

Jefferson County
Board of Commissioners
Agenda Request

To: Board of Commissioners
Philip Morley, County Administrator

From: Frank Gifford, Public Works Director *FG*

Agenda Date: February 14, 2011

Subject: A Utility Easement request from Washington State Parks and Recreation Commission.

Statement of Issue:

Washington State Parks and Recreation Commission (WSP) is developing a sewer facility and transport line pertaining to the Dosewallips State Park, which will require an easement for utility purposes along a portion of County owned property adjacent to the State right of way. Please refer to the Exhibit B map attached to the subject Utility easement document.

Analysis/Strategic Goals/Pro's & Con's:

Washington State Parks and Recreation Commission (WSP) is requesting this easement in conjunction with the previously granted County Utility Franchise dated December 6, 2010. The easement is necessary to connect a transport line leading from the State right of way for US Route 101, across County property to the franchise location. WSP is seeking a 30 foot wide easement for sewer utility purposes adjoining the northerly boundary line of the County owned parcel, APN 941700324, west of US Route 101. The County owned parcel was acquired in July of 1994. The subject easement should not affect the utility of the parcel once the facilities are constructed.

Fiscal Impact/Cost Benefit Analysis:

Washington State Parks has initiated this project based on the concept that they are building a sewer system that will immediately provide groundwater protection for the Dosewallips River and Hood Canal. WSP has agreed to pay the County for all administrative expenses incurred with the execution and recording of the subject easement.

Department Contact:

Monte Reinders P.E., County Engineer, 385-9242

Recommendation:

The Department of Public Works recommends the Board of County Commissioners sign the Easement document provided by WSP and return the original to the Department of Public Works for further processing. The Board will be provided a copy of the fully recorded document once filed with the Jefferson County Auditor.

Reviewed By:


Philip Morley, County Administrator

2/9/11
Date

Document Title: Utility Easement
Grantor(s): Jefferson County
Grantee(s): Washington State Parks and Recreation Commission
Legal Description: Ptn. NW 1/4 of Sec. 2, Twp. 25 N, Rng 2W, W.M.,
Additional Legal Description is on Page 9 of Document.
Assessor's Tax Parcel Number: 941700324

UTILITY EASEMENT
WSP EASEMENT #A142500PRC1

THIS EASEMENT is made this ____ day of _____, 2011, between the State of Washington, acting through the **WASHINGTON STATE PARKS AND RECREATION COMMISSION**, (hereafter as "Grantee") and **JEFFERSON COUNTY, a Washington Municipal Corporation** (hereafter "Grantor").

1.0 Conveyance.

1.1 Easement Area. For valuable consideration receipt of which is hereby acknowledged, the Grantor hereby grants and conveys to Grantee, a non-exclusive easement over a parcel of land in Jefferson County legally described as set forth in Exhibit "A" and located approximately as shown on Exhibit B (hereafter "Easement Area").

2.0 Term.

2.1 The term of this easement shall be perpetual or until the public purpose for this easement ceases to exist.

3.0 Purpose.

3.1 The easement is conveyed to provide utility service to and from lands owned by Grantee for the purpose of accessing, installing, operating, and maintaining a sewer force main, originating at Dosewallips State Park (hereinafter "Benefited Parcel" as described per Exhibit C).

Authorized use shall include the right to travel, maintain, repair, construct or reconstruct Grantee's facilities, equipment, personal property or structures located at, upon or under the Easement Area subject to the restrictions set forth hereafter. The purpose of this easement shall not be changed or modified without the consent of the Grantor which shall be at its sole discretion. Any unauthorized use of this Easement Area shall be considered a material breach of this Easement.

4.0 Nature of Estate.

- 4.1 Appurtenant Easement. The easement granted herein shall be deemed appurtenant to real property in Jefferson County, Washington, located approximately as shown in Exhibit B and legally described as set for in Exhibit A, attached hereto and by this reference incorporated herein.
- 4.2 Reservations. Grantor reserves all ownership of the Easement Area and resources thereon (including timber unless conveyed under this easement) and the right of use for any purpose including but not limited to the right to remove resources within the Easement Area reserved by Grantor, the right at all times to cross and recross the Easement Area at any place on grade or otherwise; and the right to use, maintain, patrol, reconstruct or repair the Easement Area so long as it does not unreasonably interfere with the rights granted herein. Grantor may grant to third parties any and all rights reserved. Grantor further reserves the right to relocate the Grantees improvements. If the utility is relocated at the sole request of Grantor, Grantee shall be responsible for all costs associated with said relocation and shall construct the relocated utility and associated improvements to the same standards existing at the time of relocation.
- 4.3 Improvements. Grantee shall construct no improvements not described herein without the prior consent of Grantor. Unless the parties agree in writing to share the cost of improvements, improvements shall be at the sole expense of the Grantee. Any improvements to the Easement Area shall become property of the Grantee unless the applicable consent specifically provides otherwise.
- 4.4 Franchise Agreement Controls. Grantor and Grantee agree and acknowledge that the Franchise Agreement identified as Board of County Commissioners Resolution # 53-10, between them shall control if any provision or term of this Easement is in conflict with any provision or term of that Franchise Agreement as long as the Franchise Agreement is in effect.

