

After Signature Return To:  
Washington Department of Fish and Wildlife  
Real Estate Services  
attn: Elyse Kane  
600 Capitol Way North  
Olympia, Washington 98501-1091

Document Title: Land Use Agreement  
WDFW Inventory No. A110014  
Grantor: The State of Washington, Department of Fish and Wildlife  
Grantee: New Mission LLC  
Legal Description: Section 25, Portions of Sections 27& 35, TWP 21 N., R 19 E.W.M.

## LAND USE AGREEMENT WINTER SKI AREA

**THIS AGREEMENT** is entered into this 12<sup>th</sup> day of July, 2005 by and between **THE STATE OF WASHINGTON, THE DEPARTMENT OF FISH AND WILDLIFE**, hereinafter referred to as "WDFW", and **MISSION RIDGE RESORT, INC.**, a Washington corporation, whose address is P. O. Box 1668, Wenatchee, Washington 98807, hereinafter referred to as "Grantee."

WHEREAS, WDFW owns certain real property situated in the Counties of Chelan and Kittitas, State of Washington, to wit:

### TOWNSHIP 21 NORTH, RANGE 19 EAST, W.M.

Section 25; the East half of the East half of Section 27; the North half of the North half of Section 35;

WHEREAS, said lands were acquired in 1953 by WDFW's predecessor with sportsmen's funds granted through the Federal Aid to Wildlife Restoration Act of 1937 for the management of wildlife, wildlife habitat and recreational hunting;

WHEREAS, WDFW manages said lands subject to the requirements of said Federal Aid Act, as administered through the U.S. Fish and Wildlife Service contract attached hereto as Attachment A, to preserve and protect, among other species, the Colockum elk herd, the survival of which depends upon a twice-yearly migration free of human encroachment and disturbance through said lands;

WHEREAS, Grantee desires to operate a winter recreational ski area comprised of both said WDFW lands and adjacent federal lands (hereinafter "combined ski area") and has entered into a Permit with the U.S. Department of Agriculture Forest Service, attached hereto as Attachment B (hereinafter "U.S. Forest Service Permit"), for the use of certain federal lands in Sections 22, 24, 26, and 34, all in Township 21 North, Range 19 East, W.M., (hereinafter "U.S. Forest Service Permit Area");

WHEREAS, each recreational activity and facility at the combined ski area crosses WDFW-U.S. Forest Service boundaries or otherwise serves to enhance each other recreational activity and facility at the ski area so as to be an integral part thereof;

WHEREAS, the WDFW lands constitute approximately half of the combined ski area and the WDFW lands include a portion of the site for the snow-making reservoir which will serve the combined ski area;

WHEREAS, WDFW and the U.S. Forest Service have entered the Cooperative Agreement attached hereto as Attachment C whereby the U.S. Forest Service agrees to administer the WDFW lands along with the U.S. Forest Service Permit Area for use as a combined ski area;

NOW, THEREFORE, for and in valuable consideration and subject to the terms and conditions set forth herein, WDFW hereby grants to Grantee an exclusive right to operate a winter recreational ski area on said WDFW lands (hereinafter "WDFW Agreement Area").

**THIS AGREEMENT IS MADE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

**SECTION 1  
OCCUPANCY**

- 1.01 Permitted Use. WDFW grants Grantee the right to operate within the WDFW Agreement Area a winter recreational ski area and all improvements and facilities ancillary to such use, PROVIDED THAT said improvements and facilities are of a type and at a location approved by WDFW. Attachment D lists the approved improvements, facilities, alterations, and includes the Operating Plan.
- 1.02 Term. The term of this Agreement shall commence on July 1, 2005, and terminate on June 30, 2033, as limited by the occupancy restrictions set forth in Paragraph 1.03, below.
- 1.03 Occupancy Restrictions. This Agreement is granted for the purpose of operating a winter recreational ski area from the Saturday immediately prior to Thanksgiving ("First Skiing Day") through April 30 annually during the term hereof. Between May 1 and First Skiing Day of each calendar year, Grantee's occupancy and use of the WDFW Agreement Area is restricted to the limited purposes of maintenance, construction, vegetation management and fire suppression; HOWEVER, snow-making is prohibited between May 1 and November 1 annually, except where a mutually-approved study demonstrates no adverse impact to wildlife from earlier snowmaking. Conditions of the exception must be mutually agreed to in writing by the parties. Maintenance, construction, vegetation management, and snow-making activities are further restricted to the specifications set forth in Attachment D. Grantee agrees that it will neither make, nor permit to be made, any use of the WDFW Agreement Area that restricts the use of the WDFW Agreement Area for public hunting purposes during lawful hunting seasons of September, October, and November. Grantee agrees that it will neither make, nor permit to be made, any use of the WDFW Agreement Area that restricts public access between May 1 and First Skiing Day each year, except for restrictions imposed by WDFW or approved in writing by WDFW.
- 1.04 No Warranty. Grantee expressly recognizes that the WDFW Agreement Area is located within the Colockum Wildlife Area, the purpose of which is to provide for the habitat needs of wildlife species and to provide compatible wildlife recreational opportunities for the public. This Agreement is granted without warranty, either express or implied, regarding the condition, state of repair, or utility of any improvement or facility within the WDFW Agreement Area or the suitability of the WDFW Agreement Area for Grantee's purposes. WDFW shall not be subject to any liability whatsoever on account of any shortage or defect in any part of the WDFW Agreement Area. Grantee represents that it has investigated the WDFW Agreement Area and is satisfied with it and accepts it "as is" in its current condition including, but not limited to, all improvements and facilities on the premises.
- 1.05 Limited Rights/No Assignment. No provision of this Agreement is intended nor shall be deemed to transfer any real property from WDFW to Grantee. WDFW permits only those rights and privileges set forth in this Agreement during the term hereof and WDFW retains jurisdiction over its property in all other respects. This Agreement shall neither be deemed nor construed to be an exclusive right to use the WDFW Agreement Area. WDFW reserves the right to use or permit others to use any part of the WDFW Agreement Area for any purpose, provided such use does not materially interfere with the rights and privileges hereby authorized. WDFW expressly reserves the rights to any trees, minerals, oil and gas resources, or any other valuable materials in the WDFW Agreement Area. Neither this Agreement, nor the rights, benefits and obligations set forth herein, shall be assigned or sublet by Grantee in whole or in part without the prior express written approval of WDFW.

**SECTION 2  
MANAGEMENT**

- 2.01 General Maintenance Standards. Grantee shall, at its sole cost and expense, keep and maintain the WDFW Agreement Area and all improvements and facilities appurtenant thereto in good order and repair and in safe condition and shall keep and maintain the whole of the WDFW Agreement Area in a clean, sanitary and attractive condition. No provision of this Agreement is intended nor shall be deemed to grant the right to cut, remove, burn, or dispose of trees or other vegetation on the WDFW Agreement Area without the prior, express written approval of, and payment of compensation to, WDFW. Grantee shall immediately comply with verbal or written directives by WDFW concerning use of the WDFW Agreement Area.

- 2.02 General Protection Standards. Grantee shall protect the natural aesthetic values of the WDFW Agreement Area. Grantee also shall take measures to adequately preserve and protect the WDFW Agreement Area and its trails and slopes including, but not limited to, ensuring proper drainage, preventing erosion, and protecting streams and water courses. Grantee shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires without a written permit from WDFW.
- 2.03 Damage. Grantee shall exercise diligence in protecting from damage the land, property, roads, and trails in and around the WDFW Agreement Area. Grantee shall pay to WDFW, at its option, restoration costs or compensation immediately upon demand for any damage to said land, property, roads, and trails resulting from negligence, violation of the terms of this Agreement, or violation of any law or regulation by Grantee or Grantee's agents, employees, licensees, invitees, sublessees, or contractors. Grantee shall reimburse WDFW immediately upon demand for any fines or penalties connected with said damage that are imposed upon WDFW by any governmental authority.
- 2.04 Signs. Grantee shall post signs on site to guide and direct public uses. In addition, at WDFW's request, Grantee shall post WDFW-provided signs on site to identify the WDFW Agreement Area as being publicly owned by the Washington Department of Fish and Wildlife for wildlife habitat conservation and public use and enjoyment and to acknowledge the funding assistance of the U.S. Fish and Wildlife Service. WDFW reserves the right to post additional signs for resource protection purposes.
- 2.05 Utilities. Grantee shall pay, at its sole cost and expense, all charges for all utility services to all activities and operations of Grantee, its contractors and sublessees, at the WDFW Agreement Area. Grantee agrees to waive any claim against WDFW for any interruption of utility services. Grantee shall be responsible for all costs and the legal storage of propane gas, if any, used in its activities and operations.
- 2.06 Compliance Monitoring. Authorized representatives of WDFW shall have access at all times to all parts of the combined ski area for purposes of monitoring compliance with this Agreement, the U.S. Forest Service Permit, or laws of any governmental authority and for any other lawful purpose. Said access shall be without charge including, but not limited to, the use of the lifts, vehicles, or other conveyances.
- 2.07 Compliance with Applicable Laws and Permitting Requirements. Grantee hereby agrees to comply with all applicable laws, rules, regulations, and permitting requirements, made thereunder by WDFW and all other agencies and governmental authorities, for any and all of its activities in the WDFW Agreement Area. Grantee shall allow no unlawful acts or activities in the WDFW Agreement Area.
- 2.08 Hazardous Substances. Grantee shall not allow in or around the WDFW Agreement Area any substance now or hereinafter regulated by any governmental authority as hazardous, toxic, dangerous, or harmful (hereinafter referred to as "hazardous substance") unless said hazardous substance is necessary to carry out the permitted use set forth in Section 1, above, and unless Grantee fully and strictly complies with all applicable requirements of any and all governmental authorities. Grantee shall reimburse WDFW immediately upon demand for any and all cleanup costs and any and all other charges, fees, costs, fines, and penalties (civil and criminal) imposed on WDFW by any governmental authority for hazardous substances in or around the WDFW Agreement Area.
- 2.09 Compliance with Funding Source Contracts. Grantee hereby agrees to operate and maintain the WDFW Agreement Area in compliance with the provisions of the U.S. Fish and Wildlife Service-WDFW contract (Attachment A).
- 2.10 Compliance with U.S. Forest Service Permit. Grantee acknowledges that WDFW and the U.S. Forest Service have entered into an Cooperative Agreement (Attachment C) whereby WDFW has authorized the U.S. Forest Service to act on its behalf in the management of the WDFW Agreement Area. Grantee hereby agrees to operate and maintain the WDFW Agreement Area in compliance with the written and verbal directives of the U.S. Forest Service.

### SECTION 3 CONSTRUCTION

- 3.01 Improvements and Alterations. No improvements of any kind may be made to the WDFW Agreement Area without the prior, express, written approval of WDFW. No alterations to physical features, including, but not limited to, adding or removing earth or other material, adding artificially-generated snow, or adding or altering water courses or impoundments, may be made to the WDFW Agreement Area without the prior, express, written approval of WDFW. Attachment D lists the approved improvements and alterations.
- 3.02 Prior Approval. WDFW expressly reserves the right of approval for any and all plans and schedules for new construction and expansion of improvements and facilities and for physical alterations to the WDFW Agreement Area. Prior to the commencement of said construction, expansion, or alteration, Grantee shall forward to WDFW a detailed plan and schedule for WDFW's review and approval. WDFW will use best efforts to respond expeditiously. Upon receiving WDFW's express written approval of said plan and schedule, Grantee may, at its sole cost and expense, proceed with the approved work. Grantee shall obtain and maintain, at its sole cost, all licenses and permits required by WDFW and any and all other governmental authorities.
- 3.03 Possessory Interest in Improvements. Grantee shall have a possessory interest in all improvements it constructs or acquires and that are located on the WDFW Agreement Area with WDFW's prior written approval. This possessory interest may be used as security for financing and other reasonable, customary, and conventional uses with WDFW's prior written approval.

