adjacent property arising out of any action of Grantee, its contractors, subcontractors, invitees, agents, employees, licensees, or permittees, Grantee shall, at Grantee's sole expense, promptly take all actions necessary or advisable to clean up, contain, and remove the hazardous substance or other pollutant in accordance with applicable laws. Any cleanup must be performed in a manner approved in advance in writing by State, except in emergency situations Grantee may take reasonable and appropriate actions without advance approval.

- 2.7 Wetlands. Grantee shall not cause damage to or conduct any filling of any wetlands without the proper written authorization from the appropriate government agency and without receiving prior written approval from State.
- 2.8 Timber and Vegetation Removal. Except as required by Section 2.9, Weed Control, no timber or other vegetation may be cut or removed without the prior written consent of and compensation to State according to the policies of the Washington State Parks and Recreation Commission. If Grantee cuts or removes timber or vegetation, all subsequent growth belongs to State. Grantee shall not eradicate by broadcast brush spraying, or other methods of removal, any timber or vegetation on the Easement Area. Grantee shall take all reasonable precautions to protect timber and vegetation. Any damage to timber or vegetation not previously authorized by State must be paid for by Grantee at triple the appraised value as determined by State. In the event Grantee injures or damages timber or vegetation while responding to an emergency such as a fire, flood, or Facilities failure, or necessary repair to the Facilities, Grantee shall immediately thereafter restore the ground to its prior condition and replace any such timber or vegetation to State's reasonable satisfaction.
- 2.9 Weed Control. Grantee shall, at its own cost, control all noxious weeds on the Easement Area. Such weed control must comply with county noxious weed control board rules established under RCW chapter 17.10. Grantee shall be responsible, and shall immediately reimburse State, for any weed control cost incurred as a result of Grantee's failure to control weeds on the Easement Area. All methods of weed control must be approved in writing by State prior to beginning weed control activities. Aerial spraying is not permitted.
- 2.10 Damage. Grantee, when exercising the rights granted by this Agreement, shall repair or cause to be repaired, at its sole cost, all damage to improvements on State lands occasioned by Grantee that is in excess of that which it would cause through normal and prudent exercise of such rights.
- 2.11 Response to an Emergency. For the purposes of this Agreement, "Emergency" is defined as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, natural resources, or essential public services. Nothing in this Agreement prevents Grantee from responding to a bona fide Emergency

relating to its Easement Area, provided Grantee immediately provides notice to State of its emergency response through the emergency notification process provide herein (“Emergency Notification”). Any emergency work outside of the Easement Area will require prior approval from the Area Manager through Emergency Notification. The Emergency Notification process is as follows: As early as practicable, Grantee shall notify the State Park Area Manager, as provided in Section 7.9, by phone or text message if not reachable via phone, with nature of emergency, and followed by written notification to the Real Estate Department by electronic mail at LandAgreements@parks.wa.gov.

- 2.12 Use of Roads. The speed limit within the park is 10 m.p.h. Pedestrians have right of way over vehicles at all times.
- 2.13 Road Maintenance and Repair. Any road used by grantee under this Agreement must be maintained to a standard equal to or better than the condition of that road on the Effective Date. At a minimum, the road will be maintained to meet forest practice standards set forth in WAC 222-24-050 as now written or hereafter amended. The cost of road maintenance will be allocated on the basis of the parties’, and others’, proportional uses of the road. Where either party uses a road, or portion of a road, that party must perform, or pay the costs of, that share of maintenance occasioned by its use. State reserves the right to control priority of road use and maintenance by it and others.
- Grantee shall, at its sole expense, repair damage to any road used under this Agreement that is in excess of that which results through normal and prudent use of the road. If damage is caused by an unauthorized user, then the cost of repair will be treated as ordinary maintenance and handled as set forth above.
- 2.14 Tree Removal. No trees are to be cut or removed from State’s property without prior written approval of the State according to the policies of the Washington State Parks and Recreation Commission or as described in Grantee’s plans.
- 2.15 Requests for Tree Removals. Requests for removal of trees within the permitted use area will be considered on a case-by-case basis. All tree work will be performed by qualified contractors and adhere to all applicable laws and regulations, agency policy, and ANSI A300 Pruning Standards at the determination of State Parks.
- 2.16 Tree removals within Agreement Area. Unless otherwise explicitly stated for the Agreement Area, Grantee must obtain agency approval prior to removal. Grantee must adhere to agency policies and procedures for removal of significant trees (living or dead standing trees over 10” at breast height).
- 2.17 Hazardous Tree Removal. Hazardous tree removal must be approved by the agency prior to removal, unless the tree poses an imminent threat to life or property or if the target area cannot be closed, or the target area relocated. Any hazardous tree removal must meet the agency definition of an emergency tree and follow the agency emergency tree removal procedure.

- 2.18 Non-Emergency Tree Removal. All non-hazardous tree removal must be requested in writing. Grantee must demonstrate the necessity to perform the function for which the Agreement was intended. Grantee must follow State Parks' non-emergency significant tree removal review and approval process.
- 2.19 Right to Timber. State Parks retain their right to all standing timber and dispensation of any merchantable timber removed with the Agreement area. Grantee will compensate State Parks personnel or at real market value determined at the time of sale.

3.0 RESERVATIONS

3.1 Reservations to State. State reserves all ownership of the Easement Area and resources thereon (including timber) and the right of use for any purpose including: the right to remove resources within the Easement Area the right at all times to cross the Easement Area at any place on grade or otherwise; the right to use, maintain, patrol, reconstruct, or repair the Easement Area, the right to erect fences on, over, or across the Easement Area, or any part thereof; and the right to occupy the Easement Area with State's facilities and equipment so long as the exercise of any such right by State does not unreasonably interfere with Grantee's rights granted by this Agreement. State at all times retains control of park gates, roads, and lands. State may grant to third parties any and all rights reserved to State, including easements and leases, so long as any such right granted to any third party, or the exercise thereof, does not unreasonably interfere with Grantee's rights granted by this Agreement. In the event State elects to exercise any right reserved under this Agreement, including granting to third parties any right reserved under this Agreement, State shall give written notice to Grantee.