5.0 Plan of Operation.

- 5.1 Construction and Maintenance. Sixty (60) days prior to any construction or reconstruction by Grantee or 15 days prior to any major maintenance activities on the Easement Area, Grantee shall submit a written plan of construction to Grantor outlining the construction or activity for Grantor's approval which shall not be unreasonably withheld. In the event of an emergency requiring immediate action to protect person or property, Grantee may take reasonable corrective action without prior notice to Grantor. All construction or maintenance shall comply with applicable state or local laws. During the course of construction or maintenance, Grantee shall minimize soil erosion and damage to soil. Equipment will not be operated when the ground conditions are such that excessive soil damage will occur. Grantee will not remove any timber from the Easement Area until Grantee has received approval from Grantor to remove such timber. The Grantee, its agents or employees or assigns, further agrees to coordinate with the Grantor to facilitate compensation, if warranted, in the event that any merchantable timber maybe impacted by the construction, or maintenance of the utility facility within the Easement Area.

- 5.2 Waste. Grantee shall not cause or permit any filling activity except gravel/rock filling required for road reconstruction to occur in or on the Easement Area, except as approved by Grantor. Grantee shall not deposit refuse, garbage, woody debris or other waste matter or use, store, generate, process, transport, handle, release, or dispose of any hazardous substance, or other pollutants in or on the Easement Area except in accordance with all applicable laws. 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 USC 9601 et seq.), or the Washington Model Toxic Control Act (MTCA RCW 70.105D.010.).
- 5.3 Survey Markers. Grantee shall not destroy or disturb any survey markers (including but not limited to corner markers, witness objects, or line markers) without prior approval of Grantor. 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 in force at the time of construction, including but not limited to chapter 58.24 RCW, and all States 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 cost.

6.0 General Provisions

- 6.1 Insurance. Grantee shall require its contractors, subcontractors or other permittees to procure and maintain insurance and fully indemnify the Grantor while operating at or upon the Easement Area, State's fulfillment of the insurance requirements of Section 10 of the Franchise Agreement shall be deemed satisfaction of this insurance provision. The extent of the obligation of the Grantee's contractors, subcontractors or other permittees to indemnify the Grantor while performing work or providing services at or upon the Easement Area shall be governed by the Franchise Agreement, including specifically Section 9.3 of that Agreement.

Self-Insurance. Grantee as a state agency is covered by the tort liability provisions of the state's self-insurance program. It is understood that each state agency that is a party to this easement will be assigned and assume responsibility for any damages to third parties that are attributable to the negligent acts or omission of the individual agency. Grantee agrees to assume financial responsibility for any and all physical damage to the Property that is caused by Grantee, or that, with the exercise of reasonable care, could have been prevented by Grantee.

- 6.2 Notice. Any notices required or permitted under this easement shall be mailed first class and shall be deemed properly served when so deposited with the United States Postal Service.
- 6.3 Modification. Any modification of the easement must be in writing and signed by parties.
- 6.4 Termination. Grantor shall have the right to terminate this easement if Grantee fails to cure a material breach of this easement within sixty (60) days of notice of default (Cure

Period). If a breach is not reasonably capable of being cured within the Cure Period for reasons other than lack of or failure to expend funds, Grantee shall commence to cure the default within the Cure Period and diligently pursue such action necessary to complete the cure. Grantor may authorize additional time for Grantee to cure. In addition to the right of termination, Grantor shall have any other remedy available in law or equity. Designation of certain breaches as immaterial throughout this easement shall not preclude other breaches from being declared material. A Force Majeure, as defined in the Franchise Agreement at Section 13.4, shall not be deemed a material breach and does not authorize any party to terminate this Easement.

