

AFTER RECORDING MAIL TO:

Lands Program
Washington State Parks & Recreation Commission
PO Box 42650
Olympia, WA 98504-2650



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LAND TITLE OF SKAGIT COUNTY

136299 SE + 129196 SE

Document Title(s): AGREEMENT BETWEEN WASHINGTON STATE PARKS AND RECREATION COMMISSION AND SWINOMISH INDIAN TRIBAL COMMUNITY REGARDING THE ACQUISITION OF KIKET ISLAND AND THE DEVELOPMENT, OPERATION AND MAINTENANCE OF A PUBLIC PARK ON KIKET ISLAND

Party(ies): WASHINGTON STATE PARKS AND RECREATION COMMISSION and SWINOMISH INDIAN TRIBAL COMMUNITY, a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 476)

Legal Description: GL2 in S20, T34N, R2E, AND Ptn. of GL2 and GL5, 6, 7, 8, and 9 in S21, T34N, R2E, W.M.

Assessor's Property Tax Parcel Account Number(s): P20576, P20603, P20604, P20573

AGREEMENT BETWEEN WASHINGTON STATE PARKS AND RECREATION
COMMISSION AND SWINOMISH INDIAN TRIBAL COMMUNITY REGARDING
THE ACQUISITION OF KIKET ISLAND AND THE DEVELOPMENT, OPERATION
AND MAINTENANCE OF A PUBLIC PARK ON KIKET ISLAND

This Agreement regarding the acquisition of Kiket Island and the development, operation, and maintenance of a public park on Kiket Island is made and entered into this 14th day of June 2010, by and between the Washington State Parks and Recreation Commission, an agency of the State of Washington, acting under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, and other applicable law, and the Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 476), acting under the authority of its Constitution and Bylaws.

For and in consideration of the promises, covenants and agreements contained herein, the Parties recognize, affirm, and agree as follows:

1. **Definitions.** The following words or phrases shall have the following meanings for purposes of this Agreement:

1.1. "Co-Management Agreement" means the Kiket Island Co-Management Agreement attached hereto as Exhibit A.

1.2. "Government Funding Agency" means any one of, and "Government Funding Agencies" means all of, the following Federal and State Agencies that are providing funding for the acquisition of Kiket Island: (a) Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration; (b) Fish and Wildlife Service, United States Department of the Interior; and (c) Washington State Recreation and Conservation Office.



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1.3. "Kiket Island" means Parcel A and Parcel B, as legally described in Paragraphs 1.8 and 1.9 below. Notwithstanding any other provision in this Agreement to the contrary, neither Kiket Island, Parcel A nor Parcel B includes any Kiket Island Tidelands, as described in Paragraph 1.5 below, or any right, title or interest, of whatsoever nature the same may be, in or to any Kiket Island Tidelands.¹

1.4. "Kiket Island Agreement" means this Agreement Between Washington State Parks and Recreation Commission and Swinomish Indian Tribal Community Regarding the Acquisition of Kiket Island and the Development, Operation and Maintenance of a Public Park on Kiket Island.

1.5. "Kiket Island Tidelands" means all lands adjacent to or surrounded in whole or in part by Parcel A and/or Parcel B that are or were continually or intermittently submerged beneath waters subject to the ebb and flow of the tides and that lie between the line of mean high tide and the line of extreme low water, and include the bed of the saltwater lagoon surrounded in whole or in part by Parcel B. For purposes of this definition of Kiket Island Tidelands, the line of mean high tide is determined by taking the mean of all high tides, including spring tides and neap tides, over a complete tidal cycle of 18.6 years and is ambulatory, changing location in response to erosion and accretion as well as changes in tidal elevations. However, except as otherwise provided by applicable law, if the line of mean high tide is seaward of where it would be in the absence of a human-made assemblage of materials or other human-made alteration, then the landward boundary of the Kiket Island Tidelands is where the line of mean high tide would be in the absence of such assemblage or alteration. Kiket Island Tidelands are

¹ The Parties disagree whether an existing road on Parcel A and Parcel B is located, in part, on a portion of the Kiket Island Tidelands. State Parks contends no portion of the road is located on Kiket Island Tidelands. The Tribe contends some portions of the road are located on Kiket Island Tidelands.



located entirely within the exterior boundaries of the Swinomish Reservation and are owned by the United States in trust for the Tribe.

1.6. "Management Board" means the Kiket Island Management Board described in Paragraph 2 of the Co-Management Agreement.

1.7. "Nearby Marine Waters" means the marine waters adjacent to or in close proximity to Kiket Island and the Kiket Island Tidelands, including Turner's Bay, Similk Bay, Kiket Bay and Skagit Bay.

1.8. "Parcel A" means the land legally described as follows:

Government Lot 2 in Section 20, Township 34 North, Range 2 East, W.M.

ALSO, Government Lots 5, 6, 7, 8 and 9 of Section 21, Township 34 North, Range 2 East, W.M.

TOGETHER WITH a non-exclusive easement for ingress, egress and utilities over the South 60 feet of Government Lot 2, Section 21, Township 34 North, Range 2 East, W.M.

Situate in the County of Skagit, State of Washington.

Notwithstanding anything in the foregoing legal description to the contrary, Parcel A does not include any Kiket Island Tidelands or any right, title, or interest, of whatsoever nature the same may be, in or to any Kiket Island Tidelands.

1.9. "Parcel B" means the land legally described as follows:

The South 410.32 Feet of Government Lot 2 in Section 21, Township 34 North, Range 2 East W.M. EXCEPT the East 30 feet thereof for road.

Situate in the County of Skagit, State of Washington.

Notwithstanding anything in the foregoing legal description to the contrary, Parcel B does not include any Kiket Island Tidelands or any right, title, or interest, of whatsoever nature the same may be, in or to any Kiket Island Tidelands.



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- 1.10. "Parties" means State Parks and the Tribe.
- 1.11. "Right-of-Way and Access Agreement" means the Right-of-Way and Access Agreement attached hereto as Exhibit B.
- 1.12. "Secretary" means the United States Secretary of the Interior or another employee of the United States Department of the Interior to whom the Secretary's authority to approve the Right-of-Way and Access Agreement has been delegated.
- 1.13. "State Parks" means the Washington State Parks and Recreation Commission or its successor.
- 1.14. "Swinomish Reservation" means the reservation described in the Treaty of Point Elliott as "the peninsula at the southeastern end of Perry's Island, called Shais-quihl," which is located on what is presently and commonly known as Fidalgo Island in Skagit County, Washington.
- 1.15. "Treaty of Point Elliott" or "Treaty" means the Treaty with the Duwamish, Suquamish, Etc., 12 Stat. 927 (1855).
- 1.16. "Tribe" means the Swinomish Indian Tribal Community or its successor.
- 1.17. "Trust for Public Land" or "TPL" means the nonprofit California public benefit corporation and land conservation organization with that name.

2. Reasons for Agreement.

2.1. Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters have unique ecological, environmental, conservation, educational, recreational, economic, historical, cultural, Tribal and aesthetic values that the Parties believe are worthy of preservation and protection in perpetuity.



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2.2. In the 1855 Treaty of Point Elliott, the Tribe ceded lands to the United States but reserved certain rights, including but not limited to an exclusive right to use and occupy the Swinomish Reservation and the right to exercise certain hunting, fishing (including shellfishing), and gathering rights within and without the Swinomish Reservation. The Tribe's Federally approved Constitution and Bylaws provides that the Tribe's jurisdiction shall extend to the territory within the Swinomish Reservation. Kiket Island and the Kiket Island Tidelands are located entirely within the exterior boundaries of the Swinomish Reservation.

2.3. In a September 9, 1873, Executive Order (Executive Order), President Grant stated the northern boundary of the Swinomish Reservation begins at the "low water mark on the shore of Similk Bay" and extends to the "low-water mark on the western shore of Padilla Bay." The Treaty and the Executive Order are the basis for Federal and State court decisions and numerous United States Department of the Interior opinions recognizing that tidelands adjacent to Swinomish Reservation uplands are owned by the United States in trust for the Tribe.

2.4. On April 1, 1885, Parcel A and Parcel B were allotted to a member of the Tribe and subsequently passed out of Indian ownership. Private, non-Indian ownership of Parcel A and Parcel B has prevented the Tribe and its members from gaining or maintaining unfettered access to the Kiket Island Tidelands and Nearby Marine Waters. Additionally, the current owners of Parcel A and Parcel B have made claims that are adverse to the ownership of the Kiket Island Tidelands by the United States in trust for the Tribe.



2.5. The current owners of Parcel A and Parcel B have expressed interest in selling Kiket Island. A sale to a private party could lead to an effort to subdivide and develop Kiket Island, with adverse effects on the ecology and environment of Kiket Island and on natural and cultural resources on or in Kiket Island, the Kiket Island Tidelands and Nearby Marine Waters.

2.6. State Parks, with the assistance of TPL, the Nature Conservancy and others, has secured commitments from the Government Funding Agencies to provide funding for the acquisition of portions of Kiket Island from the current owners on certain conditions. One of the conditions imposed by the Government Funding Agencies is that the portions of Kiket Island acquired with such funds be operated perpetually as a public park with limited public access consistent with protection of the resources and ecology of Kiket Island.

2.7. In order to satisfy the conditions discussed in Paragraph 2.6 above, State Parks seeks a perpetual right-of-way and access agreement from the Tribe to provide: (a) perpetual public access across any portion of the existing road on Parcel A and Parcel B that is located on the Kiket Island Tidelands; and (b) limited public access to the Kiket Island Tidelands. In addition, State Parks seeks the Tribe's assistance, including its financial assistance, as an equal co-manager in the development, operation and maintenance of a public park on Kiket Island.

2.8. The Tribe is willing to provide a perpetual right-of-way and access agreement to State Parks for the purposes set forth in Paragraph 2.7 above and to assist State Parks as an equal co-manager in the development, operation and maintenance of a public park on Kiket Island in exchange for a 50% undivided interest in Kiket Island and the



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elimination of any claims that are adverse to the United States' ownership of the Kiket Island Tidelands in trust for the Tribe.

2.9. State Parks supports the Tribe's acquisition of a 50% undivided interest in Kiket Island and the elimination of any claims that are adverse to the United States' ownership of the Kiket Island Tidelands in trust for the Tribe because of: (a) the Tribe's agreement to provide a perpetual right-of-way and access agreement to State Parks; (b) the Tribe's agreement to assist State Parks as an equal co-manager in the development, operation and maintenance of a public park on Kiket Island; (c) the Parties' shared objectives for the preservation and management of Kiket Island; (d) the location of Kiket Island within the Swinomish Reservation; and (e) the overlapping jurisdiction of the Tribe and the State of Washington with respect to Kiket Island.

2.10. The Parties agree that long-term management measures designed to avoid or minimize and remediate damage to Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters caused by human activities (including recreational activities) on Kiket Island and the Kiket Island Tidelands are necessary to preserve and protect the unique values of Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters in perpetuity. The Parties further agree that management of Kiket Island should accommodate the exercise of the Tribe's Treaty rights and Tribal spiritual and cultural activities as set forth in Section 7 of the Co-Management Agreement.

2.11. It is in the Parties' mutual interests to acquire Kiket Island as tenants in common with equal undivided interests, and to plan for and implement the preservation, protection, and use of Kiket Island by consensus, for the following reasons (among others): Kiket Island is located entirely within the Swinomish Reservation and is subject



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to the regulatory jurisdiction of the Tribe or the State of Washington or both under certain circumstances; Parcel A and Parcel B are surrounded in large part by, and activities on Parcel A and Parcel B may seriously and substantially adversely affect, Kiket Island Tidelands, which are owned by the United States in trust for the Tribe; Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters are areas of great importance to the Parties for the reasons set forth in Paragraph 2.1 above; and diffuse, intensive, and/or unmanaged public use of Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters will damage such lands and waters.

2.12. The Parties intend to use their respective ownership interests and rights, including but not limited to the Tribe's existing ownership of the Kiket Island Tidelands, the Parties' proposed co-tenancy interests in Kiket Island, and State Parks' rights under the proposed Right-of-Way and Access Agreement, to enter into and implement the Co-Management Agreement for the development, operation and maintenance of a public park on Kiket Island and thereby satisfy the conditions imposed by the Government Funding Agencies, all as set forth in this Agreement, the Co-Management Agreement and the Right-of-Way and Access Agreement.

3. Conveyances and Ownership Interests.

3.1. Immediately after executing this Agreement, the Tribe and State Parks shall execute, deliver to each other, and submit to the Bureau of Indian Affairs for review the Right-of-Way and Access Agreement. As set forth in the Right-of-Way and Access Agreement, it shall not become effective until it has been approved by the Secretary and the conveyances described in Paragraphs 3.2 and 3.6 below have been completed. If the Secretary does not approve the Right-of-Way and Access Agreement, this Agreement



shall be null and void and the Parties shall have no further obligations under it. Closing of the conveyances described in Paragraph 3.2 below shall be contingent upon the Secretary's approval of the Right-of-Way and Access Agreement.

3.2. The Parties anticipate and will make best efforts to ensure that, upon the Secretary's approval of the Right-of-Way and Access Agreement, TPL will: (a) acquire by special warranty deed from the current owners of Parcel A and Parcel B title to Parcel A and Parcel B (including any portions of Parcel A and/or Parcel B that are segregated for purposes of acquisition with funds other than those obtained from the Government Funding Agencies) and any right, title, or interest, of whatsoever nature the same may be, in or to any Kiket Island Tidelands held by the current owners of Parcel A and Parcel B; (b) convey by statutory warranty deed title to Parcel A and Parcel B to State Parks and the Tribe as tenants in common with equal undivided interests (including any portions of Parcel A and/or Parcel B that are segregated for purposes of acquisition with funds other than those obtained from the Government Funding Agencies); and (c) convey by quit claim deed any right, title, or interest, of whatsoever nature the same may be, in or to any Kiket Island Tidelands to State Parks and the Tribe. If TPL does not obtain the conveyances from the current owners of Parcel A and Parcel B described in clause (a) of this Paragraph, or if it does not make the conveyances to State Parks and the Tribe described in clauses (b) and (c) of this Paragraph, this Agreement shall be null and void and the Parties shall have no further obligations under it.