### SECTION 4 PAYMENTS

- 4.01 Annual Rent. For the previous twelve-month's occupancy of the WDFW Agreement Area, Grantee shall pay to WDFW by May 31 of each year a percentage of all of Grantee's Gross Receipts as defined below, HOWEVER, said annual rent shall be not less than \$15,000 (hereinafter "Minimum Rent"). A set-off shall be made for rental payments, if any, WDFW has received through the above-referenced U.S. Forest Service Permit for the same occupancy period.

Rent rates by bracket:

- 0.75% of Bracket 1 (\$0 to \$3,000,000 in annual gross receipts);
- 1.25% of Bracket 2 (\$3,000,001 to \$15,000,000 annual gross receipts);
- 1.375% of Bracket 3 (\$15,000,001 to \$50,000,000 annual gross receipts);
- 2% of Bracket 4 (annual gross receipts above \$50,000,000).

"Gross Receipts" shall mean all revenue, including, but not limited to, receipts, income, credit and value, received by or accruing to Grantee or Grantee's benefit whether evidenced by barter, exchange, check, credit, debit, charge account or cash, received from: the sale of all lift, tow, and other tickets, and the provision of all ski instruction, transportation, guiding, and other services, conducted in the combined ski area. "Gross Receipts" shall not include food, beverage, rental and retail sales from buildings such as restaurants, shops and indoor concessions not located on WDFW land. "Gross Receipts" shall also not include sales of WDFW hunting and fishing licenses or sales for which refunds have been made or returns accepted. Revenue from advance ticket or season pass sales shall be deemed received at the earlier of: the date refund provisions applicable to such tickets or sales have lapsed, or April 30.

- 4.02 Annual Leasehold Excise Tax. In addition to payment of rent as provided in paragraph 4.01, above, Grantee shall annually pay to WDFW the Leasehold Excise Tax (L.E.T.) required on the Agreement Area under Washington State Law.
- 4.03 Advertising Revenue. No advertising is allowed on the WDFW Agreement Area without prior express written approval of WDFW, which shall include prescriptions for content and location. All funds received from advertising, less administrative costs as agreed, shall be expended on wildlife management in the vicinity of Mission Ridge consistent with Federal Aid requirements.
- 4.04 Inundation of Reservoir Area. Grantee shall pay to WDFW upon demand a one-time payment of \$7,000 for inundation of the reservoir area of three (3) acres as shown on Attachment E.

- 4.05 Taxes and Assessments. Grantee shall pay during the term of this Agreement all taxes and other governmental assessments or charges of any kind applicable or attributable to the WDFW Agreement Area, all activities and interests therein, and Grantee's use and enjoyment thereof. Grantee shall not cause or suffer the imposition of any assessment upon the WDFW Agreement Area and any improvements thereon without the prior written consent of WDFW. In the event any tax or assessment is proposed that affects the WDFW Agreement Area, Grantee shall notify WDFW of such proposal immediately upon notice or knowledge thereof.
- 4.06 Past Due and Other Payments. Grantee shall pay interest at the rate of one percent (1%) per month until paid on rent or other sums owing under the terms of this Agreement commencing the date such rent or other sum is due. In the event WDFW pays any sum or incurs any expense which Grantee is obligated to satisfy or pay under this Agreement, or which is made on behalf of Grantee, Grantee shall reimburse WDFW immediately upon demand, together with interest thereon of one percent (1%) per month from the date of WDFW's expenditure. In addition to any other provision herein, Grantee shall pay to WDFW an administrative fee of one-half of one percent (0.5%) of the face amount of any check submitted by Grantee to WDFW which is returned by a bank as uncollectible for any reason.
- 4.07 Adjustment of Minimum Rent and Brackets. The Minimum Rent and the bracket thresholds in Section 4.01, above, shall be increased each year by the rate of inflation as published for that year by the U.S. Department of Labor [specifically, the consumer price index (CPI) for Seattle].
- 4.08 Books of Account and Audits. Grantee shall maintain such permanent books of account, records, and inventories as are sufficient to show specifically and separately the items of gross receipts, income and expense, receipts and disbursements, and such other information as will correctly reflect the financial condition and results of Grantee's operations at the combined ski area. Such books and records shall be kept available at all reasonable times for inspection by WDFW's authorized representatives. Grantee annually shall provide to WDFW an audited statement from a certified public accountant certifying the annual gross receipts of the combined ski area. WDFW may require an audit of the Grantee's books and records by a certified public accountant to ensure compliance with this Agreement. Grantee shall pay for the cost of the audit if the certified public accountant discovers errors or omissions of five percent or more in the amount paid or owed to WDFW under this Agreement.

## **SECTION 5 GENERAL PROVISIONS**

- 5.01 Indemnity. Grantee shall indemnify, defend, and save harmless WDFW, its agents and employees, with counsel satisfactory to WDFW, from and against any and all existing and future claims, damages, and causes of action of any nature including claims for injuries or damages by Grantee's employees or any other person or entity, arising out of, in connection with, or incident to the operation, maintenance, development, or use of the WDFW Agreement Area or Grantee's exercise, performance or breach of any obligation or right under this Agreement; PROVIDED, HOWEVER, Grantee's obligation to indemnify, defend, and save harmless WDFW shall be reduced by the proportion of WDFW's concurrent negligence, if any, and shall not extend to claims arising out of the sole negligence of WDFW. Grantee waives its immunity under Title 51 RCW (Industrial Insurance Act) to the extent required to indemnify, defend, and save harmless WDFW, its agents, and employees.
- 5.02 Insurance. Prior to use of the WDFW Agreement Area, Grantee shall provide to WDFW proof of liability insurance, insuring Grantee and WDFW against liability arising from Grantee's operations including use of vehicles and equipment. Minimum amounts of insurance shall be Two Million Dollars (\$2,000,000) for injury to one person and Two Million Dollars (\$2,000,000) property damage for any one occurrence. At five year intervals, increases in the minimum amounts may be determined by WDFW, at its option, provided said increases shall not exceed the rate of inflation as established by the U.S. Department of Labor consumer price index. Failure by WDFW to adjust the minimums at said five-year intervals shall not preclude WDFW from doing so thereafter.

- 5.03 Termination/Cancellation. This Agreement shall terminate at the end of the term as specified herein or earlier upon mutual written consent of the parties. This Agreement may be temporarily suspended at the sole discretion of WDFW in emergency situations. WDFW, at its option, may cancel this Agreement upon the default of Grantee as set forth in the paragraph below. If during the term of this Agreement or any extension thereof, the U.S. Department of Agriculture, the U.S. Department of Interior, the Governor of the State of Washington, or the Washington State Legislature determines the public interest requires cancellation of this Agreement, WDFW may cancel this Agreement upon one-hundred and eighty (180) days' written notice to Grantee. Upon cancellation, compensation to Grantee, if any, is limited to that expressly appropriated for this purpose by the Washington State Legislature and all rights and interests conveyed by this Agreement automatically shall revert to WDFW without the necessity of further legal action.
- 5.04 Default/Cure. Grantee shall be in default upon (a) the failure to make payments hereunder when due; or (b) the failure to perform any other obligation under this Agreement within thirty (30) days after receipt of written notice setting forth such default; or (c) the unauthorized use of the WDFW Agreement Area. In the event the default is not reasonably susceptible of cure within said thirty days, Grantee shall request in writing of WDFW a reasonable extension of the cure period, approval for which shall not be unreasonably withheld by WDFW.
- 5.05 Abandonment. In the event Grantee should abandon use of the WDFW Agreement Area for the permitted use described in Section 1, above, for a continuous period of two (2) years or more, WDFW, at its option, may cancel this Agreement upon thirty (30) days' written notice to Grantee. Upon cancellation, compensation to Grantee, if any, is limited to that expressly appropriated for this purpose by the Washington State Legislature and all rights and interests conveyed by this Agreement automatically shall revert to WDFW without the necessity of further legal action.
- 5.06 Surrender of Premises. In the event of termination or cancellation of this Agreement, Grantee shall immediately vacate and deliver up the WDFW Agreement Area to WDFW.
- 5.07 Removal of Improvements and Facilities. Within one-hundred and eighty (180) days of termination or cancellation of this Agreement, Grantee, at its sole cost and expense, shall remove all improvements and facilities (including, but not limited to, lifts, buildings, reservoir and dam, and other structures), except those owned by WDFW or by parties under separate agreement with WDFW, and shall restore the site to its original condition, except as otherwise mutually agreed upon in writing. If Grantee fails to remove all such structures or improvements within said time, they shall become the property of WDFW without further process and Grantee shall reimburse WDFW for the cost of removal and the restoration of the site.
- 5.08 Supersedes Previous Permit. This Agreement supersedes the Term Special Use Permit issued to Wenatchee Mountain, Inc. that was signed by Jack Wayland, Director of the State of Washington Department of Game, on August 13, 1986, as amended, and supersedes the Assignment issued to Mission Ridge Mountain Corporation that was signed by Jenene Fenton, Assistant Director of the Washington Department of Wildlife, on July 31, 1992.
- 5.09 Severability. If any covenant or provision of this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision, or part thereof.
- 5.10 Venue. In the event of a lawsuit involving this Agreement, jurisdiction and venue shall be proper only in the State of Washington, Thurston County Superior Court.
- 5.11 Notices. In case of change of address, Grantee shall immediately notify WDFW at:
- Real Estate Services Manager, Washington Department of Fish and Wildlife,  
600 Capitol Way North, Olympia, Washington 98501-1091.
- All notices given under this Agreement shall be given in writing and shall be given by certified mail to the addresses above. Notice shall be effective upon delivery.
- 5.12 Entire Agreement. This document contains the entire agreement between the parties and no statement, promise, representation, inducement, or agreement made by either party, or its respective officers, employees, or agents, that is not contained in this written document shall be valid, binding or enforceable. Each signatory below warrants that he is authorized to execute this instrument on behalf of his respective party, that he has read and understood this Agreement, and that his respective party agrees to be bound by the terms of this Agreement.

**SECTION 6  
INCORPORATION OF TERMS AND CONDITIONS OF SKI AREA TERM SPECIAL USE  
PERMIT GRANTED BY U.S. FOREST SERVICE**

- 6.01 Preceding Clauses Control. In the event of any conflict between any of the preceding clauses, or any provision thereof, and any of the clauses, or any provision thereof, incorporated below, the preceding clauses will control.
- 6.02 Incorporation and Extension of U.S. Forest Service Permit. The Ski Area Term Special Use Permit, as amended, granted by the U.S. Forest Service Permit Area to Grantee (Attachment B) is attached hereto in its entirety and made a part of this Agreement. The rights and authorities of the said Permit are hereby extended to WDFW officials and the WDFW Agreement Area. Grantee accepts this Agreement subject to the terms and conditions set forth in Sections 1 through 6 hereof and subject to the terms and conditions of said U.S. Forest Service Permit.

IN WITNESS WHEREOF, the parties hereto mutually have agreed upon the terms and conditions of this instrument and have caused it to be executed on this day as below subscribed.

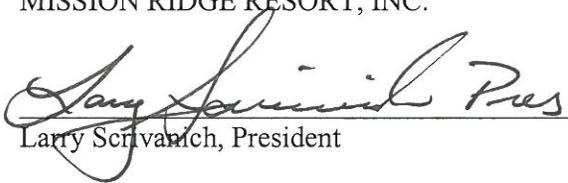
WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

7-12-05  
Date

  
Dave Brittell, Assistant Director

MISSION RIDGE RESORT, INC.

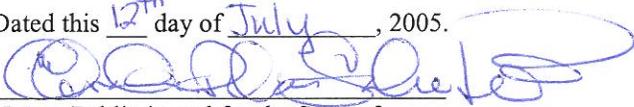
7-8-05  
Date

  
Larry Scrivanich, President

STATE OF WASHINGTON )  
 )ss  
County of Thurston )

I certify that I know or have satisfactory evidence that Dave Brittell is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as Assistant Director of the Washington Department of Fish and Wildlife to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 12<sup>th</sup> day of July, 2005.