- 6.5 Severability. If any provision of this easement shall be held invalid, it shall not affect the validity of any other provision herein.
- 6.6 Non-waiver. The waiver by Grantor of any breach or the failure of Grantor to require strict compliance with any term herein shall not be deemed a waiver of any subsequent breach.
- 6.7 Successors and Assigns. This easement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns except to the extent that this section conflicts with the section labeled "Nature of Estate" in which case the Nature of Estate section will control.
- 6.8 Compliance with Laws. Grantee shall, at its own expense, conform to all applicable laws, regulations, permits or requirements of any public authority affecting the Easement Area and the use thereof. Upon request, Grantee shall supply Grantor with copies of permits or orders.
- 6.9 Construction. The terms of this easement shall be given their ordinary meaning unless defined herein and shall not be presumed construed against the drafter.
- 6.10 Release and Indemnity. Grantee and Grantor, in conformity with Section 9 of the Franchise Agreement, hereby mutually agree to indemnify and hold harmless each other as to their respective interests and uses of the Easement Area.
- 6.11 Liability. Grantee, its agents or employees and or assigns, further agrees to maintain and assume any and all liability for the installation, maintenance and condition of the utility facilities within the Easement Area.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first above written.

GRANTOR:

Approved By:

JEFFERSON COUNTY BOARD OF COMMISSIONERS

David W. Sullivan

Phil Johnson

John Austin

SEAL:
ATTEST:

Lorna Delaney
Clerk of the Board

Date

Approved as to form only:

David Albany

Chief Civil Deputy
Prosecuting Attorney

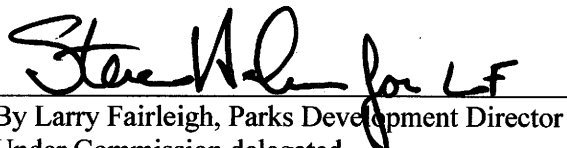
1/21/2011

Date

GRANTEE:

Approved By:


**WASHINGTON STATE PARKS AND
RECREATION COMMISSION**



By Larry Fairleigh, Parks Development Director
Under Commission delegated
authority of November 30, 2006.
Approved as to form only:

1/31/11
Date:

ROB MCKENNA
Attorney General


By /s/ James Schwartz
Assistant Attorney General

GRANTOR'S ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss.
COUNTY OF JEFFERSON)

On this ____ day of _____, 2011, before me personally appeared Phil Johnson, David W. Sullivan and John Austin, to me known to be the entire body of the Board of Jefferson County Commissioners that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said county for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the county seal of said county.

Witness my hand and official seal affixed the day and year first above written.
GIVEN under my hand and official seal this _____ day of _____, 2011.

Notary Public in and for the State of Washington,
residing at _____

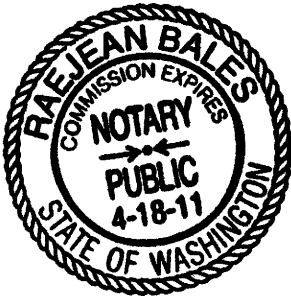
My Commission expires _____

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 Steve Hahn to me known to be the Lands Program Mgr of the **Washington State Parks and Recreation Commission** that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said Commission, for the uses and purposes therein mentioned, and on oath stated that He was authorized to execute the said instrument.

WITNESS my hand and official seal this 31st day of January, 2011.



Raejean Bales
Notary Public in and for the State of Washington
residing at Thurston Co.
My commission expires 4-18-11

EXHIBIT A
LEGAL DESCRIPTION OF EASEMENT AREA

The NW1/4 of Section 2, Township 25, Range 2W. W.M., a sewer force main crossing Assessors tax parcel #941700324, a Jefferson County owned property lying north of and adjacent to the Dosewallips River, and west of the US Hwy 101 right of way boundary, known as Tract A of Carroll's Hood Canal View Estates as recorded in Volume 4, Page 13 records of Jefferson County further described as follows:

That portion of the aforementioned parcel being the easterly 242.24 feet (approximately) of the northerly 30 feet of reserve Tract A, bounded on the east by the westerly margin of US Route 101 and bounded on the west by the southerly prolongation of centerline of platted Easy Street lying within the above referenced plat.

Situate in Jefferson County, WA

The subject easement area described herein contains approximately 0.17 acres.

GPS coordinates to be attached upon completion of construction.