3.3. Following the conveyance described in clause (b) of Paragraph 3.2 above, the Parties shall have equal undivided interests in Parcel A and Parcel B. Subject to the provisions of any deed restrictions or restrictive covenants jointly filed by the Parties, the



Parties' respective rights to use, manage, encumber, convey, assign or otherwise dispose of their interests in Parcel A and Parcel B shall be governed exclusively by this Agreement, the Co-Management Agreement and the Right-of-Way and Access Agreement. The Parties waive any rights they may have under any statutory, common or other law relating to tenants in common, including but not limited to any right to seek contribution or to seek a partition of the property, to the extent such rights are inconsistent with this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement.

3.4. The Tribe may, in its sole discretion, submit an application to the Bureau of Indian Affairs to acquire the Tribe's undivided interest in Parcel A and Parcel B in trust for the benefit of the Tribe. State Parks will not oppose any such acquisition and no such acquisition shall be considered inconsistent with or in violation of this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement, *provided that* no such acquisition shall relieve the Tribe of its obligations under such Agreements.

3.5. Except as provided in Paragraph 3.4 above or Paragraph 8 below, State Parks shall not encumber, convey, assign or otherwise dispose of its rights under the Right-of-Way and Access Agreement and neither State Parks nor the Tribe shall encumber, convey, assign or otherwise dispose of its right, title and interest in and to Parcel A and Parcel B without the prior written consent of the other Party and the approval of the Government Funding Agencies.

3.6. At or before closing of the conveyances described in Paragraph 3.2 above, State Parks shall execute a quit claim deed in the form attached as Exhibit C hereto,



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quitclaiming all right, title and interest, of whatsoever nature the same may be, in and to the Kiket Island Tidelands to the Tribe.

3.7. The Parties shall direct the closing agent to deliver and record the deeds described in Paragraph 3.2 above in the order set forth in Paragraph 3.2, and then to deliver and record the deed described in Paragraph 3.6 above.

4. Development, Operation and Maintenance of a Public Park on Kiket Island. Immediately following completion of the conveyances described in clauses (b) and (c) in Paragraph 3.2 above and the conveyance described in Paragraph 3.6 above, the Tribe and State Parks shall execute and deliver to each other the Co-Management Agreement and shall thereafter develop, operate and maintain a public park at Kiket Island in accordance with that Agreement.

5. Dispute Resolution. In the event that any disagreement or dispute between the parties arises under this Agreement, including an alleged breach of this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement, the Parties shall attempt to resolve the disagreement or dispute according to the following procedures prior to seeking redress in a court of law:

5.1. Either Party may initiate dispute resolution by notifying the other Party and the Management Board in writing as soon as practicable after a disagreement or dispute arises.

5.2. As soon as practicable and no later than thirty (30) days from the notice, the Management Board shall meet and confer to attempt to resolve the dispute.

5.3. Should the Management Board fail to reach a Consensus Decision, as defined in Paragraph 1.2 of the Co-Management Agreement, regarding the disagreement or



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dispute, the procedures set forth in Sections 4.3 through 4.5 of the Co-Management Agreement shall apply. In the event that the Parties are unable to reach agreement, each Party is free to issue its decision and pursue its interests *independent of the other Party*, including but not limited to seeking redress in a court of law in accordance with Paragraph 6 of this Agreement.

6. Mutual Limited Waivers of Sovereign Immunity. This Agreement does not waive, limit, or modify the sovereign immunity of the State of Washington or the Tribe from unconsented suit except as specifically provided in this Paragraph. The State of Washington, acting by and through State Parks, and the Tribe consent to suit by the other if, and only if: (a) the claims in the suit relate to the making, formation or validity of, or obligations under this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement, and are based exclusively on an alleged breach (or breaches) of one or more of the specific obligations, duties, covenants, or warranties expressly made or assumed by the Parties in such Agreements; and (b) the suit is filed in the Federal District Court for the Western District of Washington or, if that court rules that it lacks jurisdiction over the subject matter of the suit, in the Superior Court of Washington State for Thurston County. This limited consent to suit is applicable solely to claims by the other Party to this Agreement, and not to claims by any other person, corporation, partnership, governmental body, or other entity whatsoever. This limited waiver of sovereign immunity does not extend to proceedings in any other forum or regarding any other matter. This limited consent to suit only authorizes relief compelling State Parks or the Tribe to take action specifically required by this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement, compelling State Parks or the



Tribe to discontinue action expressly prohibited by such Agreements, terminating such Agreements for a material breach of one or more of them, and/or awarding compensatory money damages against the State of Washington or the Tribe for breach of such Agreements, provided that termination of such Agreements shall be a remedy of last resort. Any judgment against the Tribe shall be satisfied exclusively from the Class III gaming revenues of the Tribe, and not from any other income, asset or property of the Tribe. Each Party shall bear its own attorney's fees, costs, and expenses in a proceeding authorized by the Paragraph.

7. **Modification and Amendment.** This Agreement may only be modified or amended by a written agreement executed by both parties.

8. **Termination.**

8.1. This Agreement may only be terminated by: (a) a written agreement executed by both Parties; or (b) a court of competent jurisdiction acting pursuant to Paragraph 6 of this Agreement for a material breach of this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement.

8.2. Termination by Agreement. Any written agreement between the Parties providing for the termination of this Agreement shall provide:

8.2.1. Upon termination of this Agreement, State Parks shall convey all of its right, title and interest in and to Kiket Island to the Tribe, and the Tribe shall assume all of State Parks' obligations to the Government Funding Agencies for the development, operation and maintenance of a public park on Kiket Island.

8.2.2. The Parties shall provide at least sixty days advance notice to the Government Funding Agencies of the Parties' intent to terminate this Agreement, State



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Parks' intent to convey all of its right, title and interest in and to Kiket Island to the Tribe, and the Tribe's intent to assume all of State Parks' obligations to the Government Funding Agencies for the development, operation and maintenance of a public park on Kiket Island.

8.2.3. If any Government Funding Agency objects to the Parties' intent to terminate this Agreement, State Parks' intent to convey all of its right, title and interest in and to Kiket Island to the Tribe, or to the Tribe's intent to assume all of State Parks' obligations to the Government Funding Agencies for the development, operation and maintenance of a public park on Kiket Island, the Parties shall negotiate in good faith with such Government Funding Agency to resolve its objections consistent with the requirements of Paragraph 8.2.1 above.

8.2.4. If the Parties are unable to resolve an objection from a Government Funding Agency under Paragraph 8.2.3 above, and the Parties' termination of this Agreement, State Parks' conveyance of all of its right, title and interest in and to Kiket Island to the Tribe, or the Tribe's assumption of all of State Parks' obligations to the Government Funding Agencies for the development, operation and maintenance of a public park on Kiket Island results in liability to such Government Funding Agency, either for reimbursement of funds granted for the acquisition of Kiket Island or to acquire replacement lands or otherwise, the Parties' termination agreement shall allocate responsibility for such liability between the Parties.

8.2.5. Termination of this Agreement shall immediately terminate the Co-Management Agreement and the Right-of-Way and Access Agreement.



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8.3. **Termination by Court.** If this Agreement is terminated by a court of competent jurisdiction acting pursuant to Paragraphs 6 and 8.1 of this Agreement, the court's order providing for termination of this Agreement shall incorporate the provisions set forth in Paragraphs 8.2.1 through 8.2.5 above except that, in the absence of agreement between the Parties, the court shall allocate responsibility between the Parties for any liability to a Government Funding Agency under Paragraph 8.2.4 above in a manner that is fair and equitable under the circumstances.

9. **Effective Date and Term.** This Agreement shall be in force and take effect upon execution by the parties and shall remain in effect unless nullified under Paragraphs 3.1 or 3.2 of this Agreement or until terminated in accordance with Paragraphs 8.1 through 8.3 of this Agreement.

10. **Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties and their successors. This Agreement creates no rights in and may not be enforced by any other person, corporation, partnership, governmental body, or other entity whatsoever.

11. **No Waiver for Failure to Enforce.** No failure to enforce any provision of this Agreement shall be deemed to waive the right of either Party to enforce such provision or any other provisions of this Agreement in the future.

12. **Complete Agreement.** This Agreement and its Exhibits and a Purchase and Sale Agreement between State Parks, the Tribe and TPL contain the complete statement of the understanding of the Parties with respect to the subject matter of this Agreement. There are no other representations, agreements, or understandings, oral or written, by the Parties relating to the subject matter of this Agreement that are not fully expressed in this



Agreement and its Exhibits and the Purchase and Sale Agreement. Each Party acknowledges and represents to the other Party that it is executing this Agreement solely in reliance upon its own judgment and knowledge and that it is not executing this Agreement based upon the representation or covenant of the other Party, or anyone acting on such Party's behalf, except as expressly stated herein. Each Party represents to the other Party that the person executing this Agreement and its Exhibits on its behalf is duly authorized to execute said Agreement and Exhibits.

13. Construction. This Agreement has been freely and fairly negotiated by the Parties hereto and has been reviewed by legal counsel for each of the Parties, each of whom has had the full opportunity to modify the draftsmanship hereof, and, therefore, the terms of this Agreement shall be construed and interpreted without any presumption or other rule requiring constructional interpretation against the Party causing the drafting of the Agreement. The construction consistent with the terms of this Agreement that best furthers the purposes of this Agreement shall be the preferred construction.

14. Liability to Government Funding Agencies for Violation of Grants. For purposes of this Paragraph 14, "Government Funding Agency Claim" means a claim by a Government Funding Agency for reimbursement or other relief arising from one or more of the grants used to acquire Kiket Island. Except as otherwise provided in Paragraphs 8.2 or 8.3 above, the Tribe shall be liable for a Government Funding Agency Claim only to the extent such claim arises from a material breach by the Tribe of: (a) this Agreement, the Co-Management Agreement, or the Right-of-Way and Access Agreement; or (b) a term or condition of a grant to which the Tribe has separately agreed in writing to be bound. Except as otherwise provided in Paragraphs 8.2 or 8.3 above, State Parks shall be

liable for a Government Funding Agency Claim to the extent such claim arises from a material breach by State Parks of: (a) this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement; or (b) a term or condition of a grant used to acquire Kiket Island.

15. Other Loss and Liability. "Claim" as used in this Paragraph 15 means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, court costs and litigation expenses, attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible real or personal property (including but not limited to Kiket Island, any buildings attached thereto, and the Kiket Island Tidelands) including loss of use resulting therefrom, but does not include a Government Funding Agency Claim as defined in Paragraph 14 above. Each Party shall be responsible for any Claim arising from its performance of this Agreement, the Co-Management Agreement, or the Right-of-Way and Access Agreement or from its performance of activities required or authorized by such Agreements to the extent such Claim arises from the tortious acts or omissions of the Party's own employees, officers, or agents in the performance of such Agreements or activities. Neither Party shall be considered the agent of the other Party in performing such Agreements or activities.

WASHINGTON STATE PARKS AND RECREATION COMMISSION

Judy Johnson
Rey Derr, Director
Deputy Director

Date: 6/2/10



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SWINOMISH INDIAN TRIBAL COMMUNITY

M. Brian Cladoosby
M. Brian Cladoosby, Chairman

Date: 6-3-10



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Exhibit A
KIKET ISLAND CO-MANAGEMENT AGREEMENT

1. DEFINITIONS.

1.1. The definitions set forth in Paragraph 1 of the Kiket Island Agreement are hereby incorporated and shall apply for purposes of this Agreement.

1.2. "Consensus Decision" means a decision endorsed by every member of the Management Board.

1.3. "Tribal Treaty Rights" means the rights reserved to the Tribe in the Treaty of Point Elliott, including certain rights to hunt, fish (including shellfish), and gather natural resources within and without the Swinomish Reservation.

2. KIKET ISLAND MANAGEMENT BOARD.

2.1. Upon completion of the conveyances described in Paragraph 3 of the Kiket Island Agreement, the Parties will establish the Kiket Island Management Board to co-manage the development, operation and maintenance of a public park on Kiket Island, as required by Paragraph 4 of the Kiket Island Agreement.

2.2. The Management Board will initially be comprised of three representatives of State Parks and three representatives of the Tribe, totaling six members. The Parties may increase or decrease the total number of members by mutual agreement, provided that equal representation between the Parties is maintained.

2.3. Upon notice to the other Party, each Party shall have complete and unfettered discretion to appoint and remove its representatives on the Management Board, and to designate alternate representatives who may participate fully in meetings when a regular representative is absent. Each Party's representatives shall work closely with their respective Party's governing bodies such that the representatives' participation on the Management Board fairly represents their respective Party's interests.

2.4. Each Party will designate one of its Management Board representatives as a co-chairperson. The co-chairpersons shall be jointly in charge of calling and conducting meetings and authenticating minutes. However, the co-chairpersons may agree that the responsibilities of the chair will alternate between the co-chairpersons.

3. MANAGEMENT BOARD FUNCTIONS.

3.1. The Management Board will examine all proposals, initiatives, undertakings, activities, and other matters relating to the development, operation and maintenance of a public park at Kiket Island, except for those matters set forth in Section 7 below, provided that the Tribe will inform the Management Board of its plans for Tribal management and use of the Kiket Island Tidelands but such plans shall not be subject to



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deliberation or Consensus Decision-Making by the Management Board except as otherwise expressly provided in the Kiket Island Agreement, this Agreement, or Right-of-Way and Access Agreement.