3.2 Use of Area by State.

- (a) State is using or may use the Easement Area and adjoining park property for recreational park purposes.
- (b) New park facilities may be constructed in addition to or in replacement of already existing facilities.
- (c) Construction of new facilities may require the installation of roads and other fixtures or improvements over, upon, across, or under the Easement Area and, in addition, may require the location of structures with permanent foundations within the Easement Area.

Nothing in this Agreement prevents or precludes State from undertaking construction, installation, and use of the Easement Area or adjoining park property. State will not be liable to Grantee or any other party for loss or injury resulting from any damage or destruction of Grantee's Facilities directly or indirectly caused by State's use of the Easement Area or adjoining park property, or State's facilities on the Easement Area or adjoining park property, excepting

for loss or injury which results solely from State's failure to exercise reasonable care not to damage or destroy Grantee's Facilities.

Further, State is not liable to Grantee for any increased cost to Grantee of maintenance, repair, or replacement of its Facilities due to State's use and development of the property.

- 3.3 Emergency Action. State may take such emergency action as is necessary to protect the public health, safety, and welfare, including temporarily closing or otherwise restricting Grantee's use of the Easement Area. Grantee shall have no recourse against State for any losses incurred as a result of State's taking such emergency action.

4.0 CONSTRUCTION

- 4.1 Plan of Development. At least 30 days prior to any construction of the Facilities, or any other construction, including reconstruction, Grantee shall submit a completed Plan of Development to State for its written approval and verification. State's approval will be contingent upon acceptance of the Plan of Development by the applicable permitting authorities. The Plan of Development must include the following:

- (a) Map showing areas where the construction is to occur, file reference #E988501MLC1, location of Facilities, and location of utility and other Easements.
- (b) Land clearing, leveling, and erosion control plans.
- (c) Facilities Specifications, including specific physical characteristics, technical specifications, and components of the Facilities.
- (d) Schedule of completion dates for the Facilities components; and
- (e) Detailed description of activities to be conducted in the Easement Area.

No construction of any kind may take place within the Easement Area prior to State's written approval of the Plan of Development and verification that Grantee has obtained all applicable permits. State will notify Grantee in writing of its verification of permits and approval of the Plan of Development. Nothing in this Agreement imposes any duty or obligation on State to determine the adequacy or sufficiency of Grantee's Plan of Development or to ascertain whether Grantee's construction is in conformance with the Plan of Development and Facilities Specifications approved by State.

During construction and maintenance, Grantee shall minimize soil erosion and damage to soil. Grantee's equipment shall not be operated when ground conditions are such that excessive soil damage or erosion will occur.

In case of incomplete construction, Grantee shall restore the Easement Area to its original condition, if State determines it to be in the best interest for managing the Easement Area.

- 4.2 Facilities Specifications. Grantee shall so place, protect, and bury the Facilities as to allow the unobstructed movement of persons, equipment, and materials across the surface of the Easement Area and shall install the Facilities at such depth as to not interfere with State's normal and usual use of the Easement Area. Grantee shall bury the Facilities and Grantee shall mark the location of the buried Facilities as required by the applicable regulatory and permitting authorities or as directed by State. Grantee shall mark the location of the buried Facilities as directed by State and install signs that identify the Facilities as buried and identified utilities and that identify Grantee as the owner of the Facilities.

If Grantee fails to place or bury the Facilities according to the Facilities Specifications or as otherwise approved in writing by State, Grantee shall hold State harmless from any and all damage to the Facilities. Further, Grantee shall indemnify State against all claims or liabilities resulting directly or indirectly from Grantee's failure to properly place or bury the Facilities per the Facilities Specifications and other requirements contained in this Agreement. State may require Grantee to relocate the Facilities in the event that the Facilities interfere with State's use of the park.

State reserves the right to inspect the open trench during construction to ensure compliance with the Plan of Development, permits, and Facilities Specifications. Grantee shall take precautionary measures necessary to ensure the safety of park staff and visitors during construction.

- 4.3 Timing and Duration. Unless otherwise approved in writing by State, Grantee shall conduct all construction work prior to May 15 and after September 15 of each calendar year.

Except in the event of an emergency or with State's prior written approval, construction access is confined to daylight hours on weekdays; construction access on weekends and holidays is strictly prohibited. State reserves the right to further condition, limit, or restrict the timing and duration of Grantee's construction activities at State's sole discretion.

- 4.4 Survey Markers. Grantee shall not destroy or disturb any survey markers (including but not limited to corner markers, witness objects, or line markers) without State's prior written approval. Markers that must necessarily be disturbed or destroyed during construction must be adequately referenced and replaced in accordance with all applicable laws of the state of Washington, including but not limited to RCW 58.24, and all State regulations pertaining to preservation of such markers. Grantee shall re-establish such markers using a licensed land surveyor or public official as prescribed by law according to U.S. General Land Office standards at Grantee's sole cost.

- 4.5 As-Built Survey. Upon State's request, Grantee shall promptly provide State with as-built drawings and a survey showing the location of the Facilities on the Easement Area.
- 4.6 As-Built Survey. Grantee shall promptly provide State with as-built drawings and a GPS survey recorded as a digital file on a compact disc showing the location of the Facilities on State's property. Said survey must be based on either the decimal degree or NAD 83 Washington State Plane South coordinate system and must be formatted as an ArcGIS shapefile of points.
- 4.7 Work Standards. Grantee shall perform all work in accordance with the Plan of Development submitted to and approved by State and Grantee shall complete all work in a careful and workmanlike manner to State's satisfaction, free of claims or liens.
- 4.8 Grantee shall deliver to State a bond, savings account assignment, or letter of credit in the amount of **\$25,000**. The bond, savings account assignment, or letter of credit must be conditioned upon Grantee's faithful performance of its obligation under this Agreement. In the event Grantee fails or refuses to meet its obligations to the satisfaction of State, State may, without waiver or any other right of recovery, satisfy whatever damages suffered by State by withholding such amounts from the bond or by recovery against the savings account assigned or letter of credit. Grantee shall not commence any activity on the Easement Area prior to State's receipt of the bond, savings account assignment, or letter of credit.
- 4.9 Inspectors. State may appoint one or more representatives to serve as inspectors to oversee work performed by Grantee in the Easement Area. Grantee shall not carry on any work unless it has given such notice thereof as State has requested so as to allow for the presence of State's inspectors. Grantee and its contractors and subcontractors shall promptly and fully comply with all orders and directions of State's inspectors, including without limitation, cessation of work, and Grantee's construction contracts must so provide. Grantee shall promptly pay State's charge for such inspectors, including salary, lodging, and travel expenses.
- 4.10 Archaeology and Cultural Resource Compliance. All construction and maintenance projects should be reviewed by State Parks archaeologists per [RCW 27.53.080](#) prior to any ground disturbance and are subject to all applicable cultural resource regulations and laws (e.g., Governor Executive Order ([GEO 21-02](#)), [Section 106 of the National Historic Preservation Act of 1966 \(NHPA\)](#), [RCW 27.53](#), [SEPA](#), etc.).