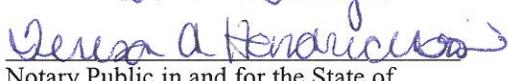
  
Notary Public in and for the State of  
Washington, residing in Olympia.  
My commission expires: 2-25-09.

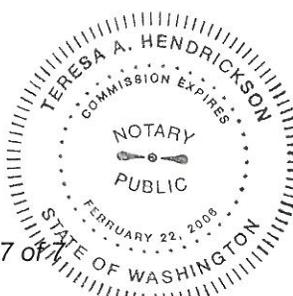


STATE OF WASHINGTON )  
 )ss  
County of King )

I certify that I know or have satisfactory evidence that Larry Scrivanich is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of the Mission Ridge Resort, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 8 day of July, 2005.

  
Notary Public in and for the State of  
Washington, residing in Nodenville.  
My commission expires: 02-22-06



## Attachments Index

- Attachment A: *Federal Aid Project Agreement, Project No. W-54-L-1*, US Dept. of the Interior, Fish and Wildlife Service to State of Washington Dept. of Game, dated January 12, 1953, with attachment *Federal Aid in Fish and Wildlife Restoration Preliminary Project Statement Land Acquisition*, dated December 31, 1952, as amended by *Project Amendment No. 1*, dated March 19, 1954.
- Attachment B: *Ski Area Term Special Use Permit*, USDA-Forest Service to Mission Ridge Mountain Corp., dated August 7, 1992;  
as amended by *Amendment Number 1*, USDA-Forest Service to Mission Ridge Mountain Corp., dated September 20, 1993.
- Attachment C: *Cooperative Agreement*, State of Washington, Dept. of Game and Forest Service, United States Dept. of Agriculture, dated August 27, 1986.
- Attachment D: Inventory of WDFW-approved improvements, facilities, alterations; and,  
*2004-2005 New Mission LLC Annual Area Operating Plan*, dated October 29, 2004
- Attachment E: Site Plan for Reservoir

A

State Copy

3-1552  
(April 1951)

UNITED STATES DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE

FEDERAL AID PROJECT AGREEMENT

United States Obligation: State Washington  
Fish Restoration . . . . . \$ --- Project No. W-54-L-1  
Wildlife Restoration . . . . . \$ 200,462.69 Contract No. 14-19-008.1304  
MEMORANDUM OF AGREEMENT made this 12th day of January, 1953

by and between STATE OF WASHINGTON DEPARTMENT OF GAME, constituting for the purpose hereof the Fish and Game Department of the State above indicated, hereinafter called the Fish and Game Department, and the Secretary of the Interior, hereinafter called the Secretary, pursuant to the Acts of Congress approved September 2, 1937 (50 Stat. 917) as amended, and August 9, 1950 (64 Stat. 430) to provide Federal Aid to the States in wildlife and fish restoration, respectively, as applicable:

WHEREAS the Fish and Game Department has submitted a preliminary project statement, plans, specifications, and estimates for a project herein described, and the Secretary has approved said documents:

NOW, THEREFORE, in consideration of the premises and of the several promises to be faithfully performed by each, as hereinafter set forth, the Fish and Game Department and the Secretary do hereby mutually agree as follows:

ARTICLE I. Project description:

1. Type Land Acquisition Total estimated cost \$ 267,283.59
2. Name Colockum Game Range
3. Location Nine miles north of Wenatchee, Chelan County, Washington
4. Species primarily benefited Elk
5. Description and purpose Acquisition of approximately 31,693.08 acres of land to aid in the management of an elk herd known as the Colockum herd.

ARTICLE II. The obligation of the United States on said project is the sum of \$ 200,462.69, provided the amount payable hereunder shall not exceed 75 percentum of the actual cost of said project as determined by the Secretary. Payments shall be made to State Treasurer, Olympia, Washington  
(State Treasurer, Fish and Game Department, etc.)

ARTICLE III. Funds other than Federal, for use of the Fish and Game Department have been made available to accomplish said project in the following amount and manner; Chapter 12, Laws of 1951

ARTICLE IV.—GENERAL CONDITIONS.

SECTION 1. *Prosecution of Work.*—The Fish and Game Department will carry said project through to final completion in strict compliance with said plans and specifications, will directly supervise all labor and construction, which shall include adequate inspection throughout, subject at all times to inspection and approval by the Secretary, in accordance with the laws of said State, the rules and regulations of the Secretary, and the following conditions:

(a) It is agreed that any construction work on the project will be performed by contract when practicable.

(b) Should the funds listed herein as the total estimated cost be insufficient to finish all work proposed in the preliminary project statement, it is agreed that additional projects will be submitted as funds become available until the unit is finally completed, and in the case of lands, that the State will take sufficiently long options of purchase or lease purchase agreements at appraised values acceptable to the Secretary to obligate the vendors for a period estimated to be sufficient to consummate acquisition.

(c) Research work conducted under this project shall be continuously correlated with other research studies conducted by the State and Federal Governments to avoid duplication.

(d) Personnel employed from funds provided under this project shall be selected on the basis of competency and perform their duties in a manner acceptable to the Secretary.

SECTION 2. *Payments.*—Upon submission of vouchers by the Fish and Game Department in such form and detail as the Secretary shall prescribe, payments shall be made to the payee designated and authorized to receive public funds, of such sums as shall not exceed the United States pro rata share, as specified in this agreement.

The Secretary reserves the right to withhold such sum as he shall deem necessary to insure completion of the project in compliance with said plans and specifications.

SECTION 3. *Management and Maintenance.*—If the project includes the acquisition, lease, or development of areas of land or water, the Fish and Game Department will use every means within its power to insure proper and permanent management and maintenance of said areas as provided in the preliminary project statement, surveys, plans, specifications, the Act of September 2, 1937, as amended, and/or the Act of August 9, 1950.

ARTICLE V. SPECIAL CONDITIONS.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures, the Fish and Game Department on the day and year first above written, and the Secretary on the date indicated below.

SECRETARY OF THE INTERIOR

By

*[Signature]*  
Acting Director, Fish and Wildlife Service.

Date

JAN 21 1958

STATE OF WASHINGTON DEPARTMENT OF GAME

(Official title of Fish and Game Department)

By

*[Signature]*

Title

John A. Biggs, Director of Game

A

STATE WASHINGTON

PROJECT \_\_\_\_\_

FEDERAL AID IN FISH AND WILDLIFE RESTORATION

PRELIMINARY PROJECT STATEMENT

LAND ACQUISITION

Date Jan 21, 1952  
January 8, 1953

The Secretary of the Interior

Washington, D. C.

Sir:

The State of Washington by and through the State of Washington Department of Game constituting the State Fish and Game Department, and pursuant to the Federal Aid In Fish and Wildlife Restoration Acts (64 Stat. 430) and (50 Stat. 917) and to the Rules and Regulations of the Secretary of the Interior made and published thereunder, does hereby submit this statement describing a wildlife acquisition project and requests authorized financing thereof. Said project is proposed as a means of promoting efficient management of wildlife resources, and will be executed under the provisions of said Act(s) and said Rules and Regulations.

1. Name of Project: COLOCKUM GAME RANGE
2. Counties: CHELAN and KITTITAS
3. Nearest town: WENATCHEE. Distance and direction: approximately nine miles north of project.
4. Needs for the proposed acquisition: The acquisition of the lands shown on the attached map will aid considerably in the management of the elk herd known as the Colockum herd. The herd numbers approximately 2,000 animals.

About seventy-five percent of the total acreage is elk winter range. The lower untimbered slopes toward the east and the Columbia River constitute the major portion of the winter range. Heavy utilization of these lower slopes by livestock seriously affects the amount of forage available to the elk during the winter period. Elimination of livestock will increase the carrying capacity of the summer range, the higher timbered area to the west, as well as the elk winter range. It is expected that the majority of the herd will eventually be wintered on this range. Depredation of crops and winter livestock feed supplies does not present a serious problem in the region at present, mostly because of the tolerant

attitude of the landowners. It should be considered however to be a problem that might develop in proportion in the future if these lands are not acquired. At present there is criticism from adjacent landowners because of elk damage to spring range by trampling and utilization. This problem can be minimized by herding the elk onto lands to be acquired for the project.

Although elk will be the species primarily benefited, deer and upland game birds including grouse and chukar partridge are of nearly equal importance.

A herd of approximately 5,000 deer range on these lands and on lands immediately adjacent to it toward the south. A considerable number of these deer use the area as both summer and winter range. The lower slopes of the range toward the Columbia River each year show an increase in the number of deer.

Chukar partridge continue to show gain in population numbers in this area which is the site of one of the original plants in the state. Chukar partridge use the area from the fringe line of timber throughout the open ridges, draws and gulches and it is estimated that a population of around 10,000 birds inhabit these more or less open areas.

5. Planned administration of the project area:

- a. The area will be opened or closed to hunting as the State Game Commission thinks best for the management of wildlife in this area.
- b. What protection will be afforded wildlife: The elimination of cattle and the eventual removal of sheep will result in an increase of forage for wildlife wintering in the project area.

6. Wildlife Restoration developments planned: Where possible on certain portions of the range, revegetation with grasses and browse species will be initiated.

7. Boundaries: See enclosed map.

8. Cover type percent:

a. Agriculture	.579%
b. Grazing	51.227%
c. Timber grazing	48.194%

Total Acres: 71,076.52

9. Land Improvements: There are several old homestead sites with buildings of low value on the project area. A few are being used as living quarters. Other buildings are generally in poor condition.

- a. Approximate value of farm buildings and other improvements is \$20,000.00

b. All improvements other than those needed for administration of the project area will be removed. Any usable fence will be utilized.

10. Water problems: Most of the water rights are riparian in nature and irrigation is practiced on a small scale on individual holdings.

11. Merchantable timber: The merchantable timber on the major tract of land in the project has been sold. The reproduction values on the tract will revert to the owner as of December 31, 1957.

12. Tracts in unit:

a. Number: 25

b. Average acreage: 3,014.06 °

° Correct on basis of present ownership data.

13. Tract ownership:

	<u>Acres</u>	<u>Percent</u>
a. Private	41,419.84	58.27
b. State	18,396.79	25.88
c. Federal	<u>11,259.89</u>	<u>15.85</u>
	71,076.52	100.00

14. Estimated acquisition costs:

a. Lands	\$308,521.15
b. Improvements	20,000.00
c. Products can be removed from land	
d. Total	<u>\$328,521.15</u>

15. The following State and Federal employees examined this area:

1. N. P. Knott, Chief, Land Mgt. Div., State Game Department
2. E. D. Maxwell, Asst. Chief, Land Mgt. Div., State Game Dept.
3. John Kanz, District Supervisor., State Game Department
4. Nillo Anderson, Protector, State Game Department
5. K. H. Gehrman, Acquisition Biol., State Game Department
6. R. P. Boone, Reg. Supv.; Fish & Wildlife Service, Portland
7. J. F. Ashley, Asst. Reg. Supv., Fish & Wildlife Service, Portland
8. R. B. Jorgenson, Appraiser, Fish & Wildlife Service, Portland

16. This statement covers all of the work contemplated under the entire land acquisition program for this area except the following: it appears that certain land use exchange agreements are possible within the bounds of the project. If such agreements can be arranged to advantage, they will be entered into.

Assurance is given that the foregoing information concerning the project herein described is presented to the best ability of the State Fish and Game Department, and all applicable provisions of the State laws have been fully complied with.

Respectfully submitted: STATE OF WASHINGTON DEPARTMENT OF GAME

By /s/ John A. Biggs  
John A. Biggs, Director of Game

Approved: Date Jan 5 1953

Approved: Date Jan 8 1953

/s/ Paul T. Quick  
Acting Regional Director  
LL

SECRETARY OF THE INTERIOR

By /s/ R. M. Rutherford  
Acting Director, Fish & Wildlife  
Service

UNITED STATES DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE

Date March 19, 1954

PROJECT AMENDMENT NO. 1

State Washington  
Project No. W-54-L-1  
Contract No. 14-19-008-1304  
Contract date January 21, 1953

To: THE SECRETARY OF THE INTERIOR,  
Washington, D. C.