3.2. Matters to be addressed by the Management Board pertaining to a public park at Kiket Island will include, but not be limited to, the following:

3.2.1. The name of the public park, taking into consideration the requirements of WAC 352-16-010 as in force on the date of execution of this Agreement and attached hereto as Exhibit 1;

3.2.2. Development, approval, implementation, review and modification of a Joint Purpose and Objectives Statement and Master Management Plan;

3.2.3. Identification, protection, preservation and/or enhancement of natural ecological habitat and culturally significant sites and other cultural resources;

3.2.4. Development, design, location and maintenance of park facilities, including but not limited to recreational facilities, water and sewage facilities, and parking facilities (including the possibility of either Party or both Parties acquiring additional property off-site for parking purposes);

3.2.5. Terms and conditions for access to and use of Kiket Island by the general public, guided tour groups, or invited guests, including access to and use of the Kiket Island Tidelands by non-Tribal members to the extent authorized by the Right of Way and Access Agreement attached as Exhibit B to the Kiket Island Agreement;

3.2.6. Advertisement and promotion of the public park, including signage;

3.2.7. Annual work plans setting out work to be done and means of accomplishing it, including staffing requirements, budgets and expenditures of both Parties;

3.2.8. Subject to Section 7 below, enforcement of applicable Federal, State and Tribal law on Kiket Island and the Kiket Island Tidelands;

3.2.9. Procedures for dealing with possible emergencies concerning public safety and security and threats to natural and cultural resources on Kiket Island and the Kiket Island Tidelands;

3.2.10. Subject to Paragraph 3.4 below, provision of assistance to Tribal members, Tribal member-owned businesses, and Tribally-owned businesses to take advantage of the full range of economic opportunities associated with the development, operation and maintenance of a public park at Kiket Island;

3.2.11. Procedures for conducting the business of the Management Board; and



3.2.12. Development of a recommended operating budget that reflects the cost of operating a public park at Kiket Island, which shall be submitted to the Parties at least annually on a schedule that is consistent with the Parties' respective budgeting processes, and which shall not be binding on the Parties until they both approve the budget as presented or modified in accordance with Paragraph 4.2 below.

3.3. In the spirit of full and frank disclosure, the Parties agree that they will refer any proposal, initiative, undertaking, activity or other matter that affects the development, operation and maintenance of a public park at Kiket Island, except for those matters set forth in Section 7 below, to the Management Board for deliberation and appropriate action, provided that the Tribe will inform the Management Board of its plans for Tribal management and use of the Kiket Island Tidelands but such plans shall not be subject to deliberation or Consensus Decision-Making by the Management Board except as otherwise expressly provided in the Kiket Island Agreement, this Agreement, or Right-of-Way and Access Agreement.

3.4 All decisions of the Management Board and all actions of the Parties with respect to the development, operation and maintenance of a public park at Kiket Island shall be subject to and consistent with the Kiket Island Agreement and applicable law. The Parties recognize that there may be conflicts between State and Tribal law governing employment, procurement and contracting and will seek to comply with all applicable law to the maximum extent practicable. As a general matter, employment, procurement and contracting by the Tribe shall be governed by Tribal law, and employment, procurement and contracting by State Parks shall be governed by State law, provided that State Parks shall comply with applicable Tribal law governing employment, procurement and contracting on the Swinomish Reservation where it does not conflict with State law in a circumstance in which the applicable State law is not preempted by Federal or Tribal law.

4. MANAGEMENT BY CONSENSUS.

4.1. The members of the Management Board shall strive in a constructive and cooperative manner to achieve a Consensus Decision on any particular proposal, initiative, undertaking, activity or other matter (collectively, a matter or matters) properly referred to it.

4.2. A Consensus Decision shall be deemed to be a recommendation to the Tribe and State Parks. Each Party's representatives on the Management Board shall designate the appropriate official, agency or department of such Party to whom such recommendation shall be forwarded, identify any steps required to approve such recommendation, and identify the time within which the Party must approve or disapprove the recommendation. The referral, any such required steps, and the time for approval or disapproval shall be noted in the Management Board's minutes. During the course of the referral process, the Management Board will, if requested by either Party, discuss the matter further. Upon the conclusion of the referral process, if there is no objection by



either Party and any required steps have been taken to approve the recommendation, the Consensus Decision will be deemed to have been approved by the Parties and may then be implemented by the appropriate Party or Parties.

4.3. In the event of a clear and final disagreement of Management Board members on a matter, that matter and all related matters will be held in abeyance and will be referred to the Director of State Parks and the Tribal Chairman to attempt to reach agreement on the matter in good faith. The Parties may request the assistance of an agreed neutral third party or parties in attempting to reach an agreement, but shall not be bound by the recommendation(s) or decision(s) of such third party or parties unless each Party agrees in writing in advance to be bound.

4.4. A matter and all related matters held in abeyance under Paragraph 4.3 above will be set aside from the normal business of the Management Board until such time as the members receive instructions from their respective authorities demonstrating that the Parties have reached agreement on the matter.

4.5. A matter and all related matters set aside under Paragraph 4.4 above will not reduce or fetter the obligation and ability of the Management Board to continue to deliberate in good faith and to strive to achieve Consensus Decisions on other matters in accordance with this Section 4.

5. AGREED MANAGEMENT OBJECTIVES.

5.1. The Parties agree that the decisions of the Management Board, including development, approval, implementation, review and modification of a Joint Purposes and Objectives Statement and Master Management Plan, shall be subject to the following management objectives for a public park at Kiket Island:

5.1.1. To actively preserve, protect, and enhance natural ecological habitat on Kiket Island and the Kiket Island Tidelands and to manage Kiket Island and the Kiket Island Tidelands so as to protect the quality of Nearby Marine Waters for the benefit of native species (including but not limited to threatened and endangered species);

5.1.2. To promote the healthy functioning of important near-shore habitat corridors for birds, fish, and marine mammals that migrate through Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters;

5.1.3. To facilitate scientific research regarding the natural values and functions of Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters, including scientific research related to the establishment of a moorage exclusion zone in Nearby Marine Waters;

5.1.4. To respect and sustain the continuity of Tribal culture and facilitate Tribal spiritual and cultural activities and the exercise of Tribal Treaty Rights at Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters as set forth in Section 7 below;



5.1.5. To preserve, protect, and encourage respect for culturally significant sites and other cultural resources on Kiket Island and the Kiket Island Tidelands;

5.1.6. To provide opportunities for low-intensity, non-consumptive, and managed public recreational and educational use of Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters, while avoiding damage to such lands and waters that would result from diffuse, intensive, and/or unmanaged public use of such lands and waters, and minimizing and remediating any damage that does occur; and

5.1.7. To provide programming and facilities to inform and educate the public about the natural and cultural history of Kiket Island and how to care for its future.

5.2. Subject to Section 7 below, the Parties and the Management Board shall make preservation and protection of Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters the primary priority, with recreation and education at Kiket Island and the Kiket Island Tidelands being a secondary priority.

6. AGREED USE LIMITATIONS.

6.1. The Parties agree and the decisions of the Management Board shall be subject to the following limitations on the use of Kiket Island and the Kiket Island Tidelands:

6.1.1. No person may use the Kiket Island Tidelands except as authorized by the Tribe. For persons other than Tribal members or Tribal employees acting within the course and scope of their employment, such Tribal authorization must be contained in either (a) a Right-of-Way and Access Agreement with State Parks that has been approved by the Secretary and is in good standing or (b) other valid written Tribal authorization. For Tribal members and Tribal employees acting within the course and scope of their employment, the form of such Tribal authorization shall be determined by the Tribe;

6.1.2. The only uses of Kiket Island by the Parties and of the Kiket Island Tidelands by State Parks that shall be permitted are: (a) preservation, protection and/or enhancement of natural ecological habitat or culturally significant sites and other cultural resources; (b) scientific research; (c) the exercise of Tribal Treaty Rights and the conduct of Tribal Spiritual and Cultural Activities as set forth in Section 7 below; (d) low-intensity, non-consumptive, and managed public recreational and educational activities; (e) non-commercial use consistent with the Master Management Plan and approved by the Management Board of the facilities currently located on the western end of Kiket Island; and (f) administrative, maintenance and enforcement functions;

6.1.3. Persons who are not members or authorized employees of the Tribe shall be prohibited from hunting, fishing (including shellfishing), or gathering any natural resource on or from Kiket Island or the Kiket Island Tidelands, except as permitted by WAC 352.28.030 as in force on the date of execution of this Agreement and attached hereto as Exhibit 2;

6.1.4. With limited exceptions to be developed by the Management Board, the use of Kiket Island by the Parties and of the Kiket Island Tidelands by State Parks shall be limited to day use only except as authorized on a case-by-case basis by the Management Board or as permitted under Section 7 below;

6.1.5. With limited exceptions to be developed by the Management Board, including uses associated with administrative, enforcement, and emergency functions, the exercise of Tribal Treaty Rights, the conduct of Tribal Spiritual and Cultural Activities, and the non-commercial use of the facilities currently located on the western end of Kiket Island, the Parties will limit the use of vehicles on Kiket Island and the Kiket Island Tidelands to non-motorized and electric vehicles, limit all vehicles (including bicycles and the like) on Kiket Island to established roads, and prohibit the use of any vehicles (including bicycles and the like) on the Kiket Island Tidelands;

6.1.6. Persons who are not members of the Tribe, authorized employees of the Tribe or State Parks, or law enforcement or emergency personnel shall be prohibited from accessing Kiket Island or the Kiket Island Tidelands with gasoline- or diesel-powered boats and from anchoring any boats on the Kiket Island Tidelands or in any other moorage exclusion zone established pursuant to this Agreement; and

6.1.7. Public access to sensitive nearshore habitat areas for forage fish and salmon will be restricted during critical spawning and rearing seasons, with specific habitat areas and seasonal timing of such restrictions determined on the basis of multiple sources of on-site habitat data, including but not limited to the May 2008 Pentec Kiket Island Biological Assessment.

6.2. It shall be the responsibility of each Party to prohibit the activities proscribed under Paragraph 6.1 above with respect to all persons subject to that Party's jurisdiction and control.

6.3. Subject to the provisions of Section 7 below, it shall be the responsibility of each Party to adopt rules or other enforceable measures to manage all boat access by persons subject to that Party's jurisdiction and control:

6.3.1. To minimize disturbance to the Kiket Island Tidelands and to eel grass beds, benthos, and shellfish beds;

6.3.2. To prevent decertification of the Swinomish growing area as a commercial shellfish harvest area by the Washington State Department of Health;

6.3.3. To limit as much as possible the areas in which boats are landed and placed by visitors to Kiket Island; and

6.3.4. To prevent interference with the exercise of Tribal Treaty Rights, including but not limited to beach seining and harvesting shellfish.



6.4. It shall be the joint responsibility of the Parties to provide law enforcement services for purposes of enforcing the prohibitions, rules and other measures adopted pursuant to Paragraphs 6.2 and 6.3 above. In order to fulfill this responsibility, the Parties, working through the Management Board, shall develop, enter into and implement a cooperative law enforcement agreement. However, in the absence of such an agreement, nothing in this Agreement shall prohibit either party from providing law enforcement services to enforce the prohibitions, rules and other measures adopted pursuant to Paragraphs 6.2 and 6.3 above to the full extent of its law enforcement authority. In exercising its law enforcement authority, State Parks will refer violations by Tribal members to the Tribe for prosecution or referral to the United States unless and until the Tribe declines, in writing, the opportunity to prosecute or refer such violations.

6.5. If the Parties are unable to fulfill their separate responsibilities under Paragraphs 6.2 and 6.3 above or their joint responsibilities under Paragraph 6.4 above, the Parties shall temporarily prohibit all access to Kiket Island (except for access by employees of State Parks or the Tribe or law enforcement or emergency personnel) to the extent necessary to enforce the prohibitions set forth in Paragraph 6.1 above or to prevent damage to the ecology or natural or cultural resources of Kiket Island, the Kiket Tidelands or Nearby Marine Waters until they are able to fulfill those responsibilities.

7. TRIBAL TREATY RIGHTS AND TRIBAL SPIRITUAL AND CULTURAL ACTIVITIES.

7.1. Tribal Treaty Rights and Tribal Spiritual and Cultural Activities on or from Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters include but are not limited to the following:

7.1.1. Hunting or trapping of land mammals and waterfowl;

7.1.2. Fishing and shellfishing;

7.1.3. Gathering of plants or plant materials used for spiritual, ceremonial, or medicinal purposes;

7.1.4. Gathering of culturally significant Tribal foods;

7.1.5. Conducting ceremonies of spiritual, ceremonial, or cultural significance;

7.1.6. Seeking spiritual and cultural inspiration; and

7.1.7. Traveling into and within Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters and use of shelter and facilities on Kiket Island in the pursuit of the above activities.



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7.2. Notwithstanding any other provision in this Agreement, State Parks agrees not to interfere with or regulate, or attempt to interfere with or regulate, the exercise of Tribal Treaty Rights or the conduct of Tribal Spiritual and Cultural Activities on or from Kiket Island, the Kiket Island Tidelands, or Nearby Marine Waters, except as specifically provided in this Section 7.² Any allegation of such interference shall be addressed through the dispute resolution process set forth in Paragraph 5 of the Kiket Island Agreement and, if not resolved by the Parties through that process, may be the subject of litigation under Paragraph 6 of the Kiket Island Agreement, but shall not be grounds to terminate this Agreement or the Kiket Island Agreement unless the court finds that State Parks' managers knew or should have known of the interference and failed to prevent it.

7.3. Notwithstanding any other provision in this Agreement, the exercise of Tribal Treaty Rights and the conduct of Tribal Spiritual and Cultural Activities on or from Kiket Island, the Kiket Island Tidelands, or Nearby Marine Waters is not subject to deliberation before the Management Board and is not subject to a Consensus Decision of the Management Board, except that:

7.3.1. The Tribe agrees to prohibit hunting and trapping of land mammals and waterfowl by its members on or from Kiket Island, absent the deliberation and a Consensus Decision of the Management Board;

7.3.2. The Tribe will provide State Parks 24-hours advance notice before permitting its members to access Kiket Island by road at night; and

7.3.3. Overnight use of shelter and facilities on Kiket Island by Tribal members will be subject to the deliberation and a Consensus Decision of the Management Board.