Per [RCW 27.53.080](#), cultural resource investigations are to be carried out by a [SOI qualified archaeologist](#) and **only after** appropriate agreement has been made between the professional archaeologist (in contract with the applicant) and State. A copy of such agreement shall be filed with State.

If ground disturbing activities encounter human skeletal remains during construction, then all activity will cease that may cause further disturbance to

those remains. The area of the find will be secured and protected from further disturbance until the State provides written notice to proceed.

The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. Please refer to Exhibit E – Inadvertent Discovery Plan (IDP) for contact information.

The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the [Department of Archeology and Historic Preservation \(DAHP\)](#) who will then take jurisdiction over the remains. [DAHP](#) will notify any appropriate cemeteries and all affected tribes of the found remains.

In the event cultural (archaeological) resources are found or unearthed during any work allowed by this Easement the Grantee shall comply with provisions of [Chapter 27.44 RCW](#), [Chapter 27.53 RCW](#), and the rules and regulations of [DAHP](#), including compliance with all archaeological excavation permit requirements.

If cultural resources are discovered, Grantee shall cease work immediately and contact State Parks' Archaeology Program Manager at the following email Archaeology@parks.wa.gov. Please refer to Exhibit E – Inadvertent Discovery Plan (IDP).

- 4.11 Restoration. Upon completion of construction authorized under this Agreement, and upon completion of any subsequent work performed by Grantee, Grantee shall remove all debris and restore the surface of the Easement Area as nearly as possible to the condition in which it was at the commencement of work and shall remove any and all equipment and materials used in the construction.

5.0 INSURANCE

- 5.1 Insurance. At its own expense, Grantee shall procure and maintain during the term of this Agreement, and require its contractors, subcontractors, or other permittees to procure and maintain while operating on the Easement Area [or Access Route], the insurance described below. All insurance must be purchased on an occurrence basis and be issued by a carrier admitted by the Insurance Commissioner to do business in the state of Washington.

Commercial General Liability. Insurance written under Insurance Services Office (ISO) Form CG0001 or its equivalent with minimum limits as set out below covering liability arising from premises, operations, independent contractors, personal injury, products completed, and liability assumed under an insured contract. In the event that Grantee is self-insured, Grantee shall send a letter, signed by a person with appropriate authority to obligate Grantee, to State

obligating Grantee's self-insurance fund to the responsibilities set forth in this Agreement.

General Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000

Business Auto Policy (BAP). Insurance written on an ISO CG0001 form or equivalent providing Bodily Injury and Property Damage Liability coverage for all owned, hired, or non-owned vehicles assigned to, or used in, the performance of this Agreement for a combined single limit of not less than \$1,000,000 each occurrence.

Physical Property Damage Insurance. Insurance covering all real and personal property located on or constituting a part of the Easement Area in an amount equal to at least one hundred percent (100%) of the replacement value of all improvements on the Easement Area (regardless of ownership). Grantee may obtain such insurance on an "Agreed Value" basis. Such insurance may have commercially reasonable deductibles. Any co-insurance provisions of the policy will be endorsed to be eliminated or waived.

Employer's Liability ("Stop Gap") Insurance. Grantee shall purchase and maintain Employer's Liability or "Stop Gap" Insurance including liability coverage with limits not less than those specified below. Grantee waives immunity under Title 51 RCW to the extent required by this clause. Insurance must include liability coverage with limits not less than those specified below:

Each Employee	Policy Limit		
	<u>By Accident</u>	<u>By Disease</u>	<u>By Disease</u>
Bodily Injury	\$1,000,000	\$1,000,000	\$1,000,000

Worker's Compensation Insurance. The State of Washington Worker's Compensation coverage, as applicable, with respect to any work by Grantee's employees on or about the Easement Area [, Access Route,] or Facilities

Builder's Risk Insurance. Contingent liability and builder's risk insurance in an amount reasonably satisfactory to State during construction, replacement, or material alteration of the Easement Area or improvements on the Easement Area. Coverage shall be in place until the work is completed, and evidence of completion is provided to State.

Environmental/Pollution Liability. Grantee shall purchase and maintain liability insurance to cover any environmental/pollution liability associated with the operation of the Facilities including, but not limited to, liability arising on account of water pollution or hazardous substances described in this Agreement. Such insurance must include liability coverage with limits not less than those specified below:

General Aggregate Limit	\$2,000,000
Each Claim/Occurrence Limit	\$1,000,000

6.0 TERMINATION

- 6.1 Termination for Breach. If Grantee breaches any provision of this Agreement, State may terminate this Agreement after Grantee has been given 30 days' written notice of the breach and (1) the breach has not been corrected within such time; or (2) if the breach cannot be reasonably corrected within such 30-day period, Grantee has not commenced correction and continued correction with reasonable diligence.

