ENERGY FACILITY SITE EVALUATION COUNCIL
STATE OF WASHINGTON

IN THE MATTER OF APPLICATION NO. 96-1 OLYMPIC PIPE LINE COMPANY CROSS CASCADE PIPE LINE PROJECT	APPLICATION NO. 96-1 PREFILED TESTIMONY OF JAVIER H. FIGUEROA EXHIBIT ____ (JHF-T) **ISSUE**: STATE PARKS' LANDS PROGRAM AND OLYMPIC'S EASEMENT APPLICATION **SPONSOR**: WASHINGTON STATE PARKS AND RECREATION COMMISSION

Q. Please provide your name and business address to the Council.

A. Javier H. Figueroa
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Q. Please summarize your employment and educational background.

A. I am currently employed by the Washington State Parks and Recreation Commission (State Parks) as the Lands Program Manager. I have worked for State Parks since 1996

From 1990 to 1996, I worked as an Energy Specialist with the Washington State Energy Office. In 1995, I participated as the technical lead and co-authored the Washington State Energy Rating System Business Plan.

In 1994, at the invitation of The White House Office of Environmental Policy, I participated as a designated panel member and guest speaker at The White House Conference on Global Climate Change. Thereafter, I continued to work on the U.S. Climate Change Plan as the Secretariat and co-authored Action #8 of the U.S. Climate Change Plan. From 1991 through 1994, I was retained by federal agencies (U.S. Department of Energy and the Environmental Protection Agency) as an expert consultant to design the implementation strategy for national policies on financing energy efficiency in residential properties.

In addition, at the invitation of the Russian Minister of Environmental Protection and Natural Resources, I served as a U.S. Delegate to the 1995 Environmental Conference in Moscow, Russia. The conference provided in-depth discussion sessions with Russian leaders and previewed Russian plans to shape future environmental polices.

Recently, the U.S. Forest Service (USFS), the Bureau of Land Management (BLM) and various state agencies requested my expertise to further their understanding in negotiating trends and evaluation of right-of-way values for fiber-optic purposes.

My employment background includes eight years as a real estate manager and seven years as a real estate appraiser in the private sector. In 1998, I served as a Parks and Recreation Commissioner for the City of University Place, Washington.

I currently serve on the Better Business Bureau National Panel of Consumer Arbitrators as a certified arbitrator. In addition, I am a trained mediator for the Northwest and Western Regional Utilities Transmission Associations. I have three years of undergraduate work in marketing and economics and extensive specialized training in the fields of real estate, facilitation, negotiation, financing and mediation.

Q. Generally, what is the subject of your testimony?

A. My testimony concerns the process for obtaining a right of use or easement over property under State Parks' management and control; the applicable statutes, administrative codes, and Commission policies; the nature and the status of Olympic Pipe Line Company's (OPL) easement application to State Parks; and the State Parks' properties included within OPL's proposed pipeline route.

Q. What are your specific job responsibilities as the Lands Program Manager for Washington State Parks?

A. As the Lands Program Manager, I administer and implement the agency's land transactions, water rights, trespass identification and resolution, and lands acquisition programs. I administer the system by which applications for licenses, permits and easements are recorded, evaluated and processed according to Commission policy, administrative rules, and statutes. Specific responsibilities include developing, maintaining and managing State Parks' land records, i.e., deeds, surveys, relevant real property background information and various legal agreements. I am also responsible for the overall administration of the lands in the Washington State Seashore Conservation Area. As the Lands Program Manager, I am the lead staff for addressing economic impacts, valuation methods and negotiation trends for use of State lands, such as OPL's proposed use of the property under State Parks' management and control.

Q. Generally, what is the process for obtaining a right of use or easement along property under the management and control of Washington State Parks?

A. State Parks has standard application forms and procedures for any request for non-recreational use of land within the State Park system. Once an application is received, Lands

Program staff review it for completeness and review the property files for any encumbrances or restrictions on the land requested for use. If the application is complete and no property restrictions are found, the application is then reviewed by staff from the Operations and Resources Divisions (including the Planning, Environmental, Engineering, Concessions and Horticulture sections).

In addition to this review, staff from the specific park and appropriate region evaluate the request and provide recommendations for approval or denial. The recommendation is then forwarded to the Lands Program designated project coordinator.