7.4 Notwithstanding any other provision in this Agreement, the Tribe's exercise of Tribal Treaty Rights and Tribal Spiritual and Cultural Activities on Kiket Island shall be subject to the provisions of any deed restrictions or restrictive covenants jointly filed by the Parties with respect to Kiket Island.

8. FUNDING.

8.1. Except as otherwise agreed by the Parties, the Parties shall contribute equally to the site-specific costs of developing, operating and maintaining a public park at Kiket Island. An illustrative list of the types of costs that are and are not subject to this cost-sharing requirement is attached hereto as Exhibit 3. The Parties may fulfill their obligations under this Paragraph through in-kind contributions (if mutually agreeable), securing grants from third parties, or their own financial contributions. After reviewing, making modifications (if any) to, and approving a budget recommended by the Management Board, each Party shall determine how best to fund the budget consistent with its cost-sharing obligations under this Paragraph. The Parties may develop billing procedures and/or set up joint operating accounts to facilitate receipt of funds or payment

² State Parks cannot bind other state agencies to any interpretation of law or treaty rights as they affect Nearby Marine Waters.



of expenses. Consistent with the Government Funding Agency requirements, the Parties acknowledge that all revenue raised through the operation of the property shall be used to cover operating costs.

9. SELECTION OF EMPLOYEES. Subject to the provisions of Paragraph 3.4 above:

9.1. In accordance with Paragraph 3.2.10 above, the Parties intend to assist Tribal members, Tribal member-owned businesses and Tribally-owned businesses to take advantage of the full range of economic and employment opportunities associated with the development, operation and maintenance of a public park at Kiket Island.

9.2. Statements of qualifications for the selection of employees for positions at Kiket Island will recognize the importance of an ability to work effectively in support of the objectives set forth in this Agreement and the Kiket Island Agreement and, where appropriate, will require knowledge and understanding of Tribal heritage and culture.

WASHINGTON STATE PARKS AND RECREATION COMMISSION

Judy Johnson
Re: Derr, Director
Deputy Director

Date: 6/7/10

SWINOMISH INDIAN TRIBAL COMMUNITY

M. Brian Cladoosby
M. Brian Cladoosby, Chairman

Date: 6-3-10



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EXHIBIT 1

WAC 352-16-010

Naming and classification of state park areas — Commission action.

- (1) All areas dedicated for public park purposes, excluding separately located administrative areas, and under the ownership and/or management of the Washington state parks and recreation commission, shall be defined as state park areas.
- (2) The official name of any state park area shall generally include in it the term "state park."
- (3) The official naming of any state park area shall be the function of the commission: *Provided, That the commission may not change any name established by the legislature, including specified conservation areas, seashore conservation areas and other recreation and open space areas.*
- (4) The official land classification, or reclassification, of any state park area, pursuant to WAC 352-16-020, shall be the function of the commission: *Provided, That the director shall have authority to manage, on an interim basis, state park areas in accordance with any appropriate land classification prior to final commission action.*
- (5) Any named or unnamed state park area may have one or more land classifications within its boundary.
- (6) Land classifications defined in this chapter shall apply throughout Title 352 WAC.



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EXHIBIT 2

WAC 352-28-030

Harvest of edibles.

Nonmarine edible plants and edible fruiting bodies, including mushrooms, shall be managed by the agency in accordance with WAC 352-28-010. The commercial harvest of edibles is not allowed on park lands. The harvest of edibles for personal consumption, or scientific or educational projects, is subject to the following conditions:

(1) **Personal consumption:** The recreational harvest, possession, or transport of edible plants and edible fruiting bodies including, but not limited to, mushrooms, berries, and nuts, is allowed up to an amount of two gallons per person per day, unless otherwise posted at the park. The harvest amount may be comprised of one or more species. The harvest may occur within the following park classification areas: Recreation, resource recreation, natural, natural forest, heritage, or in parks not yet classified. No harvest of edible plants or edible fruiting bodies, including mushrooms, is allowed within a natural area preserve. This rule is not intended to limit federally reserved tribal rights, including treaty rights.

(2) **Scientific or educational projects:** The harvest of edible plants and/or edible fruiting bodies, including mushrooms, for scientific or educational projects is subject to an approved agency research permit as described in WAC 352-28-040. The approval shall specify a harvest amount not to exceed the minimum quantity necessary for the purposes of the project. The harvest may occur within all park classification areas.

(3) Harvest techniques that involve raking or other techniques that have the potential to degrade park natural or cultural resources are prohibited.

(4) The director or the designee of the director may close, temporarily close, or condition public access to certain park areas for recreational harvesting of edibles upon finding that the activity degrades or threatens to degrade the park's natural or cultural resources, or to protect public health, safety, and welfare. Such closure shall be posted at the entrance to the park area affected and at the park office.



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EXHIBIT 3

The following list illustrates the types of site-specific costs that are and are not subject to the Parties' cost-sharing agreement under Paragraph 8.1 of the foregoing Co-Management Agreement. The Parties have not yet authorized any of the items on this list, and any such authorization is subject to all of the provisions of the Kiket Island Agreement and its attachments (including the Co-Management Agreement and the Right-of-Way and Access Agreement).

Types of Capital/Development Expenses to Be Shared by the Parties:

Gate and Lock
Create and Install Signs
Develop Trails
Parking Facilities
Fill in Swimming Pool
Development of Visitor Center
Sanicans for Visitor Center
Improved water and wastewater capacity
Improve Road
Replace Portion of Road with Bridge

Types of Operating Expenses to Be Shared by the Parties

On-site resident manager/park ranger
Additional park rangers
Trail maintenance
Spartina/invasive species control
Beach clean-up
Other maintenance and/or restoration of natural areas
Maintenance of residence/visitor center



Maintenance of residence on Fidalgo Island parcel

Public education programs

Sanican maintenance and service

Solid waste removal

Fire service

Police service

Excluded Items (Each Party Bears Its Own Costs)

Support staff at Deception Pass State Park, Parks headquarters, or Tribal Offices

Legal and Accounting

Insurance: land title, property loss, liability

Any other overhead expenses

Meetings of Management Board and Participation on Management Board

Advertising and public relations



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Exhibit B – Right of Way and Access Agreement

WHEN RECORDED, RETURN TO:

Washington State Parks and Recreation Commission
Attn: Director
1111 Israel Road Southwest
Olympia, Washington 98504

RIGHT-OF-WAY AND ACCESS AGREEMENT

GRANTOR: **UNITED STATES OF AMERICA FOR AND ON BEHALF OF THE SWINOMISH INDIAN TRIBAL COMMUNITY**
GRANTEE: **WASHINGTON STATE PARKS AND RECREATION COMMISSION**
SHORT LEGAL: Tidelands adjacent to GL 2, 20-34-2E WM; Tidelands adjacent to GL 5, 6, 7, 8 & 9, 21-34-2E WM; and Tidelands adjacent to Ptn. GL 2, 21-34-2E
PARCEL NOS: Tidelands adjacent to P20573, P20576 and P20603

1. RIGHT-OF-WAY AND ACCESS AGREEMENT.

1.1. **Parties.** The Parties to this Right-of-Way and Access Agreement are the **UNITED STATES OF AMERICA FOR AND ON BEHALF OF THE SWINOMISH INDIAN TRIBAL COMMUNITY**, a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 476) (hereinafter “the Tribe”), owners of Trust lands located within the exterior boundaries of the Swinomish Reservation, acting by and through the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, Department of the Interior, under authority contained in 209 DM 8, 230 DM 1, 3 IAM 4, 4a pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17, 25 U.S.C. §§ 323-328) and Part 169, Title 25 Code of Federal Regulations, and the **WASHINGTON STATE PARKS AND RECREATION COMMISSION**, an agency of the State of Washington (“State Parks”).

1.2. For and in consideration of the promises, covenants and agreements contained herein and in the “Agreement Between Washington State Parks and Recreation Commission and Swinomish Indian Tribal Community Regarding the Acquisition of Kiket Island and the Development, Operation and Maintenance of a Public Park on Kiket



Island" (incorporated herein by reference and attached as Exhibit 1)("Kiket Island Agreement"), and other valuable consideration in hand paid, the Parties agree as follows.

1.3. Legal Descriptions.

1.3.1. **Kiket Island.** The land commonly known as Kiket Island is located entirely within the exterior boundaries of the Swinomish Reservation and is legally described as follows:

Parcel A:

Government Lot 2 in Section 20, Township 34 North, Range 2 East, W.M.

ALSO, Government Lots 5, 6, 7, 8 and 9 of Section 21, Township 34 North, Range 2 East, W.M.

TOGETHER WITH a non-exclusive easement for ingress, egress and utilities over the South 60 feet of Government Lot 2, Section 21, Township 34 North, Range 2 East, W.M.

Situate in the County of Skagit, State of Washington.

Parcel B:

The South 410.32 Feet of Government Lot 2 in Section 21, Township 34 North, Range 2 East W.M. EXCEPT the East 30 feet for road.

Situate in the County of Skagit, State of Washington.

Notwithstanding anything in the foregoing legal description to the contrary, Parcel A and Parcel B do not include any Tidelands or any right, title, or interest, of whatsoever nature the same may be, in or to any Tidelands.

The approximate location of Parcel A and Parcel B is shown on the map incorporated herein by reference and attached hereto as Exhibit 2.

1.3.2. Tidelands.

1.3.2.1. As used in this Agreement, "Tidelands" means all lands adjacent to or surrounded in whole or in part by Parcel A and/or Parcel B that are or were continuously or intermittently submerged beneath waters subject to the ebb and flow of the tides, and that lie between the line of mean high tide and the line of extreme low water, and include the bed of the saltwater lagoon surrounded in whole or in part by Parcel B. For purposes of this definition of Tidelands, the line of mean high tide is determined by taking the mean of all high tides, including spring tides and neap tides, over a complete tidal cycle of 18.6 years and is ambulatory, changing location in response to erosion and accretion as well as changes in tidal elevations. However, except as otherwise provided by applicable law, if the line of mean high tide is seaward of where it would be in the absence of a



human-made assemblage of materials or other human-made alteration, then the landward boundary of the Tidelands is where the line of mean high tide would be in the absence of such assemblage or alteration.

1.3.2.2. The Tidelands are owned by the United States of America in trust for the Tribe.

1.3.3. **Kiket Island Road.** An existing road provides access to Parcel A and Parcel B ("Road"). The Road crosses Parcels A and B and may cross Tidelands.³ The Road is legally described as follows:

Road:

A 30 foot wide easement lying over and across a portion of Government Lots 2 and 9, Section 21, Township 34 North, Range 2 East, W.M., and adjacent Tidelands, if any, being 15 feet on each side of the following described easement centerline which follows an existing gravel road, shown on the survey dated May 27, 2010, incorporated herein by reference and attached hereto as Exhibit 3 :

Commencing at the corner common to Government Lots 2, 3 and 9, monumented with a 1 3/4" diameter axle, from which the east quarter corner of Section 21 bears south 88°28'13" east 1327.52 feet, thence north 00°28'34" east, along the line common to Government Lots 2 & 9, 10.26 feet to the center of an existing gravel road and the point of beginning; thence north 88°11'10" west 100.43 feet to a point of curvature, concave to the south, from which the radius point bears south 01°48'50" west 300.00 feet; thence westerly along said curve through a central angle of 26°15'25" a distance of 137.48 feet to a point of tangency; thence south 65°33'25" west 99.70 feet to a point of curvature, concave to the southeast, from which the radius point bears south 24°26'35" east a distance of 200.00 feet; thence southwesterly along said curve through a central angle of 20°23'26" a distance of 71.18 feet to a point of reverse curvature, concave to the northwest, from which the radius point bears north 44°50'01" west 220.00 feet; thence southwesterly along said curve through a central angle of 6°19'02" a distance of 24.26 feet to a point of tangency; thence south 51°29'01" west 75.00 feet, to the end of this description, from which the point of commencement bears north 69°54'59" east, 490.12 feet

TOGETHER WITH a 30-foot wide easement as shown on the easement exhibit map, lying over and across Tidelands, if any, along the south 30 feet of Government Lot 2, Section 21, Township 34 North, Range 2 East, W.M.

³ The Parties disagree whether the Road is located, in part, on a portion of the Tidelands. State Parks contends no portion of the Road is located on Tidelands. The Tribe contends some portions of the Road are located on Tidelands.



1.4. Right of Way and Access.

1.4.1. Subject to and conditioned upon the terms set forth hereinafter and in the Kiket Island Agreement and its Exhibits, State Parks is authorized to use the following described real property ("Kiket Island Tidelands Property" herein) in Skagit County, Washington:

TIDELANDS ABOVE-DESCRIBED, INCLUDING BUT NOT LIMITED TO TIDELANDS UNDERLYING THE ROAD.

1.4.2. State Parks' use of the Kiket Island Tidelands Property shall be consistent with all terms and conditions related to scope, time and manner of use as set forth in the Kiket Island Agreement and its Exhibits, including but not limited to the Kiket Island Co-Management Agreement and any plans developed and approved pursuant to that Agreement.

1.4.3. State Parks' rights under this Agreement are subject to existing authorized uses of the Kiket Island Tidelands Property (including any existing use for a Tribal or Bureau of Indian Affairs roadway and for the installation, operation and transmission of utility services by the Tribe and/or by third parties, including Tribal utilities, water, sewer, electric, natural gas, television, telephone, fiber optic and data).

1.4.4. No other use of the Kiket Island Tidelands Property by State Parks is authorized by this Agreement without the prior express written consent of the Tribe, and, if necessary, an approved amended Right-of-Way and Access Agreement. Any use of the Kiket Island Tidelands Property by or under the authority of State Parks that is not explicitly authorized in this Agreement is strictly prohibited.

