



Don Hoch
Director

STATE OF WASHINGTON
WASHINGTON STATE PARKS AND RECREATION COMMISSION

1111 Israel Road SW • PO Box 42650 • Olympia, WA 98504-2650 • (360) 902-8500
Internet Address: <http://www.parks.wa.gov> TDD: (800) 833-6388

August 8, 2013

Item E-3: Fort Worden State Park Future Governance- Requested Action

EXECUTIVE SUMMARY: This item asks the Washington State Parks and Recreation Commission to consider entering into a 50 year lease with the Fort Worden Lifelong Learning Center Public Development Authority for the management of a portion of Fort Worden State Park. This item advances the Commission Transformation Strategy: “Form strategic partnerships with other agencies, tribes and non-profits”.

SIGNIFICANT BACKGROUND INFORMATION: Fort Worden State Park encompasses 434 acres in Port Townsend. The fort itself was built primarily from 1898 – 1910 as part of a coast defense system that included Fort Flagler and Fort Casey that was designed to protect the entrance to Puget Sound. Between 1956 and 1979, land that currently makes up much of Fort Worden State Park was transferred from the United States Government to the State of Washington. In 1972, that property was transferred to Washington State Parks and became Fort Worden State Park. In the years following that property transfer State Parks has acquired additional properties to fill out the current boundaries of Fort Worden State Park.

Long-range planning the future of Fort Worden State Park began in 2004. In 2005, the Washington State Parks and Recreation Commission (Commission) adopted a vision and mission statement for the park. In 2007, the Commission adopted land classifications, a long-term boundary, park use and development principles and the concept of Fort Worden State Park becoming a lifelong learning center. In 2008, the Commission adopted a long range plan for the park. That plan included the notion that State Parks would engage a non-profit partner to bring the lifelong learning center concept to fruition. Copies of all planning documents and Fort Worden State Park agenda items presented by State Parks staff to the Commission from 2008 until present are available at <http://parks.wa.gov/fortworden/governance/>

In September 2011, the City of Port Townsend adopted a charter to establish the Fort Worden Lifelong Learning Center Public Development Authority (PDA). Since that time State Parks and PDA staff have been engaged in a process to develop a proposed agreement in the form of a 50 year lease that would establish the PDA as the manager of an approximately 90 acre portion of Fort Worden State Park commonly referred to as the Campus. The proposed lease is attached as Appendix 1.

Transfer Deed and Grant Requirements:

There are two major transfer deed restrictions affecting the property under consideration for lease to the PDA. The first restriction is found in the quitclaim deeds to State Parks from the federal government. Each of these quit claim deeds contains deed “reservations” which require State Parks to manage the property for “*public park and public recreational area purposes*”.

Secondly, restrictions in the transfer deeds prohibit the sale or lease of the deeded lands “*except to another local government agency that the Secretary of the Interior, or his successor in function, is satisfied can assure the continued use and maintenance of the Property for public park and public recreational purposes.*”

The second set of deed reservations affecting the management of the Campus comes in the form of legal restrictions associated with grant monies provided to State Parks through the years to acquire land and construct capital improvements at Fort Worden State Park. Both federal and state grant monies together with their respective use reservations affect the Campus area of the park.

Grant restrictions include those typical to grants processed through the Recreation and Conservation Office (RCO) and include language within each grant that requires State Parks to manage the property for “*public outdoor recreational purposes.*” Any change in use or management requires the approval of the RCO.

Federal grant rules also contain reservations on subsequent uses and activities allowable on property that has received federal grant funding. Typical federal restrictions mirror those RCO use descriptions just described. Staff to the Commission is presently working with staff to the RCO to address both state and federal grant conditions that would affect a lease offer to the PDA.

Legislative Provisos: There are no legislative provisos in place at this time related to Fort Worden State Park, the PDA or the Commission that guide or restrict Commission decision making regarding the proposed lease to the PDA.