Based upon these reviews, a decision is made by agency management on whether or not to approve, condition or deny the request. The seven-member Parks and Recreation Commission (Commission) has delegated specific authorities to the Director to manage certain types of non-recreational uses. Other authorities have not been delegated and therefore require specific Commission action. Depending upon the proposal's complexity, sensitivity, or expected impact to other park amenities, a public meeting may be held to notify and take comment from the public.

For proposals that receive final approval, a use authorization, e.g., lease, permit, easement (LPE), etc., is prepared, offered and executed. Exhibit JHF-1 is a copy of the agency's "LPE Checklist," which outlines in more detail the steps in the application process.

Q. Are you familiar with the proposal by the Applicant in this proceeding, Olympic Pipe Line Company, to construct a Cross Cascades Pipeline?

A. Yes. The initial OPL easement application was submitted to the Lands Program. I reviewed the application for completeness and was State Parks' lead for negotiating OPL's "Easement

Application Agreement" (Exhibit JHF-2). In addition, I have reviewed and studied in detail OPL's most current revised application to State Parks. Furthermore, I have thoroughly reviewed the Draft Environmental Impact Statement (DEIS) on the Cross Cascades Pipeline, and have participated in study sessions with other State Parks staff in regard to the project. Both the application and the DEIS provided in-depth maps pertaining to the proposed route. Moreover, I've met with OPL's representatives numerous times to discuss their proposal and have toured the proposed route with OPL. Also, I have inspected portions of the proposed route with State Parks staff.

Q. Describe the easement application filed with State Parks by Olympic Pipe Line Company.

A. OPL submitted its initial Easement Application to State Parks in October 1996. A revised application was submitted by OPL in November 1998, describing in greater detail the proposed route and reflecting changes since it was originally submitted. OPL proposes to construct an underground petroleum products pipeline, a portion of which will be 14-inch diameter and another will be 12-inch diameter. The portion of the proposed pipeline affecting State Parks extends for a distance of approximately 22.17 miles on State Parks owned land and an additional estimated 7.33 miles of land under the management of State Parks but owned by USFS. A copy of the management agreement between State Parks and the USFS is attached as Exhibit JHF-3. OPL has requested both lineal use and crossings for its proposed pipeline route over Olallie State Park - Twin Falls Natural Area, Iron Horse State Park - John Wayne Pioneer Trail (JWPT), and Ginkgo Petrified Forest State Park (Ginkgo) including the Wanapum Recreation Area.

OPL requests the following right of way widths along the proposed route described in the referenced "Revised OPL Easement Application:

- Twin Falls State Park (including Tinkham Road) and – 20 feet Permanent and 30 feet Construction.
- JWPT (including the Snoqualmie Pass Tunnel) – 10 feet Permanent and 30 feet Construction.
- Ginkgo Petrified Forest State Park - 20 feet Permanent and 30 feet Construction.

These widths are narrower than the 60 foot construction and 30 foot permanent requested and referenced by OPL in its Site Certification Application to EFSEC. However, OPL's easement application also stated, "To construct the pipeline in the narrow corridor with minimal impact, OPL will request additional widths for staging areas at identified areas along the route." OPL to date has not identified the additional widths for the staging areas. Attached as Exhibit JHF-4 is a copy of the revised easement application, which describes OPL's request in more detail.

Q. Have you reviewed State Parks' historical records with respect to State Parks' acquisition of properties within Olallie State Park - Twin Falls Natural Area, Iron Horse State Park - John Wayne Pioneer Trail, and the Ginkgo Petrified Forest State Park potentially affected by the proposed pipeline route?

A. I (or staff under my direct and close supervision) conducted a complete and thorough review of State Parks' historical records, specifically focusing on those park lands affected by the proposed pipeline route. The records reviewed include all applicable laws, administrative codes and original property acquisition deeds for those lands along the proposed route. During my research, I found no specific statutes (RCWs) or administrative regulations (WACs) that would necessarily preclude State Parks from managing lands along the proposed pipeline route in any particular manner, except for those general provisions contained within RCW 43.51.409.

Staff carefully reviewed the deed histories for restrictions or reservations that may have been placed on the land as a condition of the seller's offer or State Parks' acceptance. For example, State Parks commonly accepts property deeds with a restriction that the property be used for public benefit and recreational purposes only. After staff review of State Parks records, no restrictions were found within the deeds that would prohibit the installation of utilities.