The occurrence of any of the following events is a breach that allows immediate termination of this Agreement (30 days' written notice not required): if Grantee makes an assignment for the benefit of creditors or files a voluntary petition under any bankruptcy act or other law for the relief of debtors; or if an involuntary petition is filed under any bankruptcy act or other law for the relief of debtors; or an order for relief is entered for or against Grantee under any bankruptcy act or other law for the relief of debtors; or if any department of any government or any officer thereof takes possession of Grantee's business or property. Upon any such occurrence State, at its option, may, in addition to any other remedy available at law or equity or under this Agreement, terminate this Agreement by notice to Grantee and upon such termination Grantee shall quit and surrender the Easement Area to State, but Grantee shall remain liable as provided by this Agreement.

- 6.2 Termination for Non-Use. In the event that Grantee does not commence use of the Easement Area within a period of two years following the Effective Date, this Agreement terminates. However, an extension of time may be granted upon written request prior to the expiration date of the two-year period and upon such additional terms and conditions as State may specify, including modification of the consideration due State, which may include additional charges for administrative costs and appreciation of land and valuable material.

If Grantee ceases to use the Easement Area for a period of two years, this Agreement terminates.

- 6.3 Effect of Termination. In the event that this Agreement is terminated for any reason, Grantee's rights within the Easement Area immediately revert to State, and the Easement Area will be freed from the Easement as fully and completely as if this Agreement had not been entered into. Upon termination, all Facilities on the Easement Area are forfeited and become the property of State subject only to any previously approved waiver of interest or security interest. In addition to the right of termination, State has any other remedy available in law or equity. Any Grantee obligations not fully performed upon termination continue until fully performed. The failure of State to exercise any right at any time will not waive State's right to terminate for any future breach or default. The failure by State to provide notice to Grantee does not relieve Grantee of its obligations under this Agreement.

- 6.4 Removal of Improvements and Equipment. All Facilities that remain on the Easement Area 60 days from the termination of this Agreement, become the

property of State and become a part of the land upon which they are located; provided, however, that any time within 60 days after the termination of this Agreement, Grantee is entitled to remove the Facilities; or, State may require Grantee to remove the Facilities, at Grantee's cost. All tools, equipment, and other property not permanently affixed upon the land by Grantee remain Grantee's property. Grantee shall, within 60 days after termination of this Agreement, remove all such tools, equipment, and other property not permanently affixed upon the land.

7.0 GENERAL TERMS AND CONDITIONS

- 7.1 Compliance with Laws and Regulations. Grantee shall comply with all applicable laws, including all federal, state, county, and municipal laws, ordinances, and regulations in effect for the design, construction, maintenance, operation, or improvement of the Facilities and use of the Easement Area. Grantee shall so comply in a timely manner and at its sole cost.

In addition to complying with those laws of the state of Washington pertaining to forest protection, Grantee shall comply with any requirements pertaining to burning procedure, blasting, watchman, extra patrol, pumpers, tankers, fire hose, fire tools, etc., that State deems necessary for prevention and suppression of fire resulting from construction operations.

- 7.2 Ownership and Maintenance of Facilities. The Facilities authorized in this Agreement must be continuously owned and maintained by Grantee at Grantee's sole expense.

Any merger, consolidation, liquidation, or any change in ownership or the power to vote the majority of Grantee's outstanding voting stock, constitutes an assignment, whether the result of a single transaction or a series of transactions. If Grantee is a general partnership, the death, withdrawal or expulsion of a partner or partners owning in the aggregate more than 50% of the partnership profits or capital will constitute an assignment, and the transfer of interests representing, in the aggregate more than 50% of the partnership profits or capital, whether the result of a single transaction or a series of transactions, will constitute an assignment. If Grantee is a limited partnership, the death, withdrawal, or expulsion of any general partner will constitute an assignment.

- 7.3 Successors. The rights and obligations of the parties inure to the benefit of and be binding upon their respective successors and assigns.
- 7.4 Indemnity. Grantee shall indemnify State for any and all liability or loss, including costs and reasonable attorneys' fees incurred by State in defense thereof, arising from acts or omissions of Grantee, or Grantee's employees, agents, or contractors, in the exercise of the rights granted in this Agreement. However, Grantee is not required to indemnify State for liability or losses arising out of bodily injury to persons or damage to property caused by the sole negligence of State or State's employees or agents. If the liabilities or losses are caused by the concurrent negligence of Grantee, or Grantee's employees, agents, or

contractors, and State or State's employees or agents, Grantee shall indemnify State only to the extent of the negligence of Grantee or Grantee's employees, agents, or contractors.

- 7.5 Attorney Fees. In the event State is required to incur attorney fees and costs to enforce Grantee's obligations under this Agreement, in addition to any other relief to which State may be entitled, Grantee shall pay to State its costs and reasonable attorney fees.
- 7.6 Venue and Governing Law. Venue for any action related to this Agreement is in Thurston County Superior Court. The laws of the state of Washington govern any dispute and the interpretation of this Agreement.
- 7.7 Notices and Submittals. All notices, demands, and requests required under this Agreement must be in writing sent by United States registered or certified mail, postage prepaid, and shall be addressed as follows or at such other place as either party may from time to time designate by written notice to the other.

Notices, demands, and requests served upon State or Grantee as provided in this section are sufficiently given for purposes of this Agreement three days after such notice, demand, or request is mailed. When a notice, demand, or request is mailed by State, it is considered mailed on the date transferred to State's Consolidated Mail Services.

All notices, demands, or requests sent to State shall refer to file #E988501MLC1 in the subject line. Notices required to be in writing under this permit must be given as follows:

If to State:
Washington State Parks & Recreation Commission
Real Estate Program
P.O. Box 42650
Olympia, WA 98504-2650
(360) 902-8500
landsprog@parks.wa.gov

If to Grantee:

With Copy to:

Washington State Parks & Recreation Commission
Area Manager

- 7.8 Force Majeure. Grantee's failure to comply with any of the obligations under this Agreement will be excused only if due to causes beyond Grantee's control and without the fault or negligence of Grantee, including acts of God, acts of the public enemy, acts of any government, fires, floods, epidemics, and strikes.