Amendment of the above-identified project is hereby requested as indicated below:

ITEM No. (1)	ITEM (2)	LATEST APPROVED ESTIMATE (3)	CHANGES REQUESTED		REVISED COST ESTIMATE (6)
			Add (4)	Deduct (5)	
3	Lands - Dilling Brothers; Tract No. 4 31,693.08 acres	\$264,637.22			\$264,637.22
6B	Other expenditures - Reimbursement to Dilling Brothers on unexpired leases (Grantor)		\$748.10		748.10
I	Contingency Fund	2,646.37		\$748.10	1,898.27
TOTALS,		\$267,283.59	\$748.10	\$748.10	\$267,283.59

REASONS FOR AMENDMENT (Use reverse side or additional forms if necessary): Under point No. 3 of terms and conditions of the option for this project the Dilling Brothers agreed to pay any and all taxes and assessments due up to date of conveyance. Dilling Brothers had paid lease fees on State of Washington public land for grazing rights subsequent to the date of conveyance and therefore were reimbursed on a pro-rated basis on each lease. See attached statement and Release of Lease-Hold.

APPROVED: Date MAR 25 1954  
Secretary of the Interior.  
By [Signature]  
Acting Director, Fish and Wildlife Service.  
Regional/

THE STATE OF WASHINGTON DEPARTMENT OF GAME  
(Fish and Game Department)  
By [Signature]  
Title John A. Biggs, Director of Game  
APPROVED: Date \_\_\_\_\_  
By \_\_\_\_\_  
Regional Director, Fish and Wildlife Service.

B

PS-2700-24 (7/92)

OMB No. 0596-0103 Expires 7/31/95

USDA - Forest Service  SKI AREA TERM SPECIAL USE PERMIT  Act of October 22, 1986  (Ref. FSM 2710)	Holder No.	Type Site	Authority
	4101 / 03	161	545
	Auth. Type	Issue Date	Expir. Date
	18	/ /	12/31/2032
	Location Sequence No.		Stat. Ref.
	0617075300704		
Latitude	Longitude	LOS Case	
47-16-00	120-26-00		

Mission Ridge Mountain Corporation of P.O. Box 1668, Wenatchee, WA 98807 (hereafter called the holder) is hereby authorized to use National Forest System lands, on the Wenatchee National Forest, for the purposes of constructing, operating, and maintaining a winter sports resort including food service, retail sales, and other ancillary facilities, described herein, known as the Mission Ridge ski area and subject to the provisions of this term permit. This permit covers 1040 acres described here and as shown on the attached map dated 6/16/92.

National Forest lands in the SE1/4SE1/4, Section 22, S1/2 Section 24, Section 26, NE1/4NE1/4 Section 34, all in T.21N., R.19E., Willamette Meridian, unsurveyed. This area is shown on a map labeled EXHIBIT "A" (dated 6/16/92) and hereby made a part of this permit.

The Corporation's downtown Wenatchee office building located at 212 South Mission Street on south 10 feet of Lot 4, all of Lots 5 and 6, Block 30, Amended Great Northern Plan of Wenatchee are included. Allowable GFA credit within this area is restricted to only those assets exclusive of land, which are 100% dedicated to use in connection with the ski area.

Attached Clauses. This term permit is accepted subject to the conditions set forth herein on pages 2 through 19, and to exhibits A to B attached or referenced hereto and made a part of this permit.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL OF ITS TERMS AND CONDITIONS.

ACCEPTED:

MISSION RIDGE MOUNTAIN CORP. *[Signature]* PRESIDENT August 7, 1992  
 HOLDER'S NAME AND SIGNATURE DATE

for APPROVED: *[Signature]* FOREST SUPERVISOR 8/7/92  
 AUTHORIZED OFFICER'S NAME AND SIGNATURE TITLE DATE

## TERMS AND CONDITIONS

## I. AUTHORITY AND USE AND TERM AUTHORIZED.

A. Authority. This term permit is issued under the authority of the Act of October 22, 1986, (Title 16, United States Code, Section 497b), and Title 36, Code of Federal Regulations, Sections 251.50-251.64.

B. Authorized Officer. The authorized officer is the Forest Supervisor. The authorized officer may designate a representative for administration of specific portions of this authorization.

C. Rules, Laws and Ordinances. The holder, in exercising the privileges granted by this term permit, shall comply with all present and future regulations of the Secretary of Agriculture and federal laws; and all present and future, state, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit to the extent they are not in conflict with federal law, policy or regulation. The Forest Service assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.

D. Term. [For existing areas with a Master Development Plan place N/A in D.1. For new areas or areas without a Master Development Plan place N/A in D.2]

1. This authorization is for a term of N/A years to provide for the holder to prepare a Master Development Plan. Subject to acceptance of the Master Development Plan by the authorized officer, this authorization shall be extended for an additional N/A years, for a total of N/A years, to provide the holder sufficient time to construct facilities approved in the Master Development Plan within the schedule outlined in clause II.B. (Site Development Schedule), so that the area may be used by the public. Further Provided; This authorization shall be extended by its terms for an additional N/A years, for a total of N/A years, if it is in compliance with the site development schedule in the Master Development Plan and being in operation by the 10-year anniversary date of the issuance of this authorization. Failure of the holder to comply with all or any provisions of this clause shall cause the authorization to terminate under its terms.

2. Unless sooner terminated or revoked by the authorized officer, in accordance with the provisions of the authorization, this permit shall terminate on December 31, 2032, but a new special-use authorization to occupy and use the same National Forest land may be granted provided the holder shall comply with the then-existing laws and regulations governing the occupancy and use of National Forest lands. The holder shall notify the authorized officer in writing not less than six (6) months prior to said date that such new authorization is desired.

E. Nonexclusive Use. This permit is not exclusive. The Forest Service reserves the right to use or permit others to use any part of the permitted area for any purpose, provided such use does not materially interfere with the rights and privileges hereby authorized.

F. Area Access. Except for any restrictions as the holder and the authorized officer may agree to be necessary to protect the installation and operation of authorized structures and developments, the lands and waters covered by this permit shall remain open to the public for all lawful purposes. To facilitate public use of this area, all existing roads or roads as may be constructed by the holder, shall remain open to the public, except for roads as may be closed by joint agreement of the holder and the authorized officer.

G. Master Development Plan. In consideration of the privileges authorized by this permit, the holder agrees to prepare and submit changes in the Master Development Plan encompassing the entire winter sports resort presently envisioned for development in connection with the National Forest lands authorized by this permit, and in a form acceptable to the Forest Service. Additional construction beyond maintenance of existing improvements shall not be authorized until this plan has been amended. Planning should encompass all the area authorized for use by this permit. The accepted Master Development Plan shall become a part of this permit. For planning purposes, a capacity for the ski area in people-at-one time shall be established in the Master Development Plan and appropriate National Environmental Policy Act (NEPA) document. The overall development shall not exceed that capacity without further environmental analysis documentation through the appropriate NEPA process.

H. Periodic Revision.

1. The terms and conditions of this authorization shall be subject to revision to reflect changing times and conditions so that land use allocation decisions made as a result of revision to Forest Land and Resource Management Plan may be incorporated.

2. At the sole discretion of the authorized officer this term permit may be amended to remove authorization to use any National Forest System lands not specifically covered in the Master Development Plan and/or needed for use and occupancy under this authorization.

## II. IMPROVEMENTS.

A. Permission. Nothing in this permit shall be construed to imply permission to build or maintain any improvement not specifically named in the Master Development Plan and approved in the annual operating plan, or further authorized in writing by the authorized officer.

B. Site Development Schedule. As part of this permit, a schedule for the progressive development of the permitted area and installation of facilities shall be prepared jointly by the holder and the Forest Service. Such a schedule shall be prepared by June 1, 1993, and shall set forth an itemized priority list of planned improvements and the due date for completion. This schedule shall be made a part of this permit. The holder may accelerate the scheduled date for installation of any improvement authorized, provided the other scheduled priorities are met; and provided further, that all priority installations authorized are completed to the satisfaction of the Forest Service and ready for public use prior to the scheduled due date.

1. All required plans and specifications for site improvements, and structures included in the development schedule shall be properly certified and submitted to the Forest Service at least forty-five (45) days before the construction date stipulated in the development schedule.

2. In the event there is agreement with the Forest Service to expand the facilities and services provided on the areas covered by this permit, the holder shall jointly prepare with the Forest Service a development schedule for the added facilities prior to any construction and meet requirements of paragraph II.D of this section. Such schedule shall be made a part of this permit.

C. Plans. All plans for development, layout, construction, reconstruction or alteration of improvements on the site, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect (in those states in which such licensing is required) or other qualified individual acceptable to the authorized officer. Such plans must be accepted by the authorized officer before the commencement of any work. A holder may be required to furnish as-built plans, maps, or surveys upon the completion of construction.

D. Amendment. This authorization may be amended to cover new, changed, or additional use(s) or area not previously considered in the approved Master Development plan. In approving or denying changes or modifications, the authorized officer shall consider among other things, the findings or recommendations of other involved agencies and whether their terms and conditions of the existing authorization may be continued or revised, or a new authorization issued.

E. Ski Lift Plans and Specifications. All plans for uphill equipment and systems shall be properly certified as being in accordance with the American National Standard Safety Requirements for Aerial Passenger Tramways (B77.1). A complete set of drawings, specifications, and records for each lift shall be maintained by the holder and made available to the Forest Service upon request. These documents shall be retained by the holder for a period of three (3) years after the removal of the system from National Forest land.

### III. OPERATIONS AND MAINTENANCE.

A. Conditions of Operations. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. Standards are subject to periodic change by the authorized officer. This use shall normally be exercised at least 30 days each year or season. Failure of the holder to exercise this minimum use may result in termination pursuant to VIII.B.

B. Ski Lift, Holder Inspection. The holder shall have all passenger tramways inspected by a qualified engineer or tramway specialist. Inspections shall be made in accordance with the American National Standard Safety Requirements for Aerial Passenger Tramways (B77.1). A certificate of inspection, signed by an officer of the holder's company, attesting to the adequacy and safety of the installations and equipment for public use shall be received by the Forest Service prior to public operation stating as a minimum:

"Pursuant to our special use permit, we have had an inspection to determine our compliance with the American National Standard B77.1. We have received the results of that inspection and have made corrections of all deficiencies noted. The facilities are ready for public use."

C. Operating Plan. The holder or designated representative shall prepare and annually revise by November 1 an Operating Plan. The plan shall be prepared in consultation with the authorized officer or designated representative and cover winter and summer operations as appropriate. The provisions of the Operating Plan and the annual revisions shall become a part of this permit and shall be submitted by the holder and approved by the authorized officer or their designated representatives. This plan shall consist of at least the following sections:

1. Ski patrol and first aid.
2. Communications.
3. Signs.
4. General safety and sanitation.
5. Erosion control.
6. Accident reporting.
7. Avalanche control.
8. Search and rescue.
9. Boundary management.
10. Vegetation management.
11. Designation of representatives.
12. Trail routes for nordic skiing.

The authorized officer may require a joint annual business meeting agenda to:

- a. Update Gross Fixed Assets and lift-line proration when the fee is calculated by the Graduated Rate Fee System.
- b. Determine need for performance bond for construction projects, and amount of bond.
- c. Provide annual use reports.

D. Cutting of Trees. Trees or shrubbery on the permitted area may be removed or destroyed only after the authorized officer has approved and marked, or otherwise designated, that which may be removed or destroyed. Timber cut or destroyed shall be paid for by the holder at appraised value, provided that the Forest Service reserves the right to dispose of the merchantable timber to others than the holder at no stumpage cost to the holder.

E. Signs. Signs or advertising devices erected on National Forest lands, shall have prior approval by the Forest Service as to location, design, size, color, and message. Erected signs shall be maintained or renewed as necessary to neat and presentable standards, as determined by the Forest Service.