In addition to conducting deed research, staff reviewed the State Parks and Recreation Commission meeting minutes from those meetings where the Commission discussed or approved any property acquisition or management guidelines for lands located along the proposed pipeline route. Staff reviewed the meeting minutes looking for Commission policy, direction or intent on State Parks' goals/objectives in managing any particular property or acquisition.

Further, staff researched State Parks' property files for correspondence relating to State Parks' management intent on those lands along the proposed pipeline route. Documents reviewed included reports from Parks' staff that detail the benefits, conditions or other property issues surrounding a proposed acquisition.

Finally, staff reviewed existing land uses issued through the execution of State Parks' use agreements, Memorandums of Agreement, and existing property encumbrances for all lands located in the vicinity of the proposed pipeline route. Specifically, staff reviewed agreements signed with USFS, Puget Sound Power and Light, Washington State Department of Transportation and Bonneville Power Administration.

To summarize my review, there are two conditions which potentially impact State Parks' ability to manage those lands along the proposed pipeline route. The first condition is detailed in the easement recorded under auditors' file numbers 9001020094 and 52939.

Under Section 10 of the 1989 easement executed with AT&T, State Parks agrees not to construct any structure or conduct any activities within the easement area that might interfere with the maintenance and operation of AT&T's facilities without prior approval from AT&T.

The second condition is similar to the first and is expressed through the 1996 easement agreement No. 96-0404. This easement issued to WorldCom Network Services, Inc. (MCI/WorldCom), contains language in Section 18 (c) that prohibits the State from authorizing the construction of facilities that will impair or require WorldCom to relocate existing facilities. The proposed pipeline route traverses lands encumbered by these two easements. The two documents are attached as Exhibits JHF-5 and JHF-6.

Q. Please summarize the specific statutes authorizing, and administrative codes and Commission policies guiding, the Commission's decision regarding granting of rights of way.

A. The following statutes define the Commission's discretionary authority to grant rights of way over Commission lands:

RCW 43.51.040 provides that the Commission shall:

"(2) Adopt, promulgate, issue and enforce rules pertaining to the use, care and administration of state parks and parkways…

(5) Grant concessions or leases in state parks and parkways, upon such rentals, fees, or percentages of income or profits and for such terms, in no event longer than forty 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…"

RCW 43.51.060 provides, "The commission may…

"(5) Grant franchise and easements for any legitimate purpose on parks or parkways, for such terms and subject to such conditions and considerations as the commission shall specify…

(7) 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 ten years;…"

RCW 43.51.407 Milwaukee Road corridor—Duties. Provides:

"The state parks and recreation commission shall do the following with respect to the portion of the Milwaukee Road corridor under its control:

(1) Manage the corridor as a recreational trail except when closed under RCW 43.51.409;…

(3) Close the corridor to all motorized vehicles except: (a) Emergency or law enforcement vehicles; (b) vehicles necessary for access to utility lines; (c) vehicles necessary for maintenance of the corridor, or construction of the trail;

(4) Comply with legally enforceable conditions contained in the deeds for the corridor…."

RCW 43.51.409 Milwaukee Road corridor—Additional duties. Provides:

"The state parks and recreation commission may do the following with respect to the portion of the Milwaukee Road corridor under its control:

(1) Enter into agreements to allow the realignment or modification of public roads, farm crossings, water conveyance facilities, and other utility crossings;

(2) Regulate activities and restrict uses, including, but not limited to, closing portions of the corridor to reduce fire danger or protect public safety; …

(5) Approve and process the sale or exchange of lands or easements if such a sale or exchange will not adversely affect the recreational potential of the corridor;

The Commission has also adopted an administrative rule governing its processing of applications for use of parklands.

WAC 352-32-300 – Public Use of State Park Areas. Provides:

(1) A party that desires to have a request for an easement, franchise, license, or special use permit considered by the commission shall submit an application on a form provided by the director to the:

Washington State Parks and
Recreation Commission
7150 Cleanwater Lane
P.O. Box 42650
Olympia, WA 98504-2650

Each application from a party other than a government agency shall be accompanied by a nonrefundable application fee according to a schedule adopted by the commission.

A party shall pay the commission processing and use fees as apply according to a schedule adopted by the commission.

A party shall pay the commission for any appraisal, appraisal review, and survey costs incurred by the commission during the consideration of an application for an easement,

franchise, license, or special use permit. The amount of any appraisal, appraisal review, and survey costs shall be determined by the director or the designee of the director.