2. EFFECTIVE DATE AND TERM.

2.1. This Agreement shall take effect upon the occurrence of all four of the following events:

- 2.1.1. Execution of the Kiket Island Agreement and Exhibit A thereto by State Parks and the Tribe;
- 2.1.2. Execution of this Agreement by State Parks and the Tribe;
- 2.1.3. Approval of this Agreement by the Secretary of the Interior or his authorized representative; and
- 2.1.4. Completion of all of the conveyances described in Paragraphs 3.2 and 3.6 of the Kiket Island Agreement.



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2.2. This Agreement shall remain in effect perpetually, unless and until this Agreement is terminated in accordance with Paragraph 20.

3. TRIBE'S USE OF KIKET ISLAND TIDELANDS PROPERTY. The Tribe reserves the right to use the Kiket Island Tidelands Property for any purpose not explicitly prohibited by the Kiket Island Agreement and its Exhibits, and State Parks agrees not to interfere with the use of the Kiket Island Tidelands Property by or under the authority of the Tribe for any purpose not inconsistent with the primary purpose for which the right-of-way is granted. The Tribe's use of the Kiket Island Tidelands Property may include, but is not limited to, use for an existing or future Tribal or Bureau of Indian Affairs roadway and for the installation, operation and transmission of utility services by the Tribe and/or by third parties pursuant to Tribal authorization, including water, sewer, electric, natural gas, television, telephone, fiber optic and data.

4. PERFORMANCE. State Parks will fulfill its obligations as set forth in this Right-of-Way and Access Agreement in accordance with the provisions of the Kiket Island Co-Management Agreement, including the provisions for Consensus Decision-Making by the Management Board formed under that Agreement. The Tribe will participate in good faith in the Management Board and perform its obligations under the Co-Management Agreement so as to facilitate State Parks' performance of its obligations under this Agreement.

5. CLEARING AND OTHER RESOURCE DISTURBANCE.

5.1. State Parks and its employees, agents, contractors (including subcontractors), and guests shall not cut, trim, remove, dispose of, or otherwise disturb in any way any woody debris, brush, trees or other vegetation on the Kiket Island Tidelands Property without the prior written permission of the Tribe, except in response to emergency conditions that pose an imminent danger to human health or life, in which case State Parks shall notify the Tribe as soon as practicable of any action taken in response to the emergency conditions.

5.2. State Parks and its employees, agents, contractors (including subcontractors), and guests shall not (a) hunt, fish, shellfish, or gather natural resources on the Kiket Island Tidelands Property (except as allowed by Washington Administrative Code 352.28.030 as in force on the date of execution of this Agreement) or (b) without the prior written permission of the Tribe, deface, destroy, harass, or otherwise disturb in any way any natural or cultural resources found on or in the Kiket Island Tidelands Property.

6. TRIBAL APPROVAL REQUIRED FOR CHANGES TO TIDELANDS AND ROAD.

6.1. Except as explicitly allowed under this Paragraph 6, State Parks and its employees, agents, contractors (including subcontractors), and guests shall not make any changes whatsoever to the Kiket Island Tidelands Property without the prior written



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permission of the Tribe and, if necessary, an approved amended Right-of-Way and Access Agreement.

6.2. Except as explicitly allowed under this Paragraph 6, State Parks and its employees, agents, contractors (including subcontractors), and guests shall not make any changes whatsoever to the Road (including but not limited to relocating the Road from its current location as depicted in Exhibit 3, making any changes in the size, extent, design, or engineering of the Road where currently located on the Kiket Island Tidelands Property, removing or placing fill material or shore stabilization works from or on the Road or Road revetment, constructing any buildings, structures, or other assemblages of materials on the Road or Road revetment, or cutting any Road surface) without the prior deliberation and Consensus Decision of the Management Board established pursuant to Section 2 of the Kiket Island Co-Management Agreement, and, if necessary, an approved amended Right-of-Way and Access Agreement. However, State Parks may, without the prior deliberation and Consensus Decision of the Management Board: (a) take action in response to emergency conditions that pose an imminent danger to human health or life, in which case State Parks shall notify the Tribe as soon as practicable of any action taken in response to the emergency conditions; and (b) perform minor repair activities on the Road for the sole purpose of maintaining the Road in its current condition and location for use under this Agreement and the Kiket Island Agreement and its Exhibits.

7. WORKMANLIKE MANNER. State Parks and its employees, agents and contractors (including subcontractors) shall exercise the rights conveyed by this Right-of-Way and Access Agreement in a workmanlike manner.

8. PERMITS. Before beginning any work on the Kiket Island Tidelands Property, State Parks, its employees, agents, and contractors (including subcontractors) shall obtain all necessary permits, including all necessary Tribal permits, in connection with such work. State Parks, its employees, agents and contractors (including subcontractors) shall comply with any and all conditions of said permits.

9. COMPLIANCE WITH LAW. Subject to the provisions of Paragraph 3.4 of the Kiket Island Co-Management Agreement, State Parks, its employees, agents, and contractors (including subcontractors) shall comply with all applicable Tribal, Federal and State laws when taking action pursuant to this Agreement or the Kiket Island Agreement that occurs upon or affects the Kiket Island Tidelands Property, including but not limited to the Swinomish Tribal Employment Rights Ordinance, STC Title 14, Chapter 1 and the Swinomish Tribal Employment Rights Ordinance Tax, STC Title 17, Chapter 5.

10. SITE RESTORATION. State Parks agrees:

10.1. Upon request of the Tribe, to restore the Kiket Island Tidelands Property as nearly as is possible to its condition as of the date of this Agreement upon the termination of this Agreement;



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10.2. If State Parks is authorized to cut, trim, remove, dispose of, or otherwise disturb in any way any woody debris, brush, trees or other vegetation on the Kiket Island Tidelands Property under Paragraph 5 of this Agreement, to remove and dispose of all woody debris, brush, trees or other vegetation cut, trimmed, removed, or otherwise disturbed; and

10.3. If State Parks is authorized to make any changes to the Tidelands or the Road under Paragraph 6 of this Agreement, to repair such Road, sidewalks, fences, culverts, utility lines and any and all other improvements as may be destroyed or injured by State Parks' construction work.

11. SOIL CONSERVATION. State Parks shall take soil and resource conservation and protection measures, including weed control, on the Kiket Island Tidelands Property in accordance with a plan approved by the Tribe.

12. FIRE CONTROL. State Parks will do everything reasonably within its power to prevent and suppress fires on or near the Kiket Island Tidelands Property.

13. CULTURAL RESOURCES. State Parks agrees that during the term of this Agreement, if any previously unidentified cultural resources are discovered within the Kiket Island Tidelands Property, any work on and/or use of the Kiket Island Tidelands Property that disturbs or threatens to disturb such cultural resources shall be halted immediately and the Tribe shall be contacted immediately.

14. EXISTING UTILITIES.

14.1. State Parks agrees to locate all existing utilities prior to, and avoid any damage to existing utilities during, use of the rights granted under this Right-of-Way and Access Agreement. State Parks shall cooperate with utility owners and/or operators to arrange for the prompt repair of any such damage, and shall promptly reimburse the utility owner and/or operator for the cost of such repair.

14.2. State Parks shall comply with RCW 19.122 "Underground Utilities" (or any future successor of or replacement for RCW 19.122), in connection with this Right-of-Way and Access Agreement and any activity undertaken pursuant to this Agreement. Such compliance shall be in addition to, and not a replacement for or excuse from, compliance with this Agreement or any otherwise applicable existing or future Tribal, Federal, or State law.

15. RESPONSIBILITY FOR EXPENSES & DAMAGES. State Parks shall pay promptly all compensation for damages caused to the Tribe (including any Tribal authority, enterprise, or other Tribal subdivision or entity) and any authorized users of the Kiket Island Tidelands Property for loss of life, personal injury and property damage to the extent caused by the wrongful actions or failures to act of or attributable to State Parks or its employees, agents, contractors (including subcontractors), and their respective employees and agents in the use of the Kiket Island Tidelands Property by



State Parks or its employees, agents, contractors (including subcontractors), and their respective employees and agents, provided, however, that nothing herein shall require State Parks to pay compensation for damages attributable to the negligence or intentional acts of the Tribe.

16. INDEMNIFICATION. To the extent permitted by law, State Parks agrees to indemnify, defend and hold harmless the United States, the Tribe, and the occupants and authorized users of the Kiket Island Tidelands Property against any liability for loss of life, personal injury and property damage to the extent caused by the use of the Kiket Island Tidelands Property by State Parks, its employees, agents, contractors (including subcontractors), and their respective employees and agents, provided, however, that nothing herein shall require State Parks to indemnify, defend, and hold the Tribe and authorized users of the Kiket Island Tidelands Property harmless for any such liability attributable to the negligence or intentional acts of the Tribe.

17. TRANSFER, ASSIGNMENT, AND CONVEYANCE TO THIRD PARTIES. The rights granted herein shall not be transferred or assigned without the prior written approval of the Secretary of the Interior (or his authorized representative) and the Tribe. Notwithstanding any other provision of this Agreement, the rights herein granted shall terminate immediately if State Parks attempts to transfer or assign such rights or to convey any interest in Parcel A or Parcel B to a third party without the prior written approval of the Tribe.

18. ABANDONMENT. If after this Agreement is executed by the Parties the Kiket Island Tidelands Property is not used for two (2) consecutive years without approval by the Tribe, the rights herein granted may be terminated, in which event all rights hereunder shall revert to or otherwise become the property of the Tribe without necessity for further action by the Tribe or the United States.

19. MODIFICATIONS AND AMENDMENTS. Any modifications or amendments to this Right-of-Way and Access Agreement must be approved in writing by the Tribe, State Parks and the Secretary of the Interior (or his authorized representative).

20. TERMINATION.

20.1. The Right-of-Way and Access Agreement granted herein may be terminated in whole or in part upon thirty (30) days written notice from the Bureau of Indian Affairs of the United States Department of the Interior for State Parks' failure to comply with any material term or condition of this Agreement, the Kiket Island Agreement or its Exhibits, or applicable Federal regulations, provided that this Agreement shall not be terminated under this Paragraph 20.1 if such failure is attributable to the Tribe's failure to participate in the Management Board in good faith or its failure to fulfill its obligations under the Kiket Island Agreement or its Exhibits, including the Kiket Island Co-Management Agreement, and provided further that this Agreement shall not be terminated if State Parks' failure is cured within thirty days of notice of such failure. The Tribe agrees not to request a written notice from the Bureau of Indian Affairs under this



Paragraph 20.1 before addressing State Parks' failure to comply with a material term or condition of this Agreement, the Kiket Island Agreement or its Exhibits, or applicable Federal regulations through the dispute resolution process set forth in Paragraph 5 of the Kiket Island Agreement.

20.2. The Right-of-Way and Access Agreement granted herein shall terminate and all rights hereunder shall automatically revert to or otherwise become the property of the Tribe without necessity for further action by the Tribe or the United States if the Kiket Island Agreement is terminated for any reason.

21. MUTUAL LIMITED WAIVERS OF SOVEREIGN IMMUNITY. This Agreement does not waive, limit, or modify the sovereign immunity of the State of Washington or the Tribe from unconsented suit except as specifically provided in this Paragraph 21. The State of Washington, acting by and through State Parks, and the Tribe consent to suit by the other if, and only if: (a) the claims in the suit relate to the making, formation or validity of, or obligations under this Agreement and are based exclusively on an alleged breach (or breaches) of one or more of the specific obligations, duties, covenants, or warranties expressly made or assumed by the Parties in this Agreement; and (b) the suit is filed in the Federal District Court for the Western District of Washington or, if that court rules that it lacks jurisdiction over the subject matter of the suit, in the Superior Court of Washington State for Thurston County. This limited waiver is applicable solely to claims by the other Party to this Agreement, and not to claims by any other person, corporation, partnership, governmental body, or other entity whatsoever. This limited waiver does not extend to proceedings in any other forum or regarding any other matter. This limited waiver only authorizes relief compelling State Parks or the Tribe to take action specifically required by this Agreement, compelling State Parks or the Tribe to discontinue action expressly prohibited by this Agreement, terminating this Agreement for a material breach, and/or awarding compensatory money damages against the State of Washington or the Tribe for breach of this Agreement, provided that termination of this Agreement shall be a remedy of last resort. Any judgment against the Tribe shall be satisfied exclusively from the Class III gaming revenues of the Tribe, and not from any other income, asset or property of the Tribe. Each Party shall bear its own attorney's fees, costs, and expenses in a proceeding authorized by the Paragraph.

22. TRIBAL SOVEREIGNTY. This Agreement shall in no manner diminish, affect or limit any aspect of the Tribe's jurisdiction, dominion or control, whether civil, criminal, regulatory, adjudicatory, licensing, taxation or otherwise, over the Kiket Island Tidelands Property, or over anyone or anything thereon or therein, or any activities taking place on, over or under the Kiket Island Tidelands Property, without regard to whether the person or entity being regulated is a Tribal member, other Native American or non-Indian person or entity, or State or local governmental authority. This provision is an essential and indivisible part of this Agreement; should this provision, at the request of State Parks or its employees, agents, or contractors (including subcontractors), or any person or entity acting in concert with State Parks, be struck down, ruled unenforceable, or ineffective, or



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in any manner limited, this Agreement shall be void and the rights granted by this Agreement shall terminate immediately.

23. SUCCESSORS. This Agreement shall be binding upon and inure to the benefit of successors of both parties.

24. NOTICES AND COMMUNICATIONS. State Parks shall at all times keep the Tribe and the Secretary of the United States Department of the Interior informed of its address. The Tribe shall at all times keep State Parks informed of its address. Currently, notices to State Parks shall be addressed to: Washington State Parks and Recreation Commission, Attn: Director, 1111 Israel Road Southwest, Olympia, Washington 98504 and notices to the Tribe shall be addressed to: Swinomish Indian Tribal Community, Attn: Legal Department, 11404 Moorage Way, LaConner, Washington 98257.