F. Temporary Suspension. Immediate temporary suspension of the operation, in whole or in part, may be required when the authorized officer, or designated representative, determines it to be necessary to protect the public health or safety, or the environment. The order for suspension may be given verbally or in writing. In any such case, the superior of the authorized officer, or designated representative, shall, within ten (10) days of the request of the holder, arrange for an on-the-ground review of the adverse conditions with the holder. Following this review the superior shall take prompt action to affirm, modify or cancel the temporary suspension.

IV. **NONDISCRIMINATION.** During the performance of this permit, the holder agrees:

A. In connection with the performance of work under this permit, including construction, maintenance, and operation of the facility, the holder shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or handicap. (Ref. Title VII of the Civil Rights Act of 1964 as amended).

B. The holder and employees shall not discriminate by segregation or otherwise against any person on the basis of race, color, religion, sex, national origin, age or handicap, by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally. (Ref. Title VI of the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments, and the Age Discrimination Act of 1975).

C. The holder shall include and require compliance with the above nondiscrimination provisions in any subcontract made with respect to the operations under this permit.

D. Signs setting forth this policy of nondiscrimination to be furnished by the Forest Service will be conspicuously displayed at the public entrance to the premises, and at other exterior or interior locations as directed by the Forest Service.

E. The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States of the State in which the breach or violation occurs.

V. **LIABILITIES.**

A. Third Party Rights. This permit is subject to all valid existing rights and claims outstanding in third parties. The United States is not liable to the holder for the exercise of any such right or claim.

B. Indemnification of the United States. The holder shall hold harmless the United States from any liability from damage to life or property arising from the holder's occupancy or use of National Forest lands under this permit.

C. Damage to United States Property. The holder shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit. The holder shall pay the United States the full cost of any damage resulting from negligence or activities occurring under the terms of this permit or under any law or regulation applicable to the national forests, whether caused by the holder, or by any agents or employees of the holder.

D. Risks. The holder assumes all risk of loss to the improvements resulting from natural or catastrophic events, including but not limited to, avalanches, rising waters, high winds, falling limbs or trees, and other hazardous events. If the improvements authorized by this permit are destroyed or substantially damaged by natural or catastrophic events, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. The analysis shall be provided to the holder within six (6) months of the event.

E. Hazards. The holder has the responsibility of inspecting the area authorized for use under this permit for evidence of hazardous conditions which could affect the improvements or pose a risk of injury to individuals.

F. Insurance. The holder shall have in force public liability insurance covering: (1) property damage in the amount of Fifty Thousand dollars (\$50,000.00), and (2) damage to persons in the minimum amount of Five Hundred Thousand dollars (\$500,000.00) in the event of death or injury to one individual, and the minimum amount of One Million dollars (\$1,000,000.00) in the event of death or injury to more than one individual. These minimum amounts and terms are subject to change at the sole discretion of the authorized officer at the five-year anniversary date of this authorization. The coverage shall extend to property damage, bodily injury, or death arising out of the holder's activities under the permit including, but not limited to, occupancy or use of the land and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by this permit. Such insurance shall also name the United States as an additionally insured. The holder shall send an authenticated copy of its insurance policy to the Forest Service immediately upon issuance of the policy. The policy shall also contain a specific provision or rider to the effect that the policy shall not be cancelled or its provisions changed or deleted before thirty (30) days written notice to the Forest Supervisor, Wenatchee National Forest, 301 Yakima St., P.O. Box 811, Wenatchee, WA 98807, by the insurance company.

Rider Clause (for insurance companies)

"It is understood and agreed that the coverage provided under this policy shall not be cancelled or its provisions changed or deleted before thirty (30) days of receipt of written notice to the Forest Supervisor, Wenatchee National Forest, 301 Yakima Street, P.O. Box 811, Wenatchee, WA 98807, by the insurance company."

VI. FEES.

A. Holder to pay fair market value for the permitted use. The holder must pay fair market value for the use of National Forest System land.

1. The provisions of the Graduated Rate Fee System (GRFS) identified under this permit may be revised by the Forest Service to reflect changed times and conditions. Changes shall become effective when:

- a. Mutually agreed; or,
- b. A permit is amended for other purposes; or,
- c. A new permit is issued including reissue after termination.

2. The Graduated Rate Fee System may be replaced in its entirety by the Chief of the Forest Service if a new generally applicable fee system is imposed affecting all holders of authorizations under Public Law 99-522. Replacement shall become effective on the beginning of the holder's business year following establishment.

B. Fees - Construction Period - Flat Fee. An annual flat fee shall be due the United States during the initial construction period (VI.AA) and until exceeded by fees determined by the Graduated Rate Fee System described below; Thereafter, the annual fees due the United States for those activities authorized by this permit shall be calculated on sales according to the schedule below.

B

C. Fees - Graduated Rate Fee System (GRFS). The annual fees due the United States for those activities authorized by this permit shall be calculated on sales according to the following schedule:

Kind of Business	Break-even point (Sales to GFA) (Percentage)	$\frac{\text{Sales}}{\text{GFA}}$	Balance of Sales rate (Percentage)
		Rate Base (Percentage)	
Grocery	70	.75	1.13
Service, food	70	1.25	1.88
Service, car	70	1.30	1.95
Merchandise	70	1.50	2.25
Liquor Service	60	1.80	2.70
Outfitting/Guiding	50	2.00	3.00
Rental and Services	30	4.50	6.75
Lodging	40	4.00	6.00
Lifts, Tows, and Ski Schools	20	2.00	5.00

GFA = Gross Fixed Assets

1. A weighted-average break-even point (called the break-even point) and a weighted-average rate base (called the rate base) shall be calculated and used when applying the schedule to mixed business. If the holder's business records do not clearly segregate the sales into the business categories authorized by this permit, they shall be placed in the most logical category. If sales with a different rate base are grouped, place them all in the rate category that shall yield the highest fee. Calculate the fee on sales below the break-even point using 50 percent of the rate base. Calculate the fee on sales between the break-even point and twice the break-even point using 150 percent of the rate base. Calculate the fee on sales above twice the break-even point using the balance of sales rate.

2. The minimum annual fee for this use, which is due in advance and is not subject to refund, shall be equal to the fee that would result when sales are 40 percent of the break-even point. This fee shall be calculated and billed by the Forest Service during the final quarter of the holder's fiscal year, using the most recent GFA figure and previously reported sales data for the current year, plus, if the operating season is still active, estimated sales for the remainder of the year.

3. This use occupies both State of Washington, Department of Game and National Forest land. GRFS fees collected by the Forest Service will be prorated between the State and the Forest Service based on land ownership. This percentage has been calculated on the basis of the proportion of uphill transport facilities on lands of each ownership. This has been determined to be 30.5 percent State of Washington Department of Game, and 69.5 Forest Service land; (See Cooperative Agreement between the State of Washington Department of Game and the Forest Service, USDA.) and is subject to annual review and adjustment by the Forest Service as may be necessitated by the addition or removal of improvements.

4. In addition to the GRFS fee the Forest Service will bill holder for administration of State lands.

D. Definitions of Sales Categories and Gross Fixed Assets (GFA).

1. Sales categories. For purposes of recording and reporting sales, and sales-related information including the cost of sales, the activities of the concessioner are divided into:

Grocery. Includes the sale of items usually associated with grocery stores such as staple foods, meats, produce, household supplies. Includes the sale of bottled soft drinks, beer and wine, when included in the grocery operation.

Service, Food. Includes the serving of meals, sandwiches, and other items either consumed on the premises or prepared for carry out. Snack bars are included.

Service, Cars. Includes servicing and the sale of fuels, lubricants, and all kinds of articles used in servicing and repairing autos, boats, snowmobiles, and aircraft.

Merchandise. Includes the sale of clothing, souvenirs, gifts, ski and other sporting equipment. Where a "Service, Cars" category of business is not established by this permit, the sale of auto accessories is included in this category.

Service, Liquor. Includes the sale of alcoholic drinks for consumption on the premises and other sales ordinarily a part of a bar or cocktail-lounge business. Where a bar is operated in conjunction with a restaurant or overnight accommodations, liquor, beer and wine sales shall be accounted for consistent with the holder's normal business practice. The sale of alcoholic beverages for consumption off the premises is also included in this item, except as indicated in "Grocery".

Outfitting, Guiding. Includes all activities or commercial guiding services involving back-country travel, regardless of mode of travel, when associated with a resort or dude ranch with a mixture of business. All fees charged are considered sales.

Lodging. Includes lodging where daily maid service is furnished.

Rentals and Services. Includes lodging where daily maid service is not furnished by the holder; the rental of camping space, ski equipment and other equipment rentals; fees for the use of cross-country ski trails. Also included are services such as barbershops, and amusements including video games.

Lifts, Tows, and Ski Schools. Includes charges for use of all types of uphill transportation facilities and for sports lessons and training.

2. Gross Fixed Assets. The capitalized cost of improvements, equipment, and fixtures necessary and used to generate sales and other revenue during the permit year on the permitted area or within the development boundary shown in this permit.

GFA shall be established by and changed at the sole discretion of the authorized officer based on the current interpretation of guidelines supporting the Graduated Rate Fee System.

a. Costs of the following items as presented by the holder and verified by a representative of the authorized officer to be in existence and in use are included:

(1) Identifiable structures, major equipment, such as road maintenance equipment, or land improvements which play a distinct role in the permitted activity.

B

(2) Identifiable holder costs, to provide utility services to the area. Utility services that extend beyond the development boundary may be included in GFA to the extent they are necessary for the generation of sales and are paid by the holder. Costs for user surcharge or demand rates are not included as GFA.

b. The following, and similar items, are not part of GFA:

- (1) Assets that ordinarily qualify for inclusion in GFA, but which are out of service for the full operating year for which fees are being determined.
- (2) Land.
- (3) Expendable or consumable supplies.
- (4) Intangible assets, such as goodwill, permit value, organization expense, and liquor licenses.
- (5) Improvements not related to the operation.
- (6) Luxury assets, to the extent their design and cost exceed functional need.
- (7) The prorata share of GFA assets used in off-site activities not directly associated with the authorized use.
- (8) Expensed assets.
- (9) Operating leases.

As of the date of this permit, August 7, 1992 the initial GFA under this ownership has been determined to be (See footnote below) as shown in detail on the attached EXHIBIT "B" (See footnote below). If an error is found in the GFA amount, it shall be changed to the correct amount retroactive to the date the error occurred and fees adjusted accordingly.

E. Change of Gross Fixed Asset Amount Upon Sale or Change in Controlling Interest. Upon change of ownership, effective dominion or controlling interest or upon sale of assets or common stock which results in a change of ownership, effective dominion, or controlling interest, the value of Gross Fixed Assets shall be established applying Generally Accepted Accounting Principles (GAAP).

F. Determining Sales and Other Revenue. Sales and Gross Fixed Assets shall be derived from all improvements and facilities, including those of sublessees, which constitute a logical single overall integrated business operation regardless of the land ownership. A map shall be prepared designating the development boundary and may be augmented by narrative or tables and shall become a part of this permit.

1. Sales. Fees shall be assessed against all receipts from sales unless specifically exempted. Sales for the purpose of fee calculation include, (1) all revenue derived from goods and services sold which are related to operations under this permit and all revenue derived within the development boundary, unless otherwise excluded, (2) the value of goods and services traded-off for goods and services received (bartering) and (3) the value of gratuities.

Footnote: According to Interim Directive No. 2710-91-1 issued December 24, 1991 and expiring June 24, 1993, if fixed assets have not been assigned a value by the holder at the time a permit is issued, the value for GFA must be determined by the holder and provided to the Authorized Officer no later than the end of the new holder's first financial reporting period. This information will be due no later than May 31, 1993 and will be listed in detail as EXHIBIT "B" which will be attached hereto and made a part of this permit. The GFA value is limited to the amounts capitalized on your books according to GAAP. The Tentative Rate as discussed in Paragraph G-2, page 13, is determined by using the GFA value; therefore the estimated purchase price will be used to calculate this rate.