Previous Commission Adopted Direction: At its December 2012 meeting, the Commission adopted the following specific directions to staff:

REQUESTED ACTION FROM COMMISSION

That the Washington State Parks and Recreation Commission:

6. *Directs that any proposed co-management agreement brought to the Washington State Parks and Recreation Commission (WSPRC) reflect a Net Present Value in projecting:*
 - i. *an increase of Parks net revenue over a ten year time-line and*
 - ii. *a decrease in the net Parks operating deficit relative to an agreed upon baseline, for its operational responsibilities at Fort Worden State Park no later than the fourth complete year of partnership through net revenue increases and/or cost avoidance assumed by the Fort Worden Lifelong Learning Center Public Development Authority.*

The co-management agreement will include milestones for both parties (State Parks and PDA) that tracks and evaluates specific performance measures, goals for reductions in net-operating expenses, goals for net-revenue increases, targets for capital improvements priorities and other public benefits.

7. *Authorizes the Director and/or designee to negotiate a co-management agreement that is consistent with and guided by the spirit and intent of the action taken by the Washington State Parks and Recreation Commission in September 2008 creating a Lifelong Learning Center at Fort Worden State Park, and minimizes the direct loss of jobs by current Fort Worden state employees.*

11. *Directs that the co-management agreement break down the capital plan into discrete projects and identify a stand-alone project of high value to the plan for early completion, and for the purpose of demonstrating the performance of the partners and improving the performance of subsequent operations.*

12. *Directs that the map found in Appendix 5 of the item be amended to remove approximately 10 acres of forested area near McCurdy Pavilion from the proposed management boundary for the Fort Worden Life Long Learning Center Public Development Authority.*

In response to the above noted Commission direction staff sought to achieve several outcomes when negotiating the proposed lease with the PDA.

1. Create an agreement that could reasonably be expected to lead to a fruitful partnership and the successful implementation of the Fort Worden Long Range Plan as adopted by the Commission in 2008.
2. Ensure that any proposed lease with the PDA would not increase the operating shortfall at Fort Worden State Park as measured against the baseline year of 2012.
3. To the extent possible minimize impacts on State Parks staff at Fort Worden State Park while understanding that certain existing positions would be eliminated and those functions staffed by employees of the PDA.
4. To help mitigate impacts on existing staff and to achieve near term cost reductions eliminate State Parks operating responsibilities on the Campus at the end of year four (4) of the proposed lease.
5. Develop an equitable lease that does not include three \$250,000 cash payments to the PDA as proposed in the original PDA business plan.
6. In response to State Parks now being primarily a “fee for service” provider of a public service, include in the proposed lease a pathway for Fort Worden State Park to become cost neutral by year ten (10) of PDA management of the Campus.

Summary of Proposed Lease with the PDA - The proposed lease between the Commission and the PDA includes the following major provisions:

1. **Lease (§ 1.2, 2.1)** - The agreement proposes a 50 year lease of approximately 90 acres, including mutually agreed upon historic structures, in “as-is” condition to the PDA wherein State Parks remains the underlying owner of all of Fort Worden State Park. The PDA would accept responsibility for all deed or grant restrictions that apply to the Campus.
2. **State Reserved Rights (§1.4.4)** - Within the Campus, State Parks reserves rights to timber, minerals, and other valuable materials, access to and through the Campus, the right to grant easements, licenses and permits within the Campus and the use of certain buildings and areas within the Campus to facilitate management of Fort Worden State Park.
3. **Reservation Administration (§4.6)** - The PDA would provide visitor reservation services for all structures and uses within the Campus and for the two campgrounds at the park that remain under State Parks management. The PDA would retain \$8.50 for each campground reservation that PDA staff processes.
4. **Coordinating Committee (§5.1)** - To provide a park level governance structure for the proposed lease a five (5) member Coordinating Committee would be established. The Coordinating Committee would be made up of staff from State Parks and the PDA and one mutually agreed upon member. The Coordinating Committee would serve as a primarily advisory forum for communication and cooperation between State Parks and the PDA. The Coordinating Committee would provide advice and recommendations to the Commission and/or the PDA Board on matters related to the successful execution of the proposed lease including planning issues, operating and capital budget priorities and recommendations, monitoring of compliance with the proposed lease and dispute resolution. Coordinating Committee meetings would be quarterly, noticed meetings open to the public. The Coordinating Committee would also hold at least one public meeting each year to report on its activities and to receive stakeholder and general public comment.
5. **Operations Work Group (§5.2)** - To facilitate daily operations and communication between the parties an Operations Work Group would be formed to coordinate maintenance and property management issues consistent with the terms of the proposed lease. The Operations Work Group would be made up of the Fort Worden State Park Manager, the PDA Campus Manager, and one representative from the leaseholders at Fort Worden State Park.
6. **Building Alterations in the Leased Area (§6.1)** - The PDA would be able to, at its own cost, undertake alterations costing up to \$100,000 to buildings in the Campus without State Parks approval. Alterations would need to comply with deed and grant restrictions and historic requirements as outlined in the proposed lease.
7. **Capital Improvements (§6.5)** - The responsibility for the funding of capital improvements would be shared by the parties. The Coordinating Committee would be required to recommend a seven (7) year capital improvement plan to the PDA Board and the Director by March 1, 2014. The Commission retains sole discretion as to which Fort Worden State Park capital projects get included in the Commission’s biennial capital budget requests. The parties acknowledge that a cooperative capital budget strategy is of mutual benefit and that the PDA can go directly to the legislature for capital funding for Lifelong Learning Center projects.
8. **Ownership of Buildings and Improvements (§6.6)** - To facilitate the potential use of historic tax credits or other funding mechanisms that may be available to the PDA the

Commission would agree to consider the transfer of title to certain buildings or improvements to the PDA or a tax credit entity.

9. **Surety Bonds (§6.8)** - Prior to commencing any PDA/sub-tenant construction in excess of \$500,000 the PDA would be required to provide the Commission evidence of a surety bond or letter of credit sufficient to assure completion of the project. A provision for the PDA to request a waiver of the bond requirement by the Director is also included.
10. **PDA Operating Responsibilities (§7.1)** - All responsibilities rest with the PDA for the following:
 - a. management of Campus meeting/conference facilities, accommodations and hospitality services
 - b. marketing the lifelong learning center concept
 - c. janitorial and beginning in year five (5) all Campus maintenance functions
 - d. managing existing and new leases within the Campus
 - e. recruiting new partners to the Campus
 - f. operating a reservation system for the Campus and campgrounds (see number 3 above)
 - g. keeping the Campus open to the public 365 days per year except in emergency situations
 - h. setting of fees and prices for PDA managed facilities and activities
11. **PDA Operating Expense Responsibilities (§7.2)** - The PDA would be responsible for all of its costs including but not limited to:
 - a. insurance and deductibles
 - b. utilities, telecommunications, garbage, and water/sewer charges
 - c. permits, licenses, taxes, assessments, and fees
 - d. compliance with any laws applicable to the operation of the Campus under the terms of the proposed lease.
12. **Campus Revenues (§7.4)** - The PDA would be entitled to all Campus revenues subject to revenue sharing provisions of the proposed lease.
13. **Naming Rights (§7.7)** - The PDA would have the right to name interior spaces in Campus buildings, the naming of buildings or other infrastructure would require Commission approval.
14. **Discover Pass (§7.8)** - The Discover Pass would not be required on the Campus. The PDA would instead be required to sell at least \$250,000 worth of Discover Passes annually for the first seven (7) years of the lease. Should statewide sales of the Discover Pass drop below a sales baseline set in 2013 the PDA sales requirement would be reduced proportionally. In the event the PDA is unable to sell \$250,000 worth of Discover Passes in any one year for the first seven (7) years of the lease then it must pay the difference to State Parks. At the end of year seven (7) the requirement for the PDA to sell \$250,000 worth of Discover Passes would end.
15. **Revenue Sharing (§7.9)** - Beginning in year eight (8) of the lease the PDA would pay 3.5% of its gross revenues to State Parks from its operation of the Campus.
16. **Chart of Accounts (§7.10)** - The PDA would be required to keep a chart of accounts specifically related to its activities at Fort Worden State Park and to, at its sole expense, provide State Parks with an independent auditors report and financial statement prepared by a firm mutually acceptable to State Parks and the PDA.
17. **Law Enforcement (§7.11)** - for the first four (4) years of the lease State Parks would provide law enforcement to the extent practical on the Campus by park rangers during daylight hours.