25. COMPLETE AGREEMENT AND CONSTRUCTION.

25.1. This Agreement, and the Kiket Island Agreement which is attached hereto and incorporated herein, contain the complete statement of the understanding of the Parties with respect to the subject matter of this Agreement. There are no other representations, agreements, or understandings, oral or written, by the Parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. Each Party acknowledges and represents to the other Party that it is executing this Agreement solely in reliance upon its own judgment and knowledge and that it is not executing this Agreement based upon the representation or covenant of the other Party, or anyone acting on such Party's behalf, except as expressly stated herein.

25.2. This Agreement has been freely and fairly negotiated by the Parties hereto and has been reviewed by legal counsel for each of the Parties, each of whom has had the full opportunity to modify the draftsmanship hereof, and, therefore, the terms of this Agreement shall be construed and interpreted without any presumption or other rule requiring constructional interpretation against the Party causing the drafting of the Agreement.

SWINOMISH INDIAN TRIBAL COMMUNITY:

BY: Brian Cladoosby
Name: Brian Cladoosby
Title: Chairman

WASHINGTON STATE PARKS AND RECREATION COMMISSION:

BY: Judy Johnson
Name: Judy Johnson
Title: Deputy Director



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ACKNOWLEDGMENT

STATE OF WASHINGTON

SS.

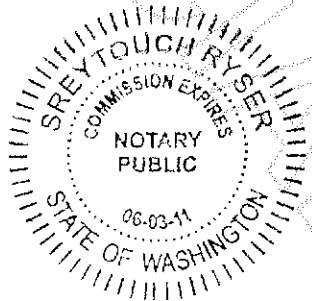
COUNTY OF Thurston

BEFORE ME, a Notary Public, in and for said County and State, on this 7th day of June, 2010, personally appeared Judy Johnson, and who acknowledged that s/he is and was at the time of signing the same Deputy Director of the Washington State Parks and Recreation Commission, and s/he personally acknowledged to me that s/he executed the foregoing as his/her free and voluntary act of the Washington State Parks and Recreation Commission for the uses and purposes set forth in the foregoing.

Stephano Rysen
(Signature of Notary)

STREYTOUCH RYSEN
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of
Washington, residing at Turner
My appointment expires 6-3-11



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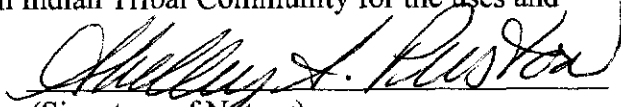
ACKNOWLEDGMENT

STATE OF WASHINGTON

ss.

COUNTY OF SKAGIT

BEFORE ME, a Notary Public, in and for said County and State, on this 3rd day of June 2010, personally appeared M. Brian Cladoosby, and who acknowledged that he is and was at the time of signing the Chairman of the Swinomish Tribal Senate; and he personally acknowledged to me that he executed the foregoing as his free and voluntary act of the Swinomish Indian Tribal Community for the uses and purposes set forth in the foregoing.


(Signature of Notary)

Shelley A. Preston

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of

Washington, residing at

My appointment expires

Bellingham
6-19-10

BUREAU OF INDIAN AFFAIRS

The within Right-of-Way and Access Agreement is hereby approved and declared to be made in accordance with the law and the rules and regulations prescribed by the Secretary of the Interior thereunder, and now in force, effective

Approved pursuant to _____

Date approved: _____

Officer in charge of Agency



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Exhibit 1 – Kiket Island Agreement

AGREEMENT BETWEEN WASHINGTON STATE PARKS AND RECREATION COMMISSION AND SWINOMISH INDIAN TRIBAL COMMUNITY REGARDING THE ACQUISITION OF KIKET ISLAND AND THE DEVELOPMENT, OPERATION AND MAINTENANCE OF A PUBLIC PARK ON KIKET ISLAND

This Agreement regarding the acquisition of Kiket Island and the development, operation, and maintenance of a public park on Kiket Island is made and entered into this _____ day of _____, 2010, by and between the Washington State Parks and Recreation Commission, an agency of the State of Washington, acting under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, and other applicable law, and the Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 476), acting under the authority of its Constitution and Bylaws.

For and in consideration of the promises, covenants and agreements contained herein, the Parties recognize, affirm, and agree as follows:

1. **Definitions.** The following words or phrases shall have the following meanings for purposes of this Agreement:

1.1. "Co-Management Agreement" means the Kiket Island Co-Management Agreement attached hereto as Exhibit A.

1.2. "Government Funding Agency" means any one of, and "Government Funding Agencies" means all of, the following Federal and State Agencies that are providing funding for the acquisition of Kiket Island: (a) Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration; (b) Fish and Wildlife Service, United States Department of the Interior; and (c) Washington State Recreation and Conservation Office.



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1.3. "Kiket Island" means Parcel A and Parcel B, as legally described in Paragraphs 1.8 and 1.9 below. Notwithstanding any other provision in this Agreement to the contrary, neither Kiket Island, Parcel A nor Parcel B includes any Kiket Island Tidelands, as described in Paragraph 1.5 below, or any right, title or interest, of whatsoever nature the same may be, in or to any Kiket Island Tidelands.¹

1.4. "Kiket Island Agreement" means this Agreement Between Washington State Parks and Recreation Commission and Swinomish Indian Tribal Community Regarding the Acquisition of Kiket Island and the Development, Operation and Maintenance of a Public Park on Kiket Island.

1.5. "Kiket Island Tidelands" means all lands adjacent to or surrounded in whole or in part by Parcel A and/or Parcel B that are or were continually or intermittently submerged beneath waters subject to the ebb and flow of the tides and that lie between the line of mean high tide and the line of extreme low water, and include the bed of the saltwater lagoon surrounded in whole or in part by Parcel B. For purposes of this definition of Kiket Island Tidelands, the line of mean high tide is determined by taking the mean of all high tides, including spring tides and neap tides, over a complete tidal cycle of 18.6 years and is ambulatory, changing location in response to erosion and accretion as well as changes in tidal elevations. However, except as otherwise provided by applicable law, if the line of mean high tide is seaward of where it would be in the absence of a human-made assemblage of materials or other human-made alteration, then the landward boundary of the Kiket Island Tidelands is where the line of mean high tide would be in the absence of such assemblage or alteration. Kiket Island Tidelands are

¹ The Parties disagree whether an existing road on Parcel A and Parcel B is located, in part, on a portion of the Kiket Island Tidelands. State Parks contends no portion of the road is located on Kiket Island Tidelands. The Tribe contends some portions of the road are located on Kiket Island Tidelands.



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located entirely within the exterior boundaries of the Swinomish Reservation and are owned by the United States in trust for the Tribe.

1.6. "Management Board" means the Kiket Island Management Board described in Paragraph 2 of the Co-Management Agreement.

1.7. "Nearby Marine Waters" means the marine waters adjacent to or in close proximity to Kiket Island and the Kiket Island Tidelands, including Turner's Bay, Similk Bay, Kiket Bay and Skagit Bay.

1.8. "Parcel A" means the land legally described as follows:

Government Lot 2 in Section 20, Township 34 North, Range 2 East, W.M.

ALSO, Government Lots 5, 6, 7, 8 and 9 of Section 21, Township 34 North, Range 2 East, W.M.

TOGETHER WITH a non-exclusive easement for ingress, egress and utilities over the South 60 feet of Government Lot 2, Section 21, Township 34 North, Range 2 East, W.M.

Situate in the County of Skagit, State of Washington.

Notwithstanding anything in the foregoing legal description to the contrary, Parcel A does not include any Kiket Island Tidelands or any right, title, or interest, of whatsoever nature the same may be, in or to any Kiket Island Tidelands.

1.9. "Parcel B" means the land legally described as follows:

The South 410.32 Feet of Government Lot 2 in Section 21, Township 34 North, Range 2 East W.M. EXCEPT the East 30 feet thereof for road.

Situate in the County of Skagit, State of Washington.

Notwithstanding anything in the foregoing legal description to the contrary, Parcel B does not include any Kiket Island Tidelands or any right, title, or interest, of whatsoever nature the same may be, in or to any Kiket Island Tidelands.



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- 1.10. "Parties" means State Parks and the Tribe.
- 1.11. "Right-of-Way and Access Agreement" means the Right-of-Way and Access Agreement attached hereto as Exhibit B.
- 1.12. "Secretary" means the United States Secretary of the Interior or another employee of the United States Department of the Interior to whom the Secretary's authority to approve the Right-of-Way and Access Agreement has been delegated.
- 1.13. "State Parks" means the Washington State Parks and Recreation Commission or its successor.
- 1.14. "Swinomish Reservation" means the reservation described in the Treaty of Point Elliott as "the peninsula at the southeastern end of Perry's Island, called Shais-quihl," which is located on what is presently and commonly known as Fidalgo Island in Skagit County, Washington.
- 1.15. "Treaty of Point Elliott" or "Treaty" means the Treaty with the Duwamish, Suquamish, Etc., 12 Stat. 927 (1855).
- 1.16. "Tribe" means the Swinomish Indian Tribal Community or its successor.
- 1.17. "Trust for Public Land" or "TPL" means the nonprofit California public benefit corporation and land conservation organization with that name.

2. Reasons for Agreement.

2.1. Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters have unique ecological, environmental, conservation, educational, recreational, economic, historical, cultural, Tribal and aesthetic values that the Parties believe are worthy of preservation and protection in perpetuity.



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2.2. In the 1855 Treaty of Point Elliott, the Tribe ceded lands to the United States but reserved certain rights, including but not limited to an exclusive right to use and occupy the Swinomish Reservation and the right to exercise certain hunting, fishing (including shellfishing), and gathering rights within and without the Swinomish Reservation. The Tribe's Federally approved Constitution and Bylaws provides that the Tribe's jurisdiction shall extend to the territory within the Swinomish Reservation. Kiket Island and the Kiket Island Tidelands are located entirely within the exterior boundaries of the Swinomish Reservation.

2.3. In a September 9, 1873, Executive Order (Executive Order), President Grant stated the northern boundary of the Swinomish Reservation begins at the "low water mark on the shore of Similk Bay" and extends to the "low-water mark on the western shore of Padilla Bay." The Treaty and the Executive Order are the basis for Federal and State court decisions and numerous United States Department of the Interior opinions recognizing that tidelands adjacent to Swinomish Reservation uplands are owned by the United States in trust for the Tribe.

2.4. On April 1, 1885, Parcel A and Parcel B were allotted to a member of the Tribe and subsequently passed out of Indian ownership. Private, non-Indian ownership of Parcel A and Parcel B has prevented the Tribe and its members from gaining or maintaining unfettered access to the Kiket Island Tidelands and Nearby Marine Waters. Additionally, the current owners of Parcel A and Parcel B have made claims that are adverse to the ownership of the Kiket Island Tidelands by the United States in trust for the Tribe.



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2.5. The current owners of Parcel A and Parcel B have expressed interest in selling Kiket Island. A sale to a private party could lead to an effort to subdivide and develop Kiket Island, with adverse effects on the ecology and environment of Kiket Island and on natural and cultural resources on or in Kiket Island, the Kiket Island Tidelands and Nearby Marine Waters.

2.6. State Parks, with the assistance of TPL, the Nature Conservancy and others, has secured commitments from the Government Funding Agencies to provide funding for the acquisition of portions of Kiket Island from the current owners on certain conditions. One of the conditions imposed by the Government Funding Agencies is that the portions of Kiket Island acquired with such funds be operated perpetually as a public park with limited public access consistent with protection of the resources and ecology of Kiket Island.

2.7. In order to satisfy the conditions discussed in Paragraph 2.6 above, State Parks seeks a perpetual right-of-way and access agreement from the Tribe to provide: (a) perpetual public access across any portion of the existing road on Parcel A and Parcel B that is located on the Kiket Island Tidelands; and (b) limited public access to the Kiket Island Tidelands. In addition, State Parks seeks the Tribe's assistance, including its financial assistance, as an equal co-manager in the development, operation and maintenance of a public park on Kiket Island.

2.8. The Tribe is willing to provide a perpetual right-of-way and access agreement to State Parks for the purposes set forth in Paragraph 2.7 above and to assist State Parks as an equal co-manager in the development, operation and maintenance of a public park on Kiket Island in exchange for a 50% undivided interest in Kiket Island and



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the elimination of any claims that are adverse to the United States' ownership of the Kiket Island Tidelands in trust for the Tribe.

2.9. State Parks supports the Tribe's acquisition of a 50% undivided interest in Kiket Island and the elimination of any claims that are adverse to the United States' ownership of the Kiket Island Tidelands in trust for the Tribe because of: (a) the Tribe's agreement to provide a perpetual right-of-way and access agreement to State Parks; (b) the Tribe's agreement to assist State Parks as an equal co-manager in the development, operation and maintenance of a public park on Kiket Island; (c) the Parties' shared objectives for the preservation and management of Kiket Island; (d) the location of Kiket Island within the Swinomish Reservation; and (e) the overlapping jurisdiction of the Tribe and the State of Washington with respect to Kiket Island.

2.10. The Parties agree that long-term management measures designed to avoid or minimize and remediate damage to Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters caused by human activities (including recreational activities) on Kiket Island and the Kiket Island Tidelands are necessary to preserve and protect the unique values of Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters in perpetuity. The Parties further agree that management of Kiket Island should accommodate the exercise of the Tribe's Treaty rights and Tribal spiritual and cultural activities as set forth in Section 7 of the Co-Management Agreement.

2.11. It is in the Parties' mutual interests to acquire Kiket Island as tenants in common with equal undivided interests, and to plan for and implement the preservation, protection, and use of Kiket Island by consensus, for the following reasons (among others): Kiket Island is located entirely within the Swinomish Reservation and is subject



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to the regulatory jurisdiction of the Tribe or the State of Washington or both under certain circumstances; Parcel A and Parcel B are surrounded in large part by, and activities on Parcel A and Parcel B may seriously and substantially adversely affect, Kiket Island Tidelands, which are owned by the United States in trust for the Tribe; Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters are areas of great importance to the Parties for the reasons set forth in Paragraph 2.1 above; and diffuse, intensive, and/or unmanaged public use of Kiket Island, the Kiket Island Tidelands, and Nearby Marine Waters will damage such lands and waters.