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a. Definitions.

(1) Gratuities. Goods, services or privileges that are provided without charge or at deep discount to such individuals as employees, owners, and officers or immediate families of employees, owners and officers and not available to the general public.

(2) Acceptable Discounts. Transactions for goods or services below stated, listed or otherwise presented prices to the public at large. Included are such things as group sales and organized programs. These are included in sales at the actual transaction price.

(3) Discriminatory Pricing. Rates based solely on residence, race, color, or religion. Discounts based on age or disability are not discriminatory pricing.

(4) Preferential Discounts. Discounts offered to certain classes or individuals based on their status, such as members of boards of directors, contractors, advertisers, doctors, and VIP's, etc.

(5) Market Price. The price generally available to an informed public excluding special promotions. It may not be the "window price".

(6) Bartering or Trade Offs. The practice of exchanging goods or services between individuals or companies.

(7) Commissions. Commissions are payments received by the holder for collecting revenue on behalf of others as an agent or providing services not directly associated with the operations, such as selling hunting and fishing licenses, bus or sightseeing tickets for trips off or predominantly off the permitted area, accommodating telephone toll calls, and so forth.

(8) Franchise Receipts. These are payments made to specific permittees by sublessees solely for the opportunity to do business at a specific location. The permittee provides little, if anything, in the way of facilities or services. They may be the only fee paid to the permittee or, if some facilities or services are provided by the permittee, they may be made in addition to a rental fee. The franchise receipts may be in the form of fixed amounts of money or in reduced prices for the franchiser's product or service.

b. Inclusions. The following items shall be included as gross receipts to arrive at sales:

(1) Gratuities. Daily and season passes are valued at market price unless the permit holder has sufficient records of daily individual use to substantiate a "value of use". Value of use is the number of days the pass is used times the market price. Does not include employees. See (4) below.

(2) Preferential Discounts. Include the amount that would have been received had the transaction been made at the market price.

(3) Value of Discriminatory Pricing. Discriminatory pricing is disallowed. Include the amount that would have been received had the transaction been made at the market price.

(4) Employee discounts in excess of 30 percent of market price. These discounts are exclusively given or provided to employees, owners, officers or immediate families of employees, owners or officers are gratuities and are included in sales at 70 percent of market price. Employee discounts less than 30 percent are recorded at the transaction price.

B

(5) Value of bartered goods and services (trade offs).

(6) Gross sales of sublessees. Includes sales of State controlled liquor stores.

(7) Fifty percent of franchise receipts.

(8) All other revenue items not specifically excluded below shall be included as sales.

c. Exclusions. The following items shall be excluded from gross receipts or revenue to arrive at sales:

(1) Value of goods and services provided to employees, agents, contractors or officials to facilitate the accomplishment of their assigned duties or work-related obligation or to others for educational or technical competence related to the type of permitted use such as lift operation, ski patrol, water safety, avalanche control, etc. Similarly, local, state and federal government officials including Forest Service employees, who in the course of their oversight responsibilities or otherwise on official business, use goods or services. The holder is not required to report the value of such duty-related or official use as sales for fee calculation purposes.

(2) The value of meals and lodging furnished by an employer to an employee for the employer's convenience if, in the case of meals, they are furnished on the employer's business premises. The fact that the employer imposes a partial charge for, or that the employee may accept or decline meals does not affect the exclusion if all other conditions are met. If the employer imposes a charge for meals and lodging it shall be included at the transaction price. The holder need not keep records of employee meals and lodging more detailed than those required by the Internal Revenue Service.

(3) Refunds from returned merchandise and receipts from sales of real and nonrental personal property used in the operation.

(4) Rents paid to the permittee by sublessees, even if based on sales.

(5) Taxes collected on site from customers, accounted for as such in the holder's accounting records, and that were paid or are payable to taxing authorities. Taxes included in the purchase price of gasoline, tobacco and other products, but paid to the taxing authority by the manufacturer or wholesaler are included in sales, and subject to the permit fee.

(6) Amounts paid or payable to a Government licensing authority or recreation administering agency from sales of hunting or fishing licenses and recreation fee tickets.

(7) Value of sales and commissions where the holder is serving as an agent for businesses not directly associated with the permitted operation. This includes such things as bus or sightseeing-ticket sales for trips not related to activities on the permitted area, telephone-toll charges, and accident-insurance sales.

(8) Sales of operating equipment. Rental equipment, capitalized assets or other assets used in operations shall be excluded from gross receipts. Examples are such items as used rental skis and boots, ski lifts, or grooming equipment, which are sold periodically and replaced.

G. Concession Payment, Graduated Rate Fee System. Reports and deposits required as outlined above shall be tendered in accordance with the schedule below. They shall be sent or delivered to the Collection Officer, Forest Service, USDA, at the address furnished by the Forest Supervisor. Checks or money orders shall be payable to "Forest Service, USDA."

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1. The holder shall report sales, calculate fees due, and make payment each calendar month except for periods in which no sales take place and the holder has notified the authorized officer that the operation has entered a seasonal shutdown for a specific period. Reports and payments shall be made by the 30th of the month following the end of each reportable period.

2. The authorized officer, prior to January 1, shall furnish the holder with a tentative rate which shall be applied to sales in the fee calculation (item 1), such rate to be one that shall produce the expected fee based on past experience. The correct fee shall be determined at the end of the year and adjustment made as provided under item (5). Any balance that may exist shall be credited and applied against the next payment due.

3. During the final fiscal month, pay within 30 days of billing by the Forest Service, the annual minimum fee for the next year.

4. The holder must also provide within three (3) months after close of its operating year, a balance sheet representing its financial condition at the close of its business year, an annual operating statement reporting the results of operations including yearend adjustments for itself and each sublessee for the same period, and a schedule of Gross Fixed Assets adjusted to comply with the terms of this permit in a format and manner prescribed by the authorized officer.

If the holder fails to report all sales in the period they were made or misreports Gross Fixed Assets and the authorized officer determines that additional fees are owed, the holder shall pay the additional fee plus interest. Such interest shall be assessed at the rate specified in clause I and shall accrue from the date the sales or correct Gross Fixed Assets should have been reported and fee paid until the date of actual payment of the underpaid fee.

5. Within 30 days of receipt of a statement from the Forest Service, pay any additional fee required to correct fees paid for the past year's operation.

6. Payments shall be credited on the date received by the designated collection officer or deposit location. If the due date for the fee or fee calculation financial statement falls on a non-workday, the charges shall not apply until the close of business on the next workday.

7. All fee calculations and records of sales and Gross Fixed Assets are subject to periodic audit. Errors in calculation or payment shall be corrected as needed for conformance with those audits. Additional fees and interest due as a result of such audits shall be in accordance with item 4, paragraph 2.

8. Disputed fees must be paid in a timely manner.

9. Correction of errors includes any action necessary to establish the cost of gross fixed assets to the current holder, sales, slope transport feet calculation, or other data required to accurately assess and calculate fees. For fee calculation purposes, error may include:

- a. Misreporting or misrepresentation of amounts,
- b. Arithmetic mistakes,
- c. Typographic mistakes,
- d. Variation from Generally Accepted Accounting Principles (GAAP), when such variations are inconsistent with the terms and conditions of the authorization.

Correction of errors shall be made retroactively to the date the error was made or to the previous audit period, whichever is more recent, with past fees adjusted accordingly. Changes effected by agency policy including definition of assets included in GFA, shall only be made prospectively.

H. Interest and Penalties.

1. Pursuant to 31 USC 3717 and 7 CFR Part 3, Subpart B, or subsequent changes thereto, interest shall be charged on any fee not paid by the date the fee or fee calculation financial statements specified in this permit was due.

2. Interest shall be assessed using the higher of (1) the most current rate prescribed by the United States Department of the Treasury Financial Manual (TFM-6-8025.40), or (2) the prompt payment rate prescribed by the United States Department of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 USC 611). Interest shall accrue from the date the fee or fee calculation financial statement is due. In the event the account becomes delinquent, administrative costs to cover processing and handling of the delinquent debt may be assessed.

3. A penalty of 6 percent per year shall be assessed on any fee overdue in excess of 90 days, and shall accrue from the due date of the first billing or the date the fee calculation financial statement was due. The penalty is in addition to interest and any other charges specified in item 2.

4. Delinquent fees and other charges shall be subject to all the rights and remedies afforded the United States pursuant to federal law and implementing regulations. (31 U.S.C. 3711 et seq.).

I. Nonpayment. Failure of the holder to make timely payments, pay interest charges or any other charges when due, constitutes breach and shall be grounds for termination of this authorization. This permit terminates for nonpayment of any monies owed the United States when more than 90 days in arrears.

J. Access to Records. For the purpose of administering this permit (including ascertaining that fees paid were correct and evaluating the propriety of the fee base), the holder agrees to make all of the accounting books and supporting records to the business activities, as well as those of sublessees operating within the authority of this permit, available for analysis by qualified representatives of the Forest Service or other Federal agencies authorized to review the Forest Service activities. Review of accounting books and supporting records shall be made at dates convenient to the holder and reviewers. Financial information so obtained shall be treated as confidential as provided in regulations issued by the Secretary of Agriculture.

The holder shall retain the above records and keep them available for review for 5 years after the end of the year involved, unless disposition is otherwise approved by the authorized officer in writing.

K. Accounting Records. The holder shall follow Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting acceptable to the Forest Service in recording financial transactions and in reporting results to the authorized officer. When requested by the authorized officer, the holder at own expense, shall have the annual accounting reports audited or prepared by a licensed independent accountant acceptable to the Forest Service. The holder shall require sublessees to comply with these same requirements. The minimum acceptable accounting system shall include:

1. Systematic internal controls and recording by kind of business the gross receipts derived from all sources of business conducted under this permit. Receipts should be recorded daily and, if possible, deposited into a bank account without reduction by disbursements. Receipt entries shall be supported by source documents such as cash-register tapes, sale invoices, rental records, and cash accounts from other sources.

2. A permanent record of investments in facilities (depreciation schedule), and current source documents for acquisition costs of capital items.

3. Preparation and maintenance of such special records and accounts as may be specified by the authorized officer.

#### VII. TRANSFER AND SALE.

A. Subleasing. The holder may sublease the use of land and improvements covered under this permit and the operation of concessions and facilities authorized upon prior written notice to the authorized officer. The Forest Service reserves the right to disapprove subleasees. In any circumstance, only those facilities and activities authorized by this permit may be subleased. The holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet. The holder may not sublease direct management responsibility without prior written approval by the authorized officer.

B. Notification of Sale. The holder shall immediately notify the authorized officer when a sale and transfer of ownership of the permitted improvements is planned.

C. Divestiture of Ownership. Upon change in ownership of the facilities authorized by this permit, the rights granted under this authorization may be transferred to the new owner upon application to and approval by the authorized officer. The new owner must qualify and agree to comply with, and be bound by the terms and conditions of the authorization. In granting approval, the authorized officer may modify the terms, conditions, and special stipulations to reflect any new requirements imposed by current Federal and state land use plans, laws, regulations or other management decisions.

#### VIII. TERMINATION.

A. Termination for Higher Public Purpose. If, during the term of this permit or any extension thereof, the Secretary of Agriculture or any official of the Forest Service acting by or under his or her authority shall determine by his or her planning for the uses of the National Forest that the public interest requires termination of this permit, this permit shall terminate upon one hundred-eighty (180) day's written notice to the holder of such determination, and the United States shall have the right thereupon, subject to Congressional authorization and appropriation, to purchase the holder's improvements, to remove them, or to require the holder to remove them, at the option of the United States. The United States shall be obligated to pay an equitable consideration for the improvements or for removal of the improvements and damages to the improvements resulting from their removal. The amount of the consideration

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shall be fixed by mutual agreement between the United States and the holder and shall be accepted by the holder in full satisfaction of all claims against the United States under this clause: Provided, that if mutual agreement is not reached, the Forest Service shall determine the amount, and if the holder is dissatisfied with the amount thus determined to be due him may appeal the determination in accordance with the Appeal Regulations, and the amount as determined on appeal shall be final and conclusive on the parties hereto; Provided further, that upon the payment to the holder of 75% of the amount fixed by the Forest Service, the right of the United States to remove or require the removal of the improvements shall not be stayed pending the final decision on appeal.