An application fee and any processing fees, use fees, and appraisal, appraisal review, and survey payments shall be submitted to the commission at the address listed above and shall be in the form of a check or money order payable to the Washington state parks and recreation commission.

(2) The application fee, processing fee, use fee, and the appraisal, appraisal review, and survey payments established by subsection (1) of this section may be waived by the director or the designee of the director when the director or the designee determines that the action authorized by an easement, franchise, license, or special use permit will be of benefit to the general public, if approved by the commission.

The fee schedule adopted by the Commission pursuant to this rule is included as an attachment to Exhibit JHF-2.

Washington State and Recreation Commission Policy -- Use of Park Land For Major Utility Facilities – See Exhibit JHF-7. On September 11, 1992, the Commission adopted a policy governing the use of park land for major utility facilities. Pipelines are considered "major utility facilities" by this policy and all such utility applications must be brought to the Commission for action. This policy begins by stating:

"The Washington State Parks & Recreation Commission is firmly opposed to the placement on park lands of any facility which will adversely affect public recreation or despoil the

natural environment. Public recreation needs and park values are paramount to any other use."

The policy further specifies that the use of park land for major utility facilities shall be considered only under the following two conditions:

1. The proposed site within the park has little or no significant adverse effect upon public recreation and the natural environment of the park; and,
2. Significant benefits are provided to State Parks.

The Commission may, at its discretion, refuse to approve any proposed use solely on the basis that the facilities are unsightly, detract from park aesthetics, interfere with scenic vistas from park property or cause adverse impact to the environment with cannot be sufficiently mitigated to the satisfaction of the Commission. This policy further specifies certain conditions that must be used in any agreement authorizing such facilities for the protection of the park, Commission and the public, and what types of benefits may be considered as offsetting land values.

Memorandum of Understanding Concerning Management of the John Wayne Pioneer Trail/Iron Horse State Park Between the Washington State Parks and Recreation Commission and the U.S. Forest Service - See Exhibit JHF-3. Under the terms of this agreement, State Parks has the lead in developing commercial lease agreements over USFS land in the trail. Both agencies are to work towards efficiently handling commercial leases and activities along the trail.

Q. Please describe State Parks' acquisition of property within Olallie State Park - Twin Falls Natural Area potentially affected by the proposed pipeline route.

A. Twin Falls Natural Area was acquired in three separate parcels and currently totals approximately 335.5 acres.

Acquisition #1

The original 159.5 acre property was purchased from Puget Sound Power and Light in 1950. In 1977, Twin Falls Natural Area received its current official classification and was made part of Olallie State Park. Prior to 1977, the property was referred to as Twin Falls State Park. The Commission renamed the property in part to "… emphasize and preserve its natural qualities." The proposed pipeline route does not traverse this portion of the Twin Falls Natural Area. However, the proposed pipeline installation in the vicinity may potentially affect view shed and other amenities of the Twin Falls Natural Area.

Acquisition #2

In January 1990, State Parks purchased 186 acres via quitclaim deed from the Department of Natural Resources (DNR). The proposed pipeline route crosses approximately 880 feet of this land. No deed restrictions or reservations are documented on these lands. No land management designations or Commission direction other than "for general park purposes" were identified in the records researched.

Acquisition #3

In April 1993, State Parks acquired a twenty-acre parcel from Gary and Colleen Wilson via land exchange. State Parks exchanged to the Wilson's a thirty-acre parcel located approximately 1,000 feet to the northwest. The Commission received a staff report that detailed a primary benefit of the Wilson exchange as protection of the visual basin along

Interstate Highway 90 (I-90). There are no deed restrictions or reservations on the twenty-acre acquired parcel. The proposed pipeline route traverses approximately 1,400 feet of this land.

Q. Please describe State Parks' acquisition of property within portions of Iron Horse State Park - John Wayne Pioneer Trail potentially affected by the proposed pipeline route.

A. State Parks acquired lands potentially affected by the proposed pipeline route through three separate parcel acquisitions.

<u>Acquisition #1 - Kittitas</u>

The first property acquisition was in December 1981. The State of Washington acquired interest in the Milwaukee corridor by quitclaim deed from Richard B. Ogilvie, trustee of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. The DNR received management control of the rail corridor from Easton to the Idaho border.