18. **Campus Maintenance (§8.1-8.5)** - For the first four (4) years following the Date of Possession the PDA would be responsible for janitorial/custodial maintenance while State Parks would remain responsible for non-capital preventative maintenance and repair of facilities on the Campus. In year five (5) and beyond preventative maintenance and repair would be the sole responsibility of the PDA at its own expense. (see Appendix 1, Exhibit G)
19. **Default in Maintenance Responsibilities (§8.6)** - Should either State Parks or the PDA fail to meet its maintenance responsibilities the other party can perform the work necessary and seek reimbursement from the non-performing party.
20. **Termination of the Lease (§16)** - Either party would be able to terminate the proposed lease because of a material breach of the lease by the other party. Additionally, with twelve months written notice the PDA could terminate the lease if it concludes that the vision of a sustainable Lifelong Learning Center cannot be achieved for one of several reasons.
21. **Dispute Resolution (§19)** - The proposed lease outlines the steps in dispute resolution, starting with the Coordinating Committee, then to the Director and the PDA Board Chair and finally to mediation.
22. **Approval By Holders of Deed or Grant Restrictions (§22)** - the proposed lease includes the requirement that deed and grant restrictions held by the National Park Service and the RCO must be satisfied. The PDA can terminate the lease if approvals are not received within six months of the date of Commission approval of the proposed lease.

Transition Planning (§21) - Should the proposed lease be adopted by the PDA Board and the Commission a period of time would exist between the date of the execution of the lease and May 1, 2014 which is projected date of possession/occupancy of the Campus by the PDA. During that several month period of time the PDA would have:

1. Ninety (90) days to provide documentation of a \$300,000 mobilization fund and a \$250,000 line of credit or term loan including a comfort letter from a lender or financing source.
2. One hundred and twenty (120) days to provide, for Commission review and approval, a revised ten (10) year pro forma that reasonably projects sustainability in PDA operations by year four (4) including a comfort letter from a lender
3. One hundred and twenty (120) days to design and implement a marketing plan for the “Fort Worden Lifelong Learning Center at Fort Worden State Park”
4. One hundred and twenty (120) days to develop a staffing and management plan that includes an organization chart, selection process and timing of hiring of PDA staff.

PDA completion of the above noted tasks is considered material. Should the PDA fail to complete these tasks the Commission would have the option to terminate the lease unless the parties mutually agree on an extension of time to complete the task.

Additional tasks to be completed during a transition period include:

1. Upon the date of possession/occupancy State Parks would transfer and assign all existing leases within the Campus to the PDA
2. Within 120 days the parties would agree on what personal property (materials and equipment) would be transferred from State Parks to the PDA.

3. Within 90 days the parties would form the Coordinating Committee and the Operations Work Group as described in the proposed lease.
4. State Parks would provide the PDA with early access to the buildings that would come under PDA management at the date of occupancy/possession.

STAFF RECOMMENDATION:

Staff from State Parks and the PDA entered into this negotiation understanding that to achieve Commission direction both parties had specific needs and limitations that had to be met. The parties also understood that as with every negotiated, need based lease that requires compromise, neither party would be able to get everything it wanted. Staff recommends that the proposed lease attached as Appendix 1 does comply with the spirit and intent of Commission direction and does represent the outline for a fruitful partnership that would ultimately achieve the goal of a Lifelong Learning Center that would greatly improve visitor experience, facility conditions and financial performance at Fort Worden State Park to the benefit of Washington's citizens and the local community without adversely affecting the rest of the state park system.