- 7.9 Amendments. Any amendments to this Agreement or the attached exhibits must be made in writing, executed by the parties, and neither State nor Grantee shall be bound by verbal or implied Agreements.
- 7.10 Discrimination. Grantee shall not unlawfully discriminate against any person on the basis of race, color, creed, religion, sex, sexual orientation, age, or physical or mental disability or allow any such discrimination by Grantee's employees, agents, representatives, or contractors.
- 7.11 Interpretation. This Agreement has been submitted to the scrutiny of all parties hereto and their counsel if desired and must be given a fair and reasonable interpretation in accordance with the words of this Agreement, without consideration or weight being given to its having drafted by any party hereto or its counsel.
- 7.12 Non-Waiver. No failure of State to insist upon the strict performance of any provision of this Agreement may be construed as depriving State of the right to insist upon strict performance of that provision or any other provision in the future. No waiver by State of any provision of this Agreement is made unless made in writing, signed by State.
- 7.13 Remedies Cumulative. The specified remedies to which State may resort under this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which State may lawfully be entitled in case of any breach or threatened breach by Grantee. In addition to the remedies provided in this Agreement, State is entitled to restraint by injunction of the violation, or attempted or threatened violation, of any of the terms and conditions of this Agreement.
- 7.14 Severability. If any term of this Agreement is found to be to any extent invalid or unenforceable, the remainder of this Agreement, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other term of this Agreement shall be valid and be enforced as written to the fullest extent permitted by law.
- 7.15 Recording. Upon full execution, Grantee shall promptly record this Agreement in Kittitas County and shall provide a copy of the recorded Agreement to State

EXECUTED as of the date hereinbelow set forth.

GRANTEE

STATE

By _____

By _____
 Heather Saunders, Director of Parks
 Development, By Delegations of

Authority of September 16, 2013,
revised November 6, 2013.

Title _____

Date: _____

Date: _____

APPROVED AS TO FORM ONLY:

Andy Woo, WSBA #46741

Assistant Attorney General

Date: _____

DRAFT

GRANTEE'S ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of)

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 _____ to me known to be the _____ of _____ that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said _____, for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute the said instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary Public in and for the State of Washington
residing at _____
My commission expires _____

GRANTEE'S ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of)

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 _____ to me known to be the _____ of _____ that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said _____, for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute the said instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary Public in and for the State of Washington
residing at _____
My commission expires _____

**WASHINGTON STATE PARKS & RECREATION COMMISSION
ACKNOWLEDGMENT**

STATE OF WASHINGTON)
) ss.
County of THURSTON)

THIS IS TO CERTIFY that on this day, before me the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ to me known to be the _____ 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 _____ was authorized to execute the said instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary Public in and for the State of Washington
residing at _____
My commission expires _____

EXHIBIT LIST

- 1. Exhibit A – Legal Description of Easement for Public Road Crossing**
- 2. Exhibit B – Map of Easement Area for Public Road Crossing**
- 3. Exhibit C – Legal Description of Utility Crossing**
- 4. Exhibit D – Map of Easement Area for Utility Crossing**
- 5. Exhibit E – Inadvertent Discovery Plan**
- 6. Exhibit F – Additional Provisions**

DRAFT

EXHIBIT A
LEGAL DESCRIPTION OF EASEMENT FOR PUBLIC ROAD CROSSING

All that certain real property situate in the Southwest One-Quarter and Southeast One-Quarter of the Southeast One-Quarter of Section 27, Township 18 North, Range 18 East, Willamette Meridian, City of Ellensburg, County of Kittitas, State of Washington, and more particularly described as follows:

Those portions of John Wayne Trail (Chicago, Milwaukee & St. Paul RY. CO.), being 20 feet wide each, adjoining northwesterly and southeasterly to the following described area:

COMMENCING at the Southwest corner of said Southeast One-Quarter, a found Railroad Spike with "+", from which the Southeast corner of said Southeast One-Quarter bears South 89°50'06" East a distance of 2647.38 feet to a found 3/4" Pipe;
Thence North 62°36'11" East a distance of 1352.01 feet, more or less, to the southwesterly line of John Wayne Trail (Chicago, Milwaukee & St. Paul RY. CO.) and the **TRUE POINT OF BEGINNING**;
Thence leaving said southwesterly line North 38°14'22" East a distance of 100.00 feet to the northeasterly line of said John Wayne Trail;
Thence South 51°47'19" East along said northeasterly line a distance of 120.00 feet;
Thence leaving said northeasterly line South 38°14'22" West a distance of 100.00 feet to said southwesterly line;
Thence North 51°47'19" West along said southwesterly line a distance of 120.00 feet to the **TRUE POINT OF BEGINNING**.

Contains 4,000 square feet, more or less.

As depicted on Exhibit 'B'.