This portion of Iron Horse State Park was acquired by the DNR with funding from the Interagency Committee for Outdoor Recreation (IAC) under contract #82-701A. Condition #17 of the project contract reads, "Contracting Party agrees to hold the land acquired under this Project Contract for the purpose for which it was acquired or until otherwise directed by <u>future legislative action</u>." Such a condition would preclude any change in use of the property that would amount to a conversion under IAC guidelines. An easement given for "non-public recreation uses" may be considered a conversion by the IAC (Procedural Manual #7, Section 07.19 Conversion Policy). When the legislature transferred management of this portion of the corridor to State Parks in 1989 (1989 Laws, Chapter 129, Section 1), it gave State Parks the authority to "enter into agreements to allow the realignment or modification of public roads, farm crossings, water conveyance facilities and other utility crossings;" (RCW

43.51.409(1)) and "approve and process the sale or exchange of lands or easements if such a sale or exchange will not adversely affect the recreational potential of the corridor" (RCW 43.51.409(5)). State Parks staff considers the legislative action to supersede condition #17 of the IAC project contract.

The proposed pipeline will make four crossings of the former Milwaukee rail corridor, all within a three mile area of the center of the town of Kittitas. The pipeline thus will affect approximately 623 lineal feet (.12 miles) of the rail corridor.

Acquisition #2 - Cedar Falls to Cabin Creek Exhibit JHF-8 is a map of this property. Prior to State Parks' acquisition of this portion of the former Milwaukee corridor, a Term Lease Agreement was executed with Burlington Northern dated May 1, 1988, for recreational trail and associated activities. State Parks subsequently executed an Option to Purchase Agreement with Burlington Northern, dated June 30, 1988.

During this period, AT&T contacted Burlington Northern to request an easement to install fiber-optic cable along the corridor. AT&T was made aware that State Parks had an option to purchase this part of the former Milwaukee corridor. AT&T began negotiations with State Parks for a fiber-optic cable easement. It was agreed that AT&T would place $1,222,717 into an escrow account to be used by State Parks to purchase the former Milwaukee corridor section from Cedar Falls to Cabin Creek and three parcels from DNR in exchange for State Parks granting an easement to AT&T for a fiber-optic cable easement.

On October 3, 1989, DNR quitclaimed to State Parks, at no cost, approximately 100 acres in three parcels along the abandoned railroad right-of-way in the South Fork Snoqualmie River

and I-90 corridor. Burlington Northern quitclaimed to State Parks on December 15, 1989, portions of the former Milwaukee corridor section from Cedar Falls to Cabin Creek.

On May 21, 1990, State Parks granted and recorded an easement to AT&T for fiber-optic cable. In addition to the easement granted, AT&T contributes to State Parks $50,000, plus CPI, annually, for the maintenance and operation of the JWPT.

Acquisition #3 - Bandera Exhibit JHF-8 is a map of this property.
On April 3, 1998, DNR quitclaimed to State Parks approximately 214 acres (the Bandera parcel) by direct land transfer pursuant to SSB 6063, Chapter 235, Section 3921, Washington State Laws of 1997, at the request of the Commissioner of Public Lands as authorized and approved by Resolution No. 940 adopted on October 21, 1997, by the Board of Natural Resources, State of Washington. This property was acquired through legislative transfer, at no cost to State Parks. The proposed pipeline will affect approximately 3,063 lineal feet (.58 miles) of the parcel.

Q. Please describe State Parks' acquisition of property within portions of Ginkgo Petrified Forest State Park (Ginkgo) potentially affected by the proposed pipeline route.

A. Ginkgo is located in Townships 16 and 17 North, Ranges 22 and 23 East, W.M., Kittitas County, adjacent to I-90 and the town of Vantage, Washington, on the west side of the Columbia River. The area was officially named and classified by the Commission on August 20, 1973, as follows:

Entire Area: Ginkgo Petrified Forest State Park

Ginkgo Petrified

Forest Trails Area:	Ginkgo Petrified Forest State Park - Natural Area
Ginkgo Interpretive Center:	Ginkgo Petrified Forest State Park - Heritage Area
Wanapum:	Ginkgo Petrified Forest State Park - Wanapum Recreation Area

The Commission minutes note that "the area contains one of the most unique petrified fossil forests in the world. Also, the area has achieved national recognition through its designation as a Registered National Landmark by the United States Department of the Interior."