2.12. The Parties intend to use their respective ownership interests and rights, including but not limited to the Tribe's existing ownership of the Kiket Island Tidelands, the Parties' proposed co-tenancy interests in Kiket Island, and State Parks' rights under the proposed Right-of-Way and Access Agreement, to enter into and implement the Co-Management Agreement for the development, operation and maintenance of a public park on Kiket Island and thereby satisfy the conditions imposed by the Government Funding Agencies, all as set forth in this Agreement, the Co-Management Agreement and the Right-of-Way and Access Agreement.

3. Conveyances and Ownership Interests.

3.1. Immediately after executing this Agreement, the Tribe and State Parks shall execute, deliver to each other, and submit to the Bureau of Indian Affairs for review the Right-of-Way and Access Agreement. As set forth in the Right-of-Way and Access Agreement, it shall not become effective until it has been approved by the Secretary and the conveyances described in Paragraphs 3.2 and 3.6 below have been completed. If the Secretary does not approve the Right-of-Way and Access Agreement, this Agreement



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shall be null and void and the Parties shall have no further obligations under it. Closing of the conveyances described in Paragraph 3.2 below shall be contingent upon the Secretary's approval of the Right-of-Way and Access Agreement.

3.2. The Parties anticipate and will make best efforts to ensure that, upon the Secretary's approval of the Right-of-Way and Access Agreement, TPL will: (a) acquire by special warranty deed from the current owners of Parcel A and Parcel B title to Parcel A and Parcel B (including any portions of Parcel A and/or Parcel B that are segregated for purposes of acquisition with funds other than those obtained from the Government Funding Agencies) and any right, title, or interest, of whatsoever nature the same may be, in or to any Kiket Island Tidelands held by the current owners of Parcel A and Parcel B; (b) convey by statutory warranty deed title to Parcel A and Parcel B to State Parks and the Tribe as tenants in common with equal undivided interests (including any portions of Parcel A and/or Parcel B that are segregated for purposes of acquisition with funds other than those obtained from the Government Funding Agencies); and (c) convey by quit claim deed any right, title, or interest, of whatsoever nature the same may be, in or to any Kiket Island Tidelands to State Parks and the Tribe. If TPL does not obtain the conveyances from the current owners of Parcel A and Parcel B described in clause (a) of this Paragraph, or if it does not make the conveyances to State Parks and the Tribe described in clauses (b) and (c) of this Paragraph, this Agreement shall be null and void and the Parties shall have no further obligations under it.

3.3. Following the conveyance described in clause (b) of Paragraph 3.2 above, the Parties shall have equal undivided interests in Parcel A and Parcel B. Subject to the provisions of any deed restrictions or restrictive covenants jointly filed by the Parties, the



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Parties' respective rights to use, manage, encumber, convey, assign or otherwise dispose of their interests in Parcel A and Parcel B shall be governed exclusively by this Agreement, the Co-Management Agreement and the Right-of-Way and Access Agreement. The Parties waive any rights they may have under any statutory, common or other law relating to tenants in common, including but not limited to any right to seek contribution or to seek a partition of the property, to the extent such rights are inconsistent with this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement.

3.4. The Tribe may, in its sole discretion, submit an application to the Bureau of Indian Affairs to acquire the Tribe's undivided interest in Parcel A and Parcel B in trust for the benefit of the Tribe. State Parks will not oppose any such acquisition and no such acquisition shall be considered inconsistent with or in violation of this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement, *provided* that no such acquisition shall relieve the Tribe of its obligations under such Agreements.

3.5. Except as provided in Paragraph 3.4 above or Paragraph 8 below, State Parks shall not encumber, convey, assign or otherwise dispose of its rights under the Right-of-Way and Access Agreement and neither State Parks nor the Tribe shall encumber, convey, assign or otherwise dispose of its right, title and interest in and to Parcel A and Parcel B without the prior written consent of the other Party and the approval of the Government Funding Agencies.

3.6. At or before closing of the conveyances described in Paragraph 3.2 above, State Parks shall execute a quit claim deed in the form attached as Exhibit C hereto,



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quitclaiming all right, title and interest, of whatsoever nature the same may be, in and to the Kiket Island Tidelands to the Tribe.

3.7. The Parties shall direct the closing agent to deliver and record the deeds described in Paragraph 3.2 above in the order set forth in Paragraph 3.2, and then to deliver and record the deed described in Paragraph 3.6 above.

4. **Development, Operation and Maintenance of a Public Park on Kiket Island.** Immediately following completion of the conveyances described in clauses (b) and (c) in Paragraph 3.2 above and the conveyance described in Paragraph 3.6 above, the Tribe and State Parks shall execute and deliver to each other the Co-Management Agreement and shall thereafter develop, operate and maintain a public park at Kiket Island in accordance with that Agreement.

5. **Dispute Resolution.** In the event that any disagreement or dispute between the parties arises under this Agreement, including an alleged breach of this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement, the Parties shall attempt to resolve the disagreement or dispute according to the following procedures prior to seeking redress in a court of law:

5.1. Either Party may initiate dispute resolution by notifying the other Party and the Management Board in writing as soon as practicable after a disagreement or dispute arises.

5.2. As soon as practicable and no later than thirty (30) days from the notice, the Management Board shall meet and confer to attempt to resolve the dispute.

5.3. Should the Management Board fail to reach a Consensus Decision, as defined in Paragraph 1.2 of the Co-Management Agreement, regarding the disagreement



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or dispute, the procedures set forth in Sections 4.3 through 4.5 of the Co-Management Agreement shall apply. In the event that the Parties are unable to reach agreement, each Party is free to issue its decision and pursue its interests independent of the other Party, including but not limited to seeking redress in a court of law in accordance with Paragraph 6 of this Agreement.

6. **Mutual Limited Waivers of Sovereign Immunity.** This Agreement does not waive, limit, or modify the sovereign immunity of the State of Washington or the Tribe from unconsented suit except as specifically provided in this Paragraph. The State of Washington, acting by and through State Parks, and the Tribe consent to suit by the other if, and only if: (a) the claims in the suit relate to the making, formation or validity of, or obligations under this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement, and are based exclusively on an alleged breach (or breaches) of one or more of the specific obligations, duties, covenants, or warranties expressly made or assumed by the Parties in such Agreements; and (b) the suit is filed in the Federal District Court for the Western District of Washington or, if that court rules that it lacks jurisdiction over the subject matter of the suit, in the Superior Court of Washington State for Thurston County. This limited consent to suit is applicable solely to claims by the other Party to this Agreement, and not to claims by any other person, corporation, partnership, governmental body, or other entity whatsoever. This limited waiver of sovereign immunity does not extend to proceedings in any other forum or regarding any other matter. This limited consent to suit only authorizes relief compelling State Parks or the Tribe to take action specifically required by this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement, compelling State Parks or the



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Tribe to discontinue action expressly prohibited by such Agreements, terminating such Agreements for a material breach of one or more of them, and/or awarding compensatory money damages against the State of Washington or the Tribe for breach of such Agreements, provided that termination of such Agreements shall be a remedy of last resort. Any judgment against the Tribe shall be satisfied exclusively from the Class III gaming revenues of the Tribe, and not from any other income, asset or property of the Tribe. Each Party shall bear its own attorney's fees, costs, and expenses in a proceeding authorized by the Paragraph.

7. **Modification and Amendment.** This Agreement may only be modified or amended by a written agreement executed by both parties.

8. **Termination.**

8.1. This Agreement may only be terminated by: (a) a written agreement executed by both Parties; or (b) a court of competent jurisdiction acting pursuant to Paragraph 6 of this Agreement for a material breach of this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement.

8.2. Termination by Agreement. Any written agreement between the Parties providing for the termination of this Agreement shall provide:

8.2.1. Upon termination of this Agreement, State Parks shall convey all of its right, title and interest in and to Kiket Island to the Tribe, and the Tribe shall assume all of State Parks' obligations to the Government Funding Agencies for the development, operation and maintenance of a public park on Kiket Island.

8.2.2. The Parties shall provide at least sixty days advance notice to the Government Funding Agencies of the Parties' intent to terminate this Agreement, State



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Parks' intent to convey all of its right, title and interest in and to Kiket Island to the Tribe, and the Tribe's intent to assume all of State Parks' obligations to the Government Funding Agencies for the development, operation and maintenance of a public park on Kiket Island.

8.2.3. If any Government Funding Agency objects to the Parties' intent to terminate this Agreement, State Parks' intent to convey all of its right, title and interest in and to Kiket Island to the Tribe, or to the Tribe's intent to assume all of State Parks' obligations to the Government Funding Agencies for the development, operation and maintenance of a public park on Kiket Island, the Parties shall negotiate in good faith with such Government Funding Agency to resolve its objections consistent with the requirements of Paragraph 8.2.1 above.

8.2.4. If the Parties are unable to resolve an objection from a Government Funding Agency under Paragraph 8.2.3 above, and the Parties' termination of this Agreement, State Parks' conveyance of all of its right, title and interest in and to Kiket Island to the Tribe, or the Tribe's assumption of all of State Parks' obligations to the Government Funding Agencies for the development, operation and maintenance of a public park on Kiket Island results in liability to such Government Funding Agency, either for reimbursement of funds granted for the acquisition of Kiket Island or to acquire replacement lands or otherwise, the Parties' termination agreement shall allocate responsibility for such liability between the Parties.

8.2.5. Termination of this Agreement shall immediately terminate the Co-Management Agreement and the Right-of-Way and Access Agreement.



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8.3. **Termination by Court.** If this Agreement is terminated by a court of competent jurisdiction acting pursuant to Paragraphs 6 and 8.1 of this Agreement, the court's order providing for termination of this Agreement shall incorporate the provisions set forth in Paragraphs 8.2.1 through 8.2.5 above except that, in the absence of agreement between the Parties, the court shall allocate responsibility between the Parties for any liability to a Government Funding Agency under Paragraph 8.2.4 above in a manner that is fair and equitable under the circumstances.

9. **Effective Date and Term.** This Agreement shall be in force and take effect upon execution by the parties and shall remain in effect unless nullified under Paragraphs 3.1 or 3.2 of this Agreement or until terminated in accordance with Paragraphs 8.1 through 8.3 of this Agreement.

10. **Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties and their successors. This Agreement creates no rights in and may not be enforced by any other person, corporation, partnership, governmental body, or other entity whatsoever.

11. **No Waiver for Failure to Enforce.** No failure to enforce any provision of this Agreement shall be deemed to waive the right of either Party to enforce such provision or any other provisions of this Agreement in the future.

12. **Complete Agreement.** This Agreement and its Exhibits and a Purchase and Sale Agreement between State Parks, the Tribe and TPL contain the complete statement of the understanding of the Parties with respect to the subject matter of this Agreement. There are no other representations, agreements, or understandings, oral or written, by the Parties relating to the subject matter of this Agreement that are not fully expressed in this



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Agreement and its Exhibits and the Purchase and Sale Agreement. Each Party acknowledges and represents to the other Party that it is executing this Agreement solely in reliance upon its own judgment and knowledge and that it is not executing this Agreement based upon the representation or covenant of the other Party, or anyone acting on such Party's behalf, except as expressly stated herein. Each Party represents to the other Party that the person executing this Agreement and its Exhibits on its behalf is duly authorized to execute said Agreement and Exhibits.

13. **Construction.** This Agreement has been freely and fairly negotiated by the Parties hereto and has been reviewed by legal counsel for each of the Parties, each of whom has had the full opportunity to modify the draftsmanship hereof, and, therefore, the terms of this Agreement shall be construed and interpreted without any presumption or other rule requiring constructional interpretation against the Party causing the drafting of the Agreement. The construction consistent with the terms of this Agreement that best furthers the purposes of this Agreement shall be the preferred construction.

14. **Liability to Government Funding Agencies for Violation of Grants.** For purposes of this Paragraph 14, "Government Funding Agency Claim" means a claim by a Government Funding Agency for reimbursement or other relief arising from one or more of the grants used to acquire Kiket Island. Except as otherwise provided in Paragraphs 8.2 or 8.3 above, the Tribe shall be liable for a Government Funding Agency Claim only to the extent such claim arises from a material breach by the Tribe of: (a) this Agreement, the Co-Management Agreement, or the Right-of-Way and Access Agreement; or (b) a term or condition of a grant to which the Tribe has separately agreed in writing to be bound. Except as otherwise provided in Paragraphs 8.2 or 8.3 above, State Parks shall be



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liable for a Government Funding Agency Claim to the extent such claim arises from a material breach by State Parks of: (a) this Agreement, the Co-Management Agreement or the Right-of-Way and Access Agreement; or (b) a term or condition of a grant used to acquire Kiket Island.

15. **Other Loss and Liability.** "Claim" as used in this Paragraph 15 means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, court costs and litigation expenses, attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible real or personal property (including but not limited to Kiket Island, any buildings attached thereto, and the Kiket Island Tidelands) including loss of use resulting therefrom, but does not include a Government Funding Agency Claim as defined in Paragraph 14 above. Each Party shall be responsible for any Claim arising from its performance of this Agreement, the Co-Management Agreement, or the Right-of-Way and Access Agreement or from its performance of activities required or authorized by such Agreements to the extent such Claim arises from the tortious acts or omissions of the Party's own employees, officers, or agents in the performance of such Agreements or activities. Neither Party shall be considered the agent of the other Party in performing such Agreements or activities.