B. Termination, Revocation and Suspension. The authorized officer may suspend, revoke, or terminate this permit for (1) noncompliance with applicable statutes, regulations, or terms and conditions of the authorization; (2) for failure of the holder to exercise the rights and privileges granted; (3) with the consent of the holder; or (4) when, by its terms, a fixed agreed upon condition, event, or time occurs. Prior to suspension, revocation, or termination, the authorized officer shall give the holder written notice of the grounds for such action and reasonable time to correct cureable noncompliance.

#### IX. RENEWAL.

A. Renewal. The authorized use may be renewed. Renewal requires the following conditions: (1) the land use allocation is compatible with the Forest Land and Resource Management Plan; (2) the site is being used for the purposes previously authorized and; (3) the enterprise is being continually operated and maintained in accordance with all the provisions of the permit. In making a renewal, the authorized officer may modify the terms, conditions, and special stipulations.

#### X. RIGHTS AND RESPONSIBILITIES UPON TERMINATION OR NONRENEWAL.

A. Removal of Improvements. Except as provided in Clause VIII. A, upon termination or revocation of this special use permit by the Forest Service, the holder shall remove within a reasonable time as established by the authorized officer, the structures and improvements, and shall restore the site to a condition satisfactory to the authorized officer, unless otherwise waived in writing or in the authorization. If the holder fails to remove the structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States without compensation to the holder, but that shall not relieve the holder's liability for the removal and site restoration costs.

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## XI. MISCELLANEOUS PROVISIONS.

A. Members of Congress. No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

B. Inspection, Forest Service. The Forest Service shall monitor the holder's operations and reserves the right to inspect the permitted facilities and improvements at any time for compliance with the terms of this permit. Inspections by the Forest Service do not relieve the holder of responsibilities under other terms of this permit.

C. Regulating Services and Rates. The Forest Service shall have the authority to check and regulate the adequacy and type of services provided the public and to require that such services conform to satisfactory standards. The holder may be required to furnish a schedule of prices for sales and services authorized by the permit. Such prices and services may be regulated by the Forest Service: Provided, that the holder shall not be required to charge prices significantly different than those charged by comparable or competing enterprises.

D. Advertising. The holder, in advertisements, signs, circulars, brochures, letterheads, and like materials, as well as orally, shall not misrepresent in any way either the accommodations provided, the status of the permit, or the area covered by it or the vicinity. The fact that the permitted area is located on the National Forest shall be made readily apparent in all of the holder's brochures and print advertising regarding use and management of the area and facilities under permit.

E. Bonding. The authorized officer may require the holder to furnish a bond or other security to secure all or any of the obligations imposed by the terms of the authorization or any applicable law, regulation, or order.

Bonds, Performance. Use the following text, when bonding is called for: As a further guarantee of the faithful performance of the provisions of terms and conditions N/A of this permit, the holder agrees to deliver and maintain a surety bond or other acceptable security in the amount of N/A. Should the sureties or the bonds delivered under this permit become unsatisfactory to the Forest Service, the holder shall, within thirty (30) days of demand, furnish a new bond with surety, solvent and satisfactory to the Forest Service. In lieu of a surety bond, the holder may deposit into a Federal depository, as directed by the Forest Service, and maintain therein, cash in the amounts provided for above, or negotiable securities of the United States having a market value at the time of deposit of not less than the dollar amounts provided above.

The holder's surety bond shall be released, or deposits in lieu of a bond, shall be returned thirty (30) days after certification by the Forest Service that priority installations under the development plan are complete, and upon furnishing by the holder of proof satisfactory to the Forest Service that all claims for labor and material on said installations have been paid or released and satisfied. The holder agrees that all moneys deposited under this permit may, upon failure on his or her part to fulfill all and singular the requirements herein set forth or made a part hereof, be retained by the United States to be applied to satisfy obligations assumed hereunder, without prejudice whatever to any rights and remedies of the United States.

Prior to undertaking additional construction or alteration work not provided for in the above terms and conditions or when the improvements are to be removed and the area restored, the holder shall deliver and maintain a surety bond in an amount set by the Forest Service, which amount shall not be in excess of the estimated loss which the Government would suffer upon default in performance of this work.

F. Water Rights. This authorization confers no rights to the use of water by the holder. Such rights must be acquired under State law.

G. Current Addresses. The holder and the Forest Service shall keep each informed of current mailing addresses including those necessary for billing and payment of fees.

H. Identification of Holder. Identification of the holder shall remain sufficient so that the Forest Service shall know the true identity of the entity.

#### Corporation Status Notification:

1. The holder shall notify the authorized officer within fifteen (15) days of the following changes:

a. Names of officers appointed or terminated.

b. Names of stockholders who acquire stock shares causing their ownership to exceed 50 percent of shares issued or otherwise acquired, resulting in gaining controlling interest in the corporation.

2. The holder shall furnish the authorized officer:

a. A copy of the articles of incorporation and bylaws.

b. An authenticated copy of a resolution of the board of directors specifically authorizing a certain individual or individuals to represent the holder in dealing with the Forest Service.

c. A list of officers and directors of the corporation and their addresses.

d. Upon request, a certified list of stockholders and amount of stock owned by each.

e. The authorized officer may require the holder to furnish additional information as set forth in 36 CFR 251.54(e)(1)(iv).

#### Partnership Status Notification:

The holder shall notify the authorized officer within fifteen (15) days of the following changes. Names of the individuals involved shall be included with the notification.

1. Partnership makeup changes due to death, withdrawal, or addition of a partner.

2. Party or parties assigned financed interest in the partnership by existing partner(s).

3. Termination, reformation, or revision of the partnership agreement.

4. The acquisition of partnership interest, either through purchase of an interest from an existing partner or partners, or contribution of assets, that exceeds 50 percent of the partnership permanent investment.

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I. Archaeological-Paleontological Discoveries. The holder shall immediately notify the authorized officer of any and all antiquities or other objects of historic or scientific interest. These include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts discovered as the result of operations under this permit, and shall leave such discoveries intact until authorized to proceed by the authorized officer. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the permit holder.

J. Protection of Habitat of Endangered, Threatened, and Sensitive Species.

Location of areas needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, as amended, or listed as sensitive by the Regional Forester under authority of FSM 2670, derived from ESA Section 7 consultation, may be shown on a separate map, hereby made a part of this permit, or identified on the ground. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the permit holder.

If protection measures prove inadequate, if other such areas are discovered, or if new species are listed as Federally threatened or endangered or as sensitive by the Regional Forester, the authorized officer may specify additional protection regardless of when such facts become known. Discovery of such areas by either party shall be promptly reported to the other party.

K. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof, and any of the following clauses or any provision thereof, the preceding clauses shall control.

L. Superseded Permit. This permit replaces a special use permit issued to:

Wanatchee Mountain, Incorporated on May 24 and May 27, 1985.

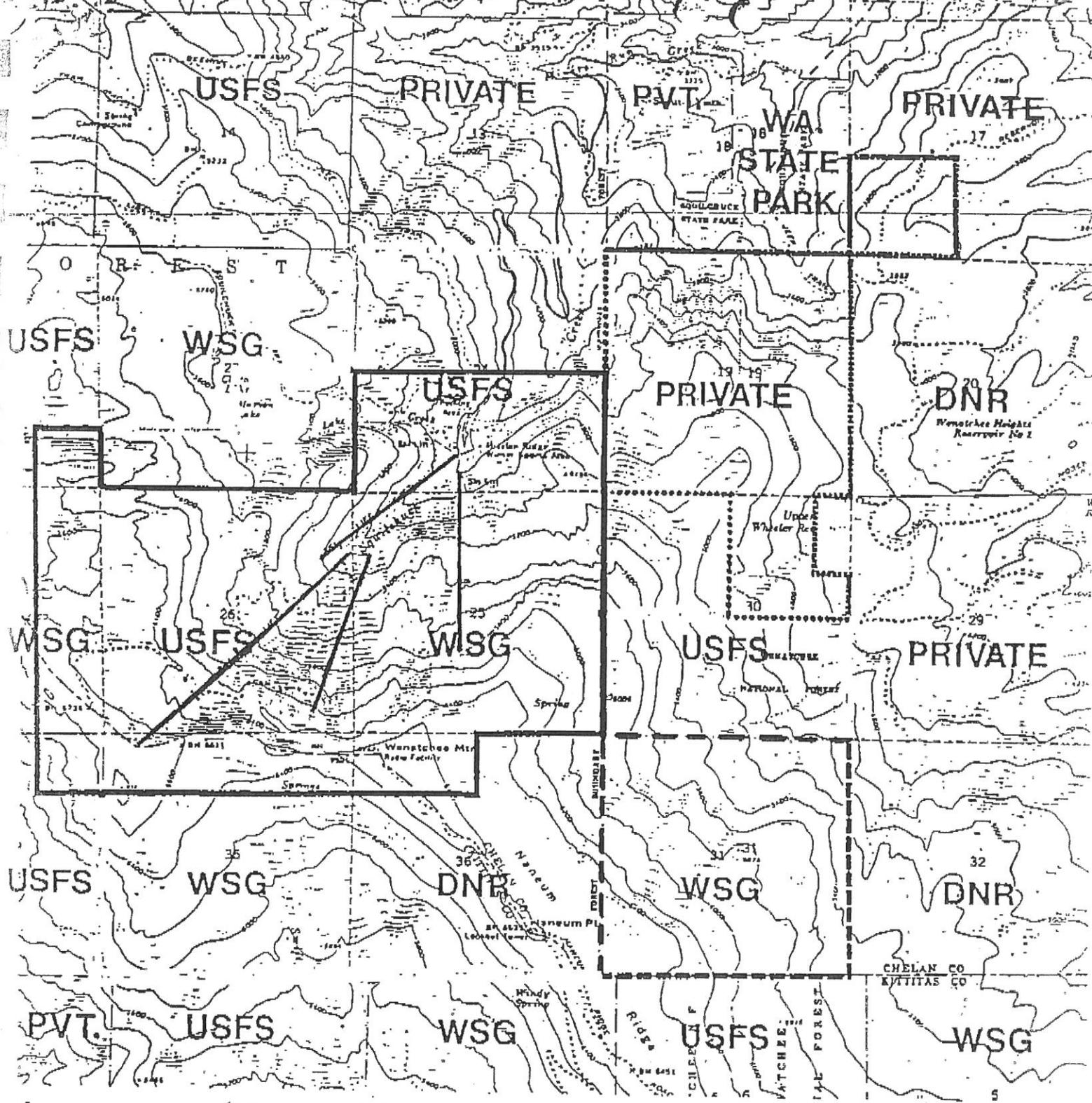
(Holder Name)

(Date)

M. Disputes. Appeal of any provisions of this authorization or any requirements thereof shall be subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto. The procedures for these appeals are set forth in 36 CFR 251 published in the Federal Register at 54 FR 3362, January 23, 1989.

Public reporting burden for this collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0596-0103), Washington, D.C. 20503.

Note: Additional provisions may be added by the authorized officer to reflect local conditions.