LEGAL AUTHORITY: RCW 79A.05.030(5)

The commission shall:

(5) Grant concessions or leases in state parks and parkways, upon such rentals, fees, or percentage of income or profits and for such terms, in no event longer than fifty years, and upon such conditions as shall be approved by the commission: PROVIDED, That leases exceeding a twenty-year term shall require a unanimous vote of the commission: PROVIDED FURTHER, That if, during the term of any concession or lease, it is the opinion of the commission that it would be in the best interest of the state, the commission may, with the consent of the concessionaire or lessee, alter and amend the terms and conditions of such concession or lease: PROVIDED FURTHER, That television station leases shall be subject to the provisions of RCW [79A.05.085](#), only: PROVIDED FURTHER, That the rates of such concessions or leases shall be renegotiated at five-year intervals. No concession shall be granted which will prevent the public from having free access to the scenic attractions of any park or parkway.

SUPPORTING INFORMATION:

Appendix 1: Proposed Master Lease for the Fort Worden State Park Campus

REQUESTED ACTION OF COMMISSION:

That the Washington State Parks and Recreation Commission:

1. Determine that the action proposed for the Washington State Parks and Recreation Commission by staff is exempt from the State Environmental Policy Act (SEPA) pursuant to WAC 197-11-800(5)(c).
2. Conveys its thanks to the Board and staff of the Fort Worden Lifelong Learning Center Public Development Authority for its willingness to diligently participate in the process of negotiating a lease to partner with the Washington State Parks and Recreation Commission in implementing the concept of a lifelong learning center at Fort Worden State Park.

3. Conveys its thanks to all stakeholders and members of the public who participated in the many public meetings related to the development of a proposed lease with the Fort Worden Lifelong Learning Center Public Development Authority.
4. Directs the Director or designee to obtain all required federal and state approvals necessary to enter into a 50 year lease with the Fort Worden Lifelong Learning Center Public Development Authority.
5. Unanimously authorizes the Director to execute, on behalf of the Washington State Parks and Recreation Commission, the attached Master Lease for the Fort Worden State Park Campus (*as amended*).
6. Authorizes the Director or designee to make necessary immaterial edits and corrections to the Master Lease for the Fort Worden State Park Campus, so long as the edits and corrections are agreed to by the Fort Worden Lifelong Learning Center Public Development Authority, prior to execution of the lease document.

Author: **Larry Fairleigh, Assistant Director**
 Larry.fairleigh@parks.wa.gov 360-902-8642

Reviewer(s):

Randy Kline, SEPA Review: Following review, staff has determined that the action proposed for the Commission by staff is exempt from the State Environmental Policy Act (SEPA) pursuant to WAC 197-11-800(5)(c).

Shelly Hagen, Fiscal Impact Review: To achieve the intended positive operating budget financial results for State Parks, there are three key provisions contained in the proposed master lease. They are: the shift in operational responsibilities for the Campus to the PDA in year five; \$250,000 in annual revenue related to Discover Pass sales for the first seven years of the lease, unless statewide sales of the Discover Pass drop below a sales baseline set in 2013 then the PDA sales requirement would be reduced proportionally; and the 3.5% gross revenue sharing provision that begins in year eight. A positive impact on capital investment is anticipated by leveraging opportunities for private and other sources of capital dollars as a result of the proposed lease.

Jim Schwartz, Assistant Attorney General Review: August 31, 2013
Larry Fairleigh, Assistant Director

Approved for Transmittal to Commission:

Don Hoch, Director

APPENDIX 1
PROPOSED MASTER LEASE FOR THE FORT WORDEN STATE PARK
CAMPUS