EXHIBIT B
MAP OF EASEMENT AND BENEFITTED PARCEL
DOSEWALLIPS STATE PARK UTILITY EASEMENT

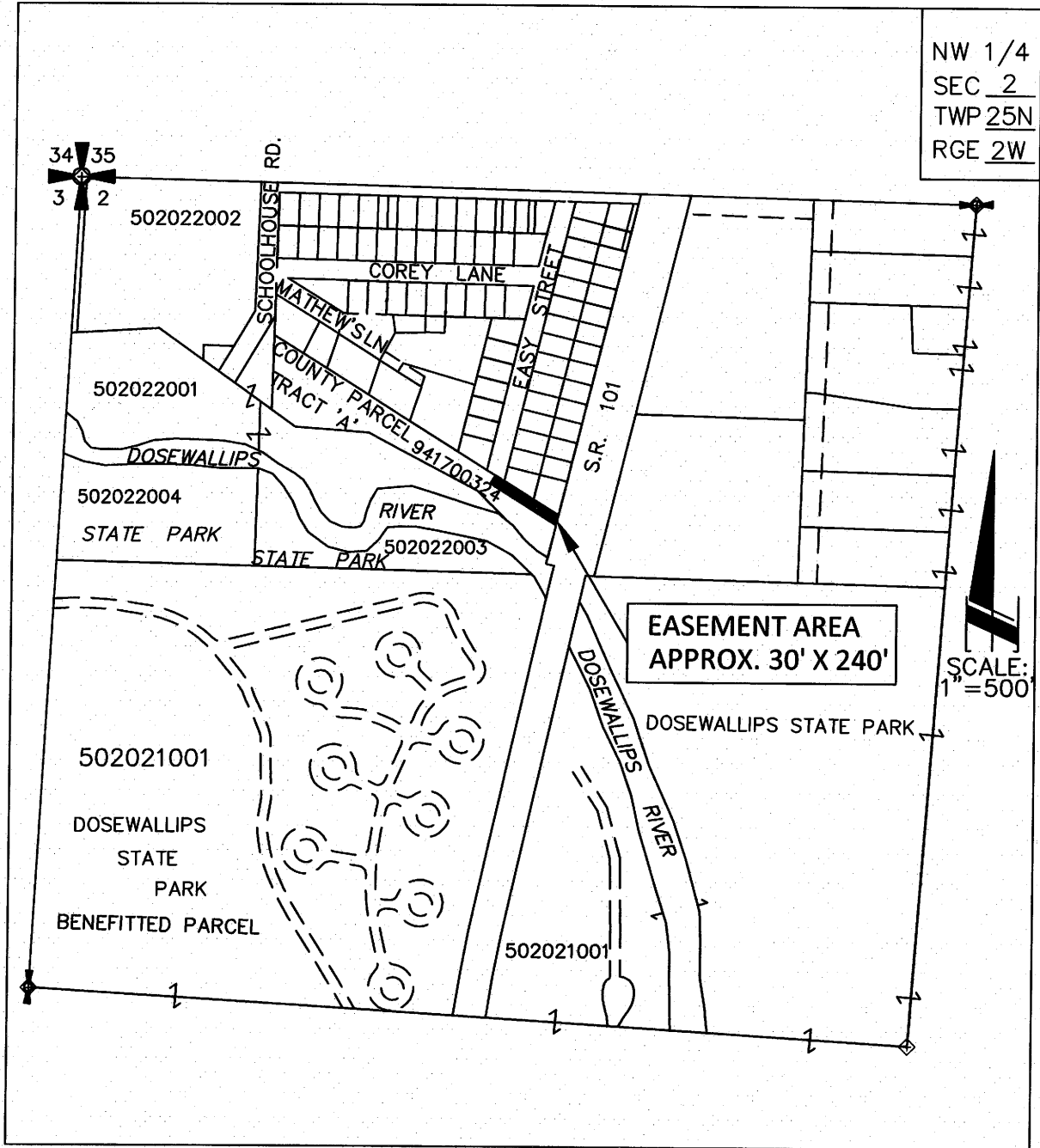


EXHIBIT C

LEGAL DESCRIPTION OF BENEFITED PROPERTY

**That portion of Northwest Quarter of Section 2, Township 25 North, Range 2 West, W.M.,
Jefferson County, Washington State, commonly known as Dosewallips State Park.
Jefferson County tax parcel numbers – 502022004 – 502022003 – 502022006 – 502021001.**

EXHIBIT A
LEGAL DESCRIPTION OF EASEMENT AREA

The NW1/4 of Section 2, Township 25, Range 2W. W.M., a sewer force main crossing Assessors tax parcel #941700324, a Jefferson County owned property lying north of and adjacent to the Dosewallips River, and west of the US Hwy 101 right of way boundary, known as Tract A of Carroll's Hood Canal View Estates as recorded in Volume 4, Page 13 records of Jefferson County further described as follows:

That portion of the aforementioned parcel being the easterly 242.24 feet (approximately) of the northerly 30 feet of reserve Tract A, bounded on the east by the westerly margin of US Route 101 and bounded on the west by the southerly prolongation of centerline of platted Easy Street lying within the above referenced plat. Situate in Jefferson County, State of Washington.

The subject easement area described herein contains approximately 0.17 acres.

GPS coordinates to be attached upon completion of construction.