### Land Use/Ownership

- Existing Mission Ridge Permit/Lease Area
- - - Existing Ski Lifts
- - - - Proposed Mission Ridge Permit/Lease Area
- ..... Constellation Ridge Resort Property

Figure 1  
6/16/92

MISSION RIDGE TERM SPECIFIC USE PERMIT AREA

Exhibit A



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FS-2700-23 (11/90)

DEPARTMENT OF AGRICULTURE Service  AMENDMENT FOR SPECIAL-USE PERMIT	Holder No.	Type Site	Authority	
	4 1 0 1-0 3	1 6 1	5 4 5	
	Issue Date	Expir. Date	Region	
0 8/0 7/2 2	1 2/3 1/3 2	0 6		
Forest	District	State	County	
1 7	0 7	5 3	0 0 7	

AMENDMENT NUMBER 1

This Amendment is attached to and made a part of the Term special-use permit for the purposes of constructing, operating and maintaining a winter sports resort including food service, retail sales, and other ancillary facilities issued to Mission Ridge Mountain Corporation on August 7, 1992 which is hereby amended as follows:

- Delete in it's entirety Clause IV.G.2 which reads as follows:
- The authorized officer, prior to January 1, shall furnish the holder with a tentative rate which shall be applied to sales in the fee calculation (item 1), such rate to be one that shall produce the expected fee based on past experience. The correct fee shall be determined at the end of the year and adjustment made as provided under item (5). Any balance that may exist shall be credited and applied against the next payment due.

And replace with the following:

- The authorized officer, prior to the end of the final fiscal month, shall furnish the holder with a tentative rate which shall be applied to sales in the fee calculation (item 1), such rate to be one that shall produce the expected fee based on past experience. The correct fee shall be determined at the end of the year and adjustment made as provided under item (5). Any balance that may exist shall be credited and applied against the next payment due.

This Amendment is accepted subject to the conditions set forth herein, and to conditions N/A to N/A attached hereto and made a part of this Amendment.

Holder: Malcolm McInnis  
 MALCOLM MCINNIS, President  
 Holder: Mission Ridge Mountain Corp.  
 Date: \_\_\_\_\_

Authorized Officer: Sonny J. O'Neal  
 SONNY J. O'NEAL  
 Title: Forest Supervisor  
 Date: 9/20/93

C

COOPERATIVE AGREEMENT  
between  
STATE OF WASHINGTON, DEPARTMENT OF GAME  
and the  
FOREST SERVICE ✓  
UNITED STATES DEPARTMENT OF AGRICULTURE  
for the  
Management of the  
MISSION RIDGE SPORTS SITE  
under the general provisions of  
Section 5 of the Granger-Thys Act (16 USC 572)  
and pursuant to  
Sections 77.12.210 and 77.12.320 of the  
Revised Code of Washington

THIS AGREEMENT, dated this 27<sup>th</sup> day of August, 1986, by and between the State of Washington, Department of Game, acting through its Director and hereinafter called the Department, and the United States Forest Service, acting through the Forest Supervisor, Wenatchee National Forest, and hereinafter called the Forest Service.

WHEREAS, certain Department lands and National Forest lands, namely Sections 22, 24, 25, 26, 27, and 35. T. 21 N., R. 19 E., Chelan and Kittitas Counties, Washington, have collectively been developed for a winter sports site known as Mission Ridge; and

WHEREAS, the Department and the Forest Service desire to cooperate by making lands under their jurisdictions available for continued operation with private capital of a winter sports facility and enhance the value of the lands herein described for wildlife habitat production and public hunting.

NOW THEREFORE:

A. THE FOREST SERVICE AGREES TO:

1. Provide National Forest lands for the development.
2. Issue a thirty (30) year special-use permit for the use of National Forest land to Wenatchee Mountain, Inc.
3. Administer the winter sports activities on the entire site.
4. Assure that an overall updated development plan for the area is prepared by Wenatchee Mountain, Inc.

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5. Obtain the Department concurrence of the overall development plan.
  6. Provide the Department with reports and copies of all vital correspondence directly related to this agreement.
  7. Give public recognition to the Department's participation in the development of the winter sports area.
  8. Assure that lands referred to in A.2 above will be open to the public for hunting and/or fishing during any lawful season without charge provided that nothing herein shall be construed as prohibiting the operators of any facility from making a reasonable charge for the use of any of their buildings, ski tows, warming huts or other facilities.

B. THE DEPARTMENT AGREES TO:

1. Provide the Departments land for continued operation of the winter sports area.
2. Issue a twenty (20) year special-use permit to Wenatchee Mountain, Inc., authorizing the occupancy of Department land under stipulations and conditions of winter use which are, for administration and management purposes, consistent with those included in the Forest Service special use permits.
3. Recognize the Forest Service as the agency responsible for administering both land ownerships for the winter sports activities.
4. Provide the Forest Service with reports and copies of all vital correspondence directly related to this agreement.
5. By the terms of its permit, require Wenatchee Mountain, Inc., to deposit with the Forest Service, in advance when requested, funds sufficient to cover the Department's share of the cost of administration of the permits.
6. Upon request, furnish the Forest Service technical advice on wildlife habitat management and food plantings.

C. IT IS MUTUALLY AGREED THAT:

1. This agreement shall become effective as soon as it is signed by the parties hereto and shall continue in force until termination of the land use permits issued by either party, or within one hundred eighty (180) days written notice by either party.
2. Amendments to this agreement may be proposed by either party and shall become effective upon approval by both parties.

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3. Nothing in this agreement shall be construed as binding either agency to expend any sum in excess of the appropriation available, and neither agency shall be liable to the other for any damage resulting from action taken under this agreement.
  4. Each and every provision of this cooperative agreement is subject to the laws of the State of Washington and the laws of the United States.
  5. Both parties hereto shall meet jointly at least once annually for discussion of matters relating to the management of the sports site.
  6. Questions pertaining to the cooperative work of the two agencies which arise in the field will be discussed on-the-ground by the local representatives of the Department and the Forest Service, and that points of disagreement will be referred to the Forest Supervisor and to the Regional Manager (Game Region 3) in the Regional Office for decision.
  7. The division of fees and distribution of cost of administration resulting from the sports development shall be accomplished as follows:
    - (a) The distribution of fees collected from Wenatchee Mountain, Inc., shall be made to the two agencies as follows:
      - (1) The fee earned on income from lifts and tows, ski schools, and other outdoor activities shall be divided in proportion to the current linear footage of uphill transportation facilities located on each ownership (currently 30.5% Game, 69.5% Forest Service).
      - (2) The fee earned on income enterprise in buildings such as restaurants, shops, and indoor concessions shall be credited 100 percent to the agency whose land the building is located.

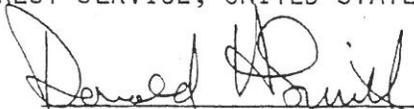
For the purposes of fee calculation the permittee shall be required to keep separate accounting for each class and source of income. The lengths of uphill transportation facilities and locations of buildings shall be reviewed and agreed to jointly by the agencies each year.

- (b) The Forest Service will calculate the total fees due from the permittee and will notify the Department of their share of fees due.
- (c) Both agencies will share the total cost of administering the winter sports area in proportion to the current linear footage of uphill transportation facilities located on each ownership.

- C
- (d) The Forest Service will make a satisfactory accounting of expenditures for administration of the area to the Department annually at the end of each fiscal year.
  - (e) The following cost items shall be recognized as necessary and legitimate expenditures:
    - (1) Salaries, wages, expenses, and transportation of employees assigned specifically to the winter sports administration on either a part or full time basis.
    - (2) Purchase and repair or rental of equipment, tools, and supplies used in the administration.
    - (3) Communications expenditures for benefit of the winter sports area.
    - (4) Common services (centralized overhead) expense not to exceed 22 percent of the reimbursable cost items above.

8. No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made for a corporation for its general benefit.

FOREST SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE

  
\_\_\_\_\_  
Forest Supervisor  
Wenatchee National Forest

DATE: August 27, 1986

STATE OF WASHINGTON, DEPARTMENT OF GAME

  
\_\_\_\_\_  
Title: Act. Asst. Director

DATE: 9/10/86

**Attachment D**

Inventory of WDFW-approved improvements, facilities, alterations and Operating Plans

**Inventory of Approved Facilities on WDFW Land****Existing 2004/05**

1. Portion of Lifts
  - a. Chair #1
    - i. Middle Portion of Lift
  - b. Chair #2
    - i. Top of Lift, Unloading Terminal and Operator and Patrol Building
  - c. Chair #3
    - i. Loading Station & Operator Building
    - ii. Drive and Gear Room Building
  - d. Chair #4
    - i. Middle and Upper Portion of Lift
    - ii. Mid-Unloading Station and Operator Building
    - iii. Top Terminal and Operator Building
2. 1 - Surface Tow & Lower Portion of 1 Surface Tow
3. 2 - Surface Tow Buildings
4. Access Road – 1.5 mile
5. Underground and Above Ground Snowmaking Infrastructure
6. Underground and Above Ground Night Lighting Infrastructure
7. Underground Power and Communication Lines
8. Underground Water Lines
9. Stream Diversion Weir
10. Underground Culverts
11. Underground Drain Field & Lines
12. Ski Jump – Class D
13. 3 - Race Finish and Scoring Buildings
14. 2 – Toilet Vaults
15. Trail and Ski Run System
16. Weather Station
17. Race Course Timing and Communication System
18. Avalanche Control Systems

**Inventory of Additional Planned Alterations & Facilities on WDFW Land****Planned Improvements – Mission Ridge EA Master Development Plan, Alternative 2**

1. Replace, upgrade and extend Chair #2 including New Top Terminal & Building
2. Reservoir for Snowmaking
3. Additional Snowmaking Infrastructure, Power and timing of operations

**Attachment D** (continued)

4. Replace, Upgrade and Align Chair #1 along with New Terminals and Building
5. Replace, Upgrade, Align and Extend Chair #3 along with New Terminal Buildings and associated Trail System
6. Replace, Upgrade, Align and Extend Chair #4 along with New Terminal Building and associated Trail System
7. New Bowl Four Chair with Loading and Unloading Terminal Buildings and associated Trail System
8. New Outback Chair with Loading and Unloading Terminal Buildings and associated Trail System
9. New Outback Race Training and Snowboard Park Venues with Associated Trails and Infrastructure including Race Finish and Scoring Buildings
10. New Central Park Chair Loading Terminal and Associated Trail System
11. Additional Trail Night Lighting
12. 2 - Toilet Vaults
13. Widening and Grading of Existing Trail Systems
14. Forest Thinning and Glade
15. Cross Country Trails
16. Maintenance Roads to Lift Terminals

New Construction:

1. Chair Lift Two and Three  
No construction of Chairlift Two from the bottom of LipLip face up and Chairlift Three and associated trails and roads will occur during fawning of mule deer and calving of elk (May 1 to July 15).
2. Snow Making Reservoir  
A snow making reservoir is approved for WDFW property. The design, inspection and management of the reservoir will ensure wildlife and public safety. The design will include appropriate escape ramps for wildlife and not require fencing during non-snow periods. During snow periods, a snow fence and posting will be constructed and maintained to ensure that people will not enter the reservoir area.
3. Snow Making Facilities  
Snowmaking has occurred on Mission Ridge base and ski run # 1 and #4 since 1978. New snowmaking will occur primarily on USFS lands around lift #2. At the beginning of snowmaking it is recommended that snowmaking occur in the nighttime, to avoid disturbance to elk, deer and hunters. "Quite Basins" were identified in and around the Mission Ridge Ski Area and mapped benefiting lynx. These areas will be managed for wildlife use as determined by survey information. Snow making nozzles shall be designed for quiet operation.

4. Wetland Mitigation site

A wetland mitigation site is approved for construction within proximity to the reservoir to ensure alternative wildlife habitat for aquatic species. In a timely manner, Grantee shall submit a site plan to WDFW for its review. No development may begin without the prior, express, written approval of WDFW.

5. General Construction Activities

Wildlife connectivity corridors have been identified and mapped. Forest structure will be maintained in these corridors to provide this benefit. Hiding cover will be maintained or developed between new construction and important wildlife habitat areas. Construction activities will be restricted to outside the northern spotted owl nesting period (March 1- August 30<sup>th</sup>) when within 0.5 miles of an active center or within unsurveyed habitat. No modifications to ski runs requiring removal of trees may begin without the prior, express, written approval of WDFW.

6. Additional Requirements

Additional requirements may be added by WDFW upon NEPA and SEPA review of specific projects identified in the Master Plan.