EXHIBIT B
MAP OF EASEMENT AREA FOR PUBLIC ROAD CROSSING

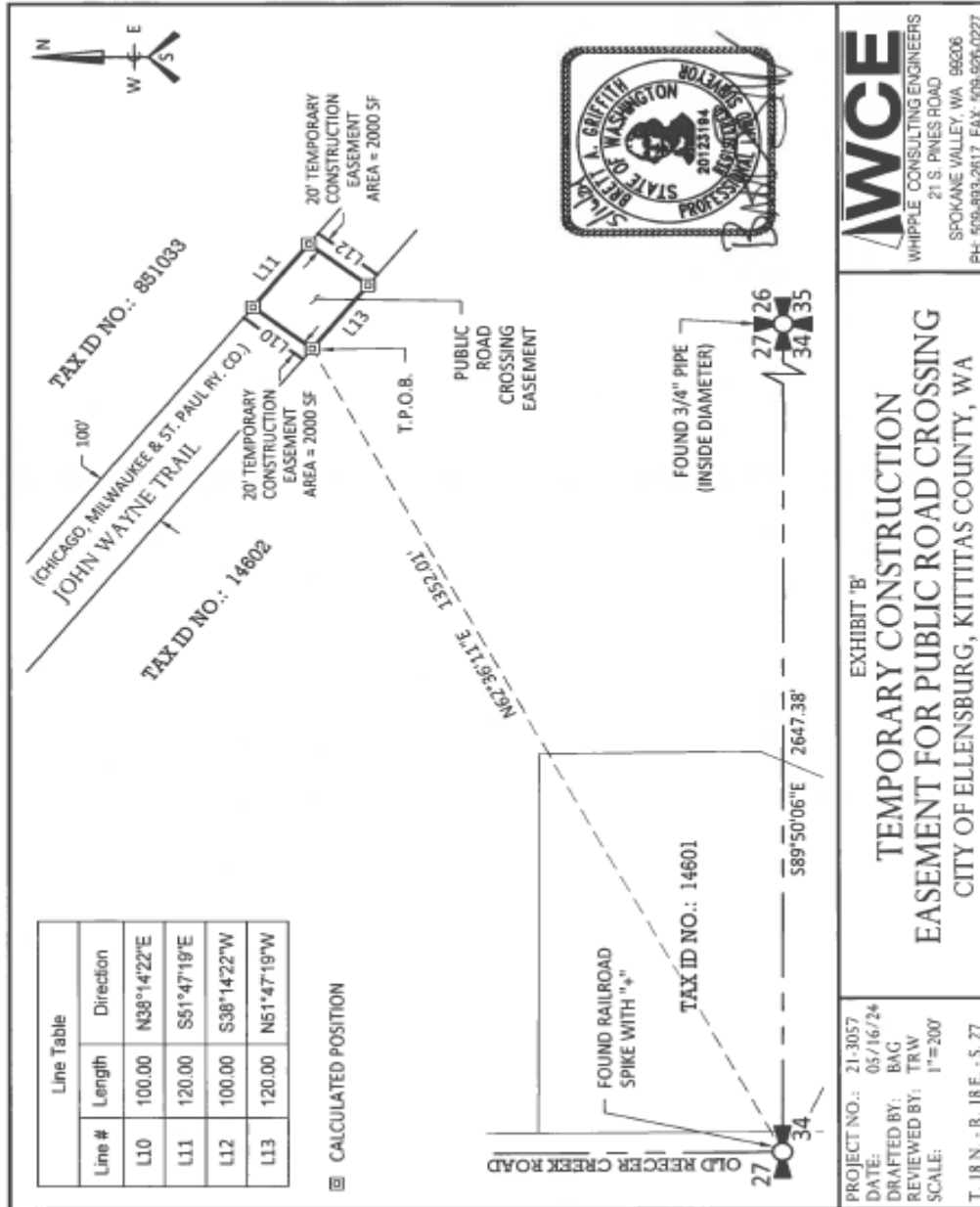


EXHIBIT C
LEGAL DESCRIPTION OF UTILITY CROSSING

All that certain real property situate in the Southeast One-Quarter of the Southeast One-Quarter of Section 27, Township 18 North, Range 18 East, Willamette Meridian, City of Ellensburg, County of Kittitas, State of Washington, and more particularly described as follows:

Those portions of John Wayne Trail (Chicago, Milwaukee & St. Paul RY. CO.), being 20 feet wide each, adjoining northwesterly and southeasterly to the following described area:

COMMENCING at the Southeast corner of said Southeast One-Quarter, a found 3/4" Pipe, from which the Southwest corner of said Southeast One-Quarter bears North 89°50'06" West a distance of 2647.38 feet to a found Railroad Spike with "+";

Thence North 72°23'47" West a distance of 853.06 feet, more or less, to the northeasterly line of John Wayne Trail (Chicago, Milwaukee & St. Paul RY. CO.) and the **TRUE POINT OF BEGINNING** of this description;

Thence South 51°47'19" East along said northeasterly line a distance of 20.00 feet;

Thence leaving said northeasterly line South 38°12'41" West a distance of 100.00 feet to the southwesterly line of said John Wayne Trail;

Thence North 51°47'19" West along said southwesterly line a distance of 20.00 feet;

Thence leaving said southwesterly line North 38°12'41" East a distance of 100.00 feet to said northeasterly line and the **TRUE POINT OF BEGINNING**.

Contains 4,000 square feet, more or less.

As depicted on Exhibit 'B'.