The land at Ginkgo that is crossed by the proposed pipeline route was acquired by State Parks in three separate acquisitions, one from DNR and two from BLM. Each of these acquisitions is summarized below:

<u>Acquisition #1 (P-3 on Exhibit JHF-9)</u>

In March 1959, State Parks received a Patent from BLM to 455.66 acres of land. All restrictions noted in the Patent expired 25 years after transfer. The pipeline is proposed to cross the SW ¼ of Section 30, Township 17 North, Range 23 East.

<u>Acquisition #2 (P-1 on Exhibit JHF-9)</u>

In September 1935, DNR acquired this land via exchange with the Smithson Company. In April 1962, this property was conveyed to State Parks under an Order of Reservation for State Park Purposes. Then, in November 1971, State Parks and DNR entered into a Real Estate Contract for the purchase of this property and in October 1992, State Parks fulfilled its obligations under the Real Estate Contract and received a quitclaim deed to the property. The

total acreage of the acquisition was 6,013.68. The only deed restriction is a reservation of mineral rights by DNR. The pipeline is proposed to cross the North ½ of Section 26, and the NW ¼ and SE ¼ of Section 25, Range 22 East; and the West ½ of Section 31, Range 23 East; all in Township 17 North.

Acquisition #3 (P-2 on Exhibit JHF-9)

In August 1964, State Parks received a Patent from BLM to 347.73 acres of land. The property is within the Wanapum Recreation Area of Ginkgo. Patent restrictions include a reservation of mineral rights and mandate that the land be used for public park purposes only. Exhibit JHF-10 is a copy of this Patent. The pipeline is proposed to cross the West ½ of Section 6, Township 16 North, Range 23 East.

The Commission minutes for acquisition of these three properties did not discuss specific details about the reasons for acquisition or directions on future management of the sites; only that the lands be for "state park purposes" and the classification of park areas described above. The proposed pipeline route does not cross through either the presently classified Natural Area or Heritage Area of Ginkgo, but it does pass within the western boundary of the Wanapum Recreation Area.

Q. What is the current status of Olympic Pipe Line Company's easement application with State Parks?

A. OPL submitted its initial Easement Application to State Parks in October 1996. In August 1997, State Parks hired a project coordinator whose principal function is to coordinate the State Parks' review of the project with the proponent, State Parks' staff and other agencies. In November 1998, OPL submitted a revised application to State Parks (Exhibit JHF-3). The review of the application and refinement of the proposed alignment through State Parks'

lands remain an ongoing process. This includes close scrutiny by staff in coordination with OPL's staff and consultants.

During the initial review of the application, it became evident that additional staff would be needed to facilitate the review process. Individuals from State Parks' staff were selected to be members of a project team from Headquarters, the Puget Sound Region which contains Olallie and part of Iron Horse State Parks, and the Eastern Region, which contains part of Iron Horse and Ginkgo Petrified Forest State Parks.

Currently, State Parks' OPL project team is assembling information for presentation at the March 19, 1999, Commission meeting, wherein the proposed alignment through State Parks lands will be considered in continuation of the Commission's ongoing review process. In addition, staff is planning for public meetings to obtain feedback from the public regarding OPL's proposed pipeline use of parklands, and is working with OPL in an attempt to reduce potential impacts of its proposal on State Parks land.

Furthermore, in February 1999, agency staff advertised and circulated a Request for Proposal for a Corridor Impact Analysis along the portion of the JWPT, proposed by OPL for installation of the Cross Cascade Pipeline. As a part of ongoing research, State Parks' staff is conducting a search of comparable transactions for market valuations between private pipeline companies and public agencies.

State Parks initiated contact with the National Park Service to discuss the ramification of its designation of Ginkgo Petrified Forest State Park as a Threatened National Natural Landmark. In addition, State Parks contacted a DNR geologist known to have done extensive mapping of the park's geology, to assist in the location and interpretation of the

park's significant fossil beds. Several field trips have been conducted to study the proposed alignment through Ginkgo State Park. As a result, the original alignment proposed through the park has been revised in effort to reduce impacts to the park's paleontological resources.

The information being accrued from field trips and studies is enabling State Parks' staff to eventually reach a level of knowledge wherewith the staff will present a recommendation to the Commission.