EXHIBIT D

MAP OF EASEMENT AREA FOR UTILITY CROSSING

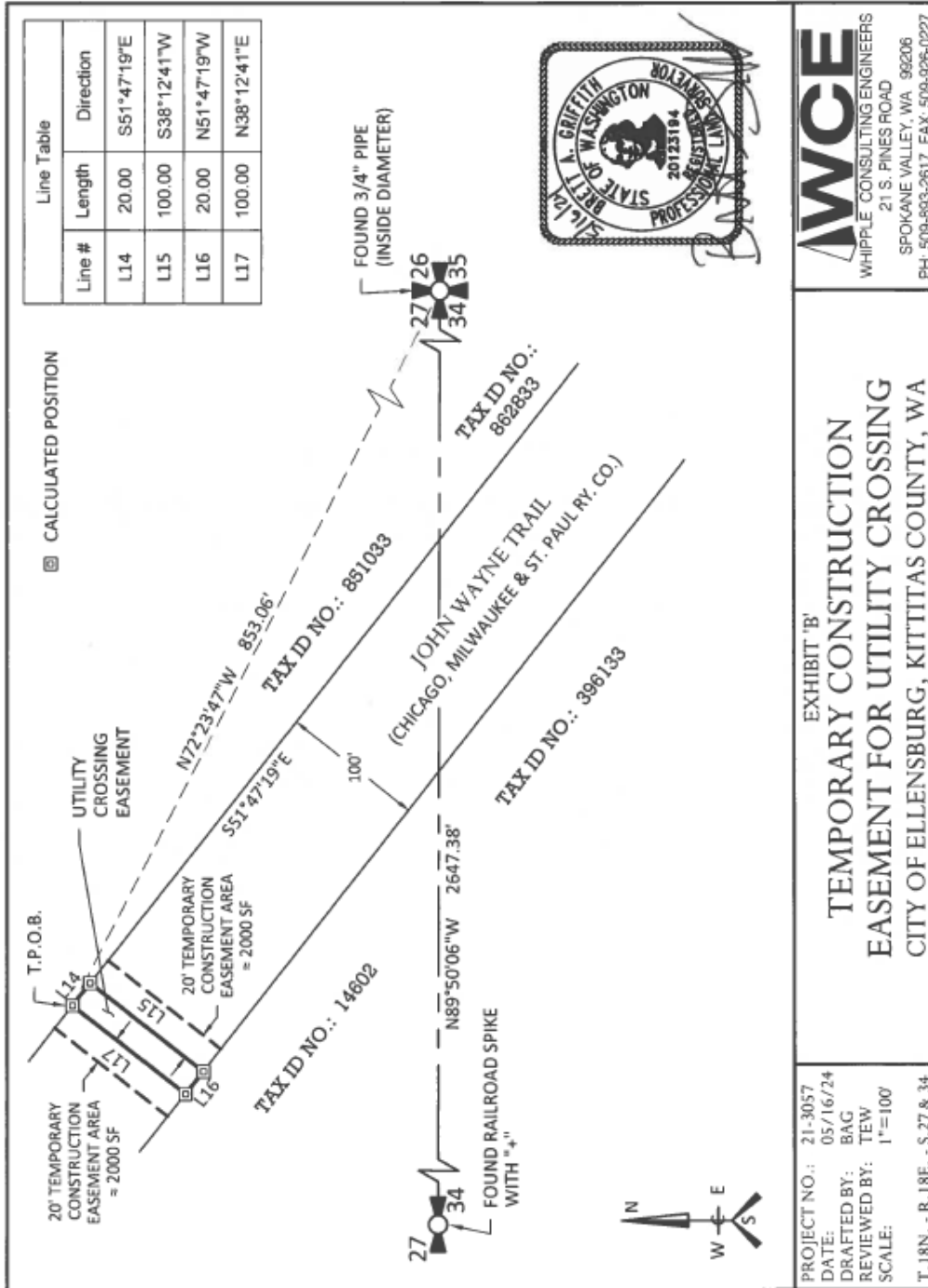


EXHIBIT E **INADVERTENT DISCOVERY PLAN**

Inadvertent Discoveries of Cultural Resources and Human Skeletal Remains Palouse to Cascades State Park Trail, Kittitas County

Many of Washington's most important heritage sites reside on lands owned or managed by the Washington State Parks and Recreation Commission (WSPRC). Nearly all Washington State Parks contain one or more important historic buildings, structures, or archaeological sites. For this reason, archaeological surveys and historic building inventories are ordinarily commissioned as a part of background analysis and information gathering for park developments and undertakings. Results of these surveys are used during project planning to ensure every effort is made to avoid impacts to cultural resources. Yet, despite these efforts, there **always** remains some potential for unanticipated discoveries while working in Washington State Parks.

All unanticipated discoveries, both cultural resources and human skeletal remains, are subject to all applicable federal and state statutes, regulations, and executive orders. For these reasons, the Inadvertent Discovery Plan (IDP) provides useful guidance and instructions for circumstances when cultural resources or human skeletal remains are found. Please carefully read these instructions. If you have any questions, please contact the appropriate WSPRC Area Manager or the WSPRC archaeologist assigned to the undertaking. It is also strongly recommended that anyone conducting ground-disturbing activities watch the training video produced by Washington State Dept of Ecology: [Inadvertent Discovery of Cultural Resources or Human Remains: Training for Field Staff](#). This IDP for cultural resources and human skeletal remains is based on [RCW 27.44](#), [RCW 27.53](#), [RCW 68.50.645](#), [RCW 27.44.055](#), and [RCW 68.60.055](#) and [recommended language](#) from the Department of Archaeology and Historic Preservation (DAHP).

INADVERTENT DISCOVERY PLAN FOR CULTURAL RESOURCES

If cultural resources are found during a project, activity in the immediate area of the find should be discontinued (**stop**), the area secured (**protect**), and the WSPRC archaeologists notified to assess the find (**notify**). *When in doubt, assume the material is a cultural resource and implement the IDP outlined below.*

Recognizing Cultural Resources-Types of Historic/Precontact Artifacts and/or Activity Areas That May Be Found

- **Artifacts**- Both historic and precontact artifacts may be found exposed in backhoe trenches or back dirt piles.
 - Precontact artifacts may range from finished tools such as stone pestles, arrowheads/projectile points, shell beads, or polished bone tools to small pieces or “flakes” or “chips” of exotic stone such as chert, jasper, or obsidian.
 - Historic artifacts may include older (more than 50 years) nails, plates/ceramics, bottles, cans, coins, glass insulators, or bricks.
 - Old abandoned industrial materials from farming, logging, railways, lighthouses, and military installations.
- **Activity Area/Cultural Features**- While excavating trench lines look for evidence of buried activity areas/cultural features such as old campfire hearths or buried artifacts.

- An area of charcoal or very dark stained soil with artifacts or burned rocks may be a fire hearth.
- A concentration of shell with or without artifacts may be shell midden deposits.
- Modified or stripped trees, often cedar or aspen, or other modified natural features, such as rock drawings or carvings
- Historic building foundation/structural remains- During excavation, buried historic structures (e.g., privies, building foundations) that are more than 50 years old may be found.
- Bone- Complete or broken pieces of bone may be discovered exposed in trench walls or in back dirt piles. Bone can come from either animal remains or human remains and requires a trained professional to identify. If you find bone, notify the WSPRC archaeologist immediately and follow their directions.

Steps to Take If a Cultural Resource Is Found During Construction

1. **Stop** if a cultural resource(s) is observed or suspected, all work within the immediate area of the discovery must stop.
2. **Protect** the area from further disturbance. Do not touch, move, or further disturb the exposed materials/artifacts. Create a protected area with temporary fencing, flagging, stakes, or other clear markings that is large enough (30 feet or larger) to protect the discovery location area. The WSPRC archaeologist can help determine the size of the protected area. Do not permit vehicles, equipment, or unauthorized personnel to traverse the discovery site.
3. **Notify** the WSPRC archaeologist. If the area needs to be secured, notify the Park Ranger or Park staff as well.
4. If requested by the WSPRC archaeologist, take photographs with a scale (e.g., pen, coin, etc.) and collect geospatial information of the discovery site to document the initial finds.

What Not to Do If a Cultural Resource Is Found During Construction

- Do not remove any artifacts from the site of the discovery.
- Do not dig out objects protruding from any trench walls as this may cause further damage to artifacts and/or destroy important contextual information.
- Do not share any information about the find, including on social media, except as necessary to implement the IDP.

What Happens Next?

1. The find will be assessed by a professional archaeologist (may be a WSPRC archaeologist or an archaeology consultant).
 - a. If the find is not a cultural resource, construction work may resume.
 - b. If the find is a cultural resource, the WSPRC archaeologist will contact the DAHP and affected Tribes, as appropriate, to develop a suitable treatment plan for the resource.
2. Construction work may resume in the protected area after the WSPRC archaeologist assigned to the undertaking has determined that the find has been adequately investigated and, if necessary, a treatment plan and monitor are in place to protect any remaining archaeological deposits.

INADVERTENT DISCOVERY PLAN FOR HUMAN SKELETAL REMAINS

Native American burials and historic grave sites are common features on Washington State Park lands. These remains, as well as any associated artifacts or funerary objects, are protected under state law and, if the park is a federal lease, applicable federal law. If you discover human remains (or bones that you believe may be human remains) during construction, please follow these important instructions. It is imperative that reporting and treatment of any human remains found during construction or any ground-disturbing activities are treated with utmost dignity and respect.

Steps to Take If Human Skeletal Remains are Found During Construction

1. **Stop** if human skeletal remains observed or suspected, all work within the immediate area of the discovery must stop.
2. **Protect** the area from further disturbance. Do not touch, move, or further disturb the remains. Cover the remains with a tarp or other materials (not soil or rocks) for temporary protection in place and shield them from being photographed. Create a protected area with temporary fencing, flagging, stakes, or other clear markings that is large enough (30 feet or larger) to protect the discovery location area. The WSPRC archaeologist can help determine the size of the protected area. Do not permit vehicles, equipment, or unauthorized personnel to traverse the discovery site.
3. **Notify** local law enforcement (Park Ranger) and the appropriate county medical examiner/coroner as soon as possible. If you are unsure if the remains are human, the physical anthropologist at DAHP may be called. Also notify the Area Manager, the WSPRC archaeologist, and the WSPRC Curator of Collections/NAGRPA Specialist of the discovery of the remains.
4. If requested by the local law enforcement, the county coroner/examiner, the DAHP physical anthropologist, or the WSPRC archaeologist, take photographs with a scale (e.g., pen, coin, etc.) and geospatial information of the discovery site to document the initial finds.

What Not to Do If Human Skeletal Remains are Found During Construction

- Do not pick up or remove anything.
- Do not take any photographs of the remains unless instructed to do so by local law enforcement, the county coroner/examiner, the DAHP physical anthropologist, or the WSPRC archaeologist. If pictures are requested, be prepared to photograph them with a scale (e.g., pen, coin, etc.) and collect geospatial information of the remains.
- Do not call 911 unless you cannot reach local law enforcement or the coroner/examiner by other means.
- Do not share any information about the find, including on social media, except as necessary to implement the IDP.

What Happens Next?

1. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and decide whether those remains are forensic (crime-related) or non-forensic.
 - a. If forensic, the county medical examiner/coroner will retain jurisdiction over the remains.
 - b. If non-forensic, the county medical examiner/coroner will report that finding to the DAHP who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected Tribes of the remains. The State Physical Anthropologist will decide whether the remains are Indian or Non-Indian and report

that finding to any appropriate cemeteries and the affected Tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

Note: The WSPRC archaeologist assigned to the undertaking will be coordinating and consulting with the DAHP, affected Tribes, and other groups as necessary. Additionally, WSPRC's Curator of Collections/NAGPRA Specialist should be included on all written and/or verbal correspondence until the remains have been officially transferred from WSPRC's possession to an outside authority. Until the remains are transferred off of WSPRC's property, it is the responsibility of the Curator of Collections/NAGPRA Specialist to document and track the information regarding all human remains and associated funerary objects (including all material from excavation areas/units from which the human remains were removed).

2. Construction work may resume in the protected area after the WSPRC archaeologist assigned to the undertaking has determined that the find has been adequately investigated and, if necessary, a treatment plan and monitor are in place.

EMERGENCY CONTACTS

WSPRC Archaeologists

Jennifer Wilson, Archaeology Program Manager	(360) 787-6511 (cell)
Email: jennifer.wilson@parks.wa.gov	(360) 902-8637 (office)
Shari Silverman, Archaeologist SW Region	(435) 260-9894 (cell)
Email: shari.silverman@parks.wa.gov	(360) 902- 8640 (office)
Kayley Bass, Archaeologist SW Region	(360) 701-1277 (cell)
Emails: kayley.bass@parks.wa.gov	
Sarah DuBois, Archaeologist Eastern Region	(509) 972-5884 (cell)
Email: sarah.dubois@parks.wa.gov	(509) 665-4336 (office)
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Laura Syvertson, Archaeologist NW Region	(360) 770-0444 (cell)
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Maurice Major, Stewardship Archaeologist	(360) 701-6218 (cell)
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WSPRC Curator of Collections/NAGPRA Specialist

Alicia L. Woods, Statewide Curator of Collections & NAGPRA Specialist	
Email: alicia.woods@parks.wa.gov	(360) 586-0206 (office)

State Physical Anthropologist

Guy Tasa, DAHP	(360) 790-1633 (cell)
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Assistant State Physical Anthropologist

Jackie Berger, DAHP	(360) 890-2633 (cell)
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County Coroner/Examiner

Nick Henderson, Coroner

(509) 856-4970 (cell)

Local Law Enforcement

Andrew Kerlee, Park Ranger 3

(509) 350-0006 (cell)

Area Manager

John Ernster

(509) 899-9294 (cell)

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EXHIBIT F
ADDITIONAL PROVISIONS

To Be Determined.

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