Q. What work remains before a decision may be made on Olympic Pipe Line Company's request?

A. The task facing State Parks is developing the "tests" or "conditions" under which the Commission would consider granting of a right-of-way for the proposed pipeline and thus the measures we as staff should use to make a recommendation to the Commission. What follows is a summary of the additional work needed from the Lands Program prior to a staff recommendation to the Commission. Additional work by the Environmental and Planning Programs, and the Operations Division may also be a prerequisite to any recommendation. Ultimately, it will be up to the Commission to decide under what "tests" or "conditions" it will consider in deciding whether to grant OPL's right of way request.

As part of the Easement Application Agreement, State Parks has begun the process of obtaining a consultant for the Corridor Impact Analysis. The purpose of the analysis is to determine the potential short-term and long-term impacts of the proposed pipeline on existing and potential uses of the corridor. These impacts include, but are not limited to, utility and telecommunication uses, and the capacity of the existing corridor to accommodate additional such uses both before and after installation of the proposed pipeline. Some of the existing

uses include utilities owned by AT&T, MCI/WorldCom, Puget Sound Energy, Bonneville Power Administration and other utilities.

In addition to the Corridor Impact Analysis, I expect to supplement the analysis by exploring the following issues:

- Determine “compatibility” between existing and future utility uses.
- Third party future rights for modifying or upgrading existing fiber-optic cables.
- State Parks' ability to renegotiate with the existing users and/or negotiate with new applicants for additional fiber-optic and other utility capacity to accommodate demand.
- Safety and risk issues associated with the project's effect on existing utilities, e.g., breakage of a utility line, loss of service to a community (Seattle) and/or a large client, such as the Federal Aviation Administration or military installations.
- Maintenance and repair issues with OPL facilities installed (includes security issues).
- Legal requirements (other than agreement rights), including those requirements of Federal regulations, e.g., Telecommunications Act of 1996, National Natural Landmark status.
- State liability issues associated with spills from the proposed pipeline.
- State Parks’ obligations under Memoranda of Agreement with third parties, such as with the U.S. Forest Service.
- Identify additional widths for staging areas along the OPL proposed route.
- Evaluate the impact(s) on individuals or groups that have already received a special use or recreation event permit.
- Evaluate the right(s) and impact(s) of commercial-use permit holders that use the trail as primary locations to provide service.

Furthermore, a methodical and thorough study is required for determining the most appropriate type of legal instrument, i.e., easement, lease, commercial contract or some other arrangement, should the Commission choose to grant OPL the right to use State Parks land for the pipeline project. The information obtained to date indicates that there is no industry standard for applying any particular type of legal instrument.

As part of the study, I am conducting a search of comparable transactions for market valuations between private pipeline companies and public agencies. Specifically, I will be searching for comparable transactions that include fiber-optic use alongside pipelines

There clearly needs to be further clarification about determining compensation, both for the fair market value of the right granted to the applicant, and for the additional risk and burden its use will impose on the State's resources, should the State Parks Commission decide to grant a right of use.

In an era of diminishing utility right-of-way opportunities on State Parks' lands, it is clear that State Parks' staff need to evaluate and comprehend values for such considerations as:

- Commercial/industrial use, e.g., communication sites; fiber optic cables, pipelines, transmission lines;
- Opportunity loss, i.e., payment for any foregone commercial opportunities;
- Loss of public resources (aesthetic loss to the recreational public and loss of non-renewable resources, e.g., vegetation, petrified wood);
- Severance, i.e., compensation for any loss of value to any encumbrance arising from granting a right-of-way;

- Replacement cost, i.e., estimated value based on what it would cost to reproduce functions foregone as a consequence of a right-of-way grant.

Additional risk analysis in determining compensation includes the long-term effects on State Parks' lands, such as social costs of disrupting the recreational network, public access, effects on adjacent landowners and state-wide economic impacts, i.e., loss of state revenue.

Furthermore, as part of the compensation package, staff will need to comprehend and evaluate the "value" loss in response to a potential major spill that may permanently damage recreational use (Fatal Flaw Analysis).

There is no longer enough space to accommodate every competing use on every section of State Parks' lands – choices will have to be made. The analysis and subsequent staff reports and recommendations will provide critical information to the Commission as it considers whether to grant OPL access to State Parks' lands for the proposed Cross Cascade Pipeline.

DATED this _____ day of February, 1999

_____
JAVIER H. FIGUEROA
Lands Program Manager