WASHINGTON STATE PARKS AND RECREATION COMMISSION

Rex Derr, Director

Date: _____



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SWINOMISH INDIAN TRIBAL COMMUNITY

Date: _____

M. Brian Cladoosby, Chairman



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Exhibit 2 -- Map of Parcels A & B

Legend

Township 34N, Range 2E

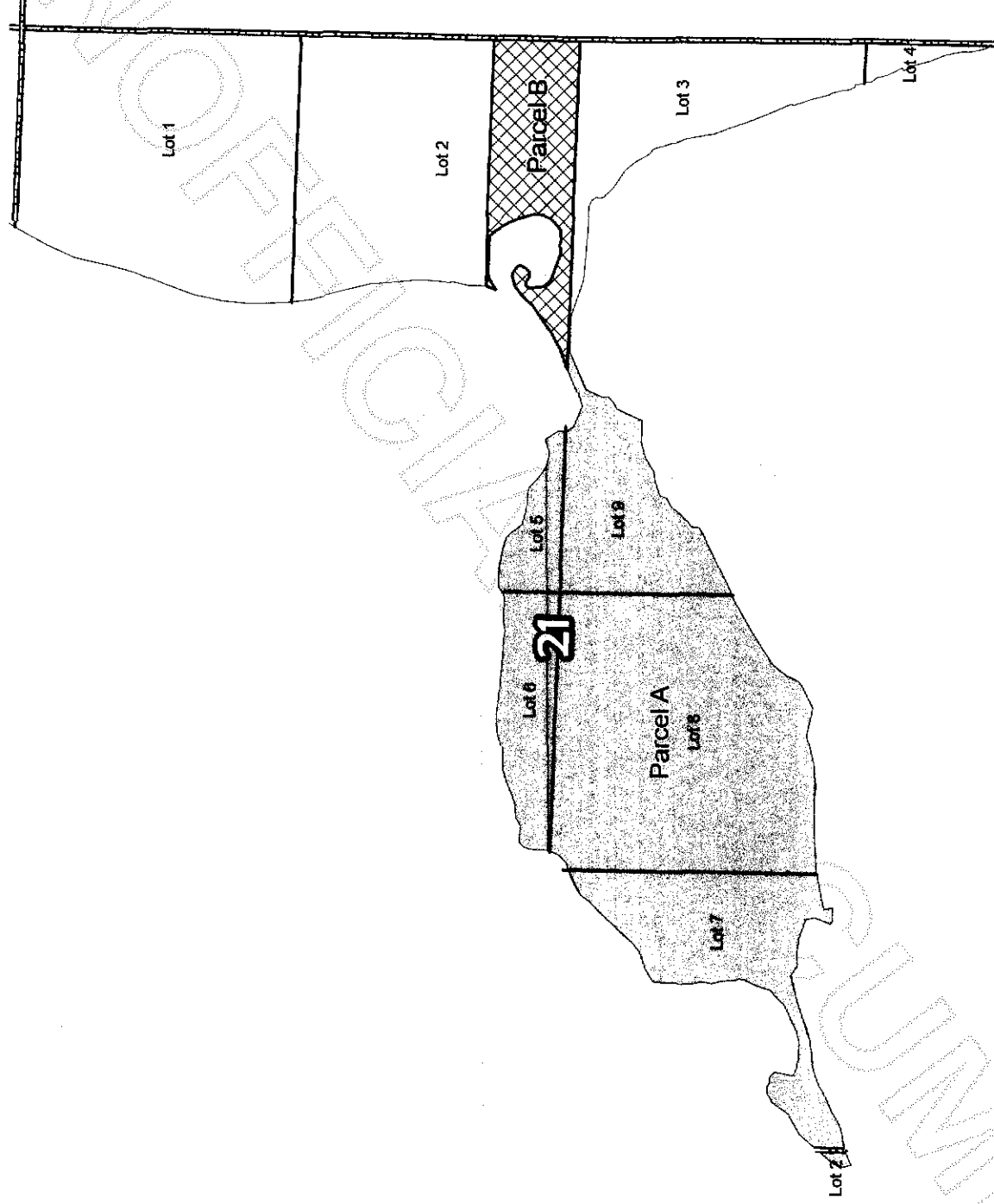
Section Lines

Government Lots

Kikot Parcels

Parcel A

Parcel B



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Swinomish Indian Tribal Community
Office of Planning & Community Development
Kikot@swinomishtribe.com

This map is not intended to reflect the exterior boundaries of the Swinomish Indian Reservation and the Swinomish Indian Tribal Community makes no claim as to the completeness, accuracy or content of any data contained herein.

Exhibit 3 -- Easement Exhibit Map

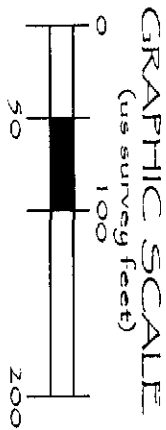
PACIFIC SURVEY & ENGINEERING INC EMAIL: pse@pseurvey.com
1812 CORNWALL AVE, BELLINGHAM, WA 98225 PHONE: 671.7387 FAX: 671.4685 www.psesurvey.com



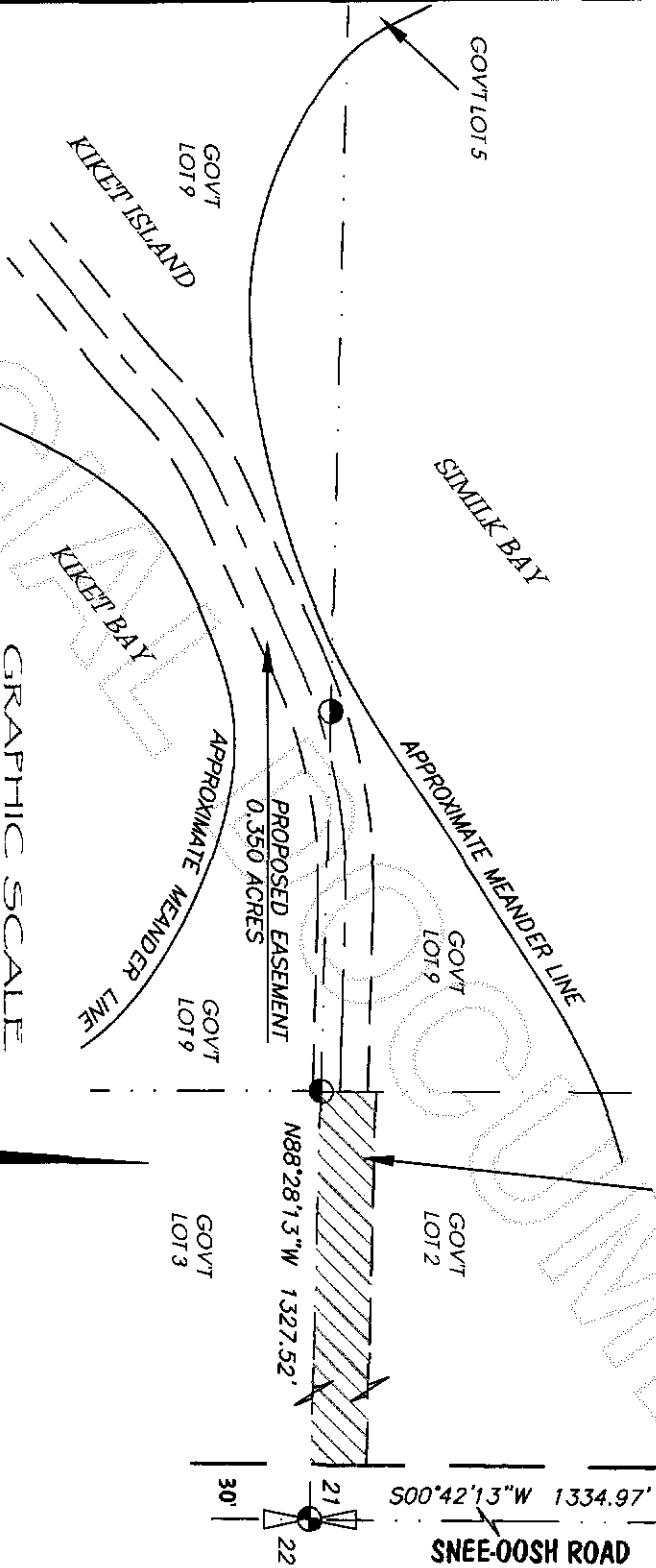
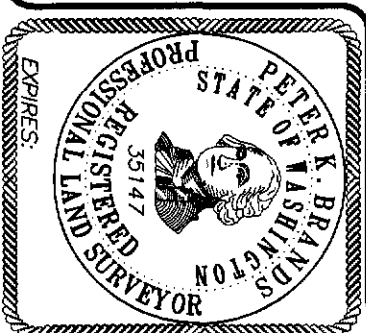
EAST 1/2, SECTION 21, TOWNSHIP 34 NORTH, RANGE 2 EAST, W.M.
EASEMENT EXHIBIT

EXISTING R.O.W. AND EASEMENT
UPON AND OVER THE SOUTH 30'
OF GOVT LOT 2, SECTION 21

- SURVEY LEGEND**
- = FOUND 1917 GLO RETRACEMENT BRASS CAP IN CASE
 - = FOUND 1 3/4" DIA. AXLE ROD WITH CHISELED "X"
 - = FOUND 3 1/4" DIA. ALUMINUM CAP, LS #15640



DRAWN BY: BJW DATE 5/27/2010 2010065_svX_R05.dwg



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Exhibit 3 -- Easement Exhibit Map



Bellingham • Bristoll

1812 Cornwell Avenue • Bellingham, WA 98225
Phone 360.671.7387 • fax 360.671.4685
E-mail pse@pseosurvey.com

Pacific Surveying & Engineering

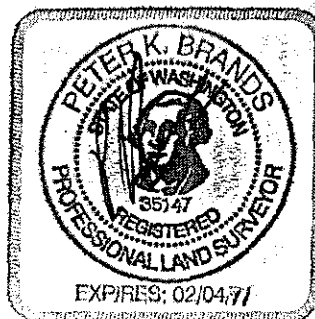
www.psesurvey.com

KIKET ISLAND EASEMENT

A 30 FOOT WIDE EASEMENT FOR INGRESS, EGRESS IN ACCORDANCE WITH THE ROW & ACCESS AGREEMENT, AND AS SHOWN ON THE EASEMENT EXHIBIT MAP, LYING OVER AND ACROSS A PORTION OF GOVERNMENT LOTS 2 AND 9, SECTION 21, TOWNSHIP 34 NORTH, RANGE 2 EAST, W.M., AND ADJACENT TIDELANDS, IF ANY, BEING 15 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED EASEMENT CENTERLINE WHICH FOLLOWS AN EXISTING GRAVEL ROAD, SHOWN ON THE ATTACHED SURVEY:

COMMENCING AT THE CORNER COMMON TO GOVERNMENT LOTS 2, 3 AND 9, MONUMENTED WITH A 1 3/4" DIAMETER AXLE, FROM WHICH THE EAST QUARTER CORNER OF SECTION 21 BEARS SOUTH 88°28'13" EAST 1327.52 FEET, THENCE NORTH 00°28'34" EAST, ALONG THE LINE COMMON TO GOVERNMENT LOTS 2 & 9, 10.26 FEET TO THE CENTER OF AN EXISTING GRAVEL ROAD AND THE POINT OF BEGINNING; THENCE NORTH 88°11'10" WEST 100.43 FEET TO A POINT OF CURVATURE, CONCAVE TO THE SOUTH, FROM WHICH THE RADIUS POINT BEARS SOUTH 01°48'50" WEST 300.00 FEET; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°15'25" A DISTANCE OF 137.48 FEET TO A POINT OF TANGENCY; THENCE SOUTH 65°33'25" WEST 99.70 FEET TO A POINT OF CURVATURE, CONCAVE TO THE SOUTHEAST, FROM WHICH THE RADIUS POINT BEARS SOUTH 24°26'35" EAST A DISTANCE OF 200.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 20°23'26" A DISTANCE OF 71.18 FEET TO A POINT OF REVERSE CURVATURE, CONCAVE TO THE NORTHWEST, FROM WHICH THE RADIUS POINT BEARS NORTH 44°50'01" WEST 220.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 6°19'02" A DISTANCE OF 24.26 FEET TO A POINT OF TANGENCY; THENCE SOUTH 51°29'01" WEST 75.00 FEET, TO THE END OF THIS DESCRIPTION, FROM WHICH THE POINT OF COMMENCEMENT BEARS NORTH 69°54'59" EAST, 490.12 FEET.

TOGETHER WITH A 30-FOOT WIDE EASEMENT FOR INGRESS, EGRESS IN ACCORDANCE WITH THE ROW & ACCESS AGREEMENT, AND AS SHOWN ON THE EASEMENT EXHIBIT MAP, LYING OVER AND ACROSS TIDELANDS, IF ANY, ALONG THE SOUTH 30 FEET OF GOVERNMENT LOT 2, SECTION 21, TOWNSHIP 34 NORTH, RANGE 2 EAST, W.M.



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Exhibit C – Quitclaim Deed to Tribe

GOVERNOR'S DEED

Grantor: STATE OF WASHINGTON, ACTING BY AND THROUGH THE
WASHINGTON STATE PARKS AND RECREATION COMMISSION.
Grantee: SWINOMISH INDIAN TRIBAL COMMUNITY
Abbreviated:
Legal Desc: Tidelands adjacent to GL 2, 20-34-2E WM; Tidelands adjacent to GL 5, 6,
7, 8 & 9, 21-34-2E WM; and Tidelands adjacent to Ptn. GL 2, 21-34-2E
Tax Parcel #: Tidelands adjacent to P20573, P20576, P20603, and P20604

WHEREAS, the STATE OF WASHINGTON, acting by and through the
WASHINGTON STATE PARKS AND RECREATION COMMISSION, at the
Commission's May 6, 2010 meeting in Montesano, Washington, authorized the transfer
of tideland interests adjacent to or within the property, located in Skagit County, more
particularly described below;

NOW THEREFORE, the **STATE OF WASHINGTON**, acting by and through
the WASHINGTON STATE PARKS AND RECREATION COMMISSION, as
Grantor, for and in consideration of the mutual benefits to be derived, pursuant to the
provisions of RCW 79A.05.030, and on such terms and conditions as are hereinafter
stated, hereby conveys and quitclaims unto SWINOMISH INDIAN TRIBAL
COMMUNITY, a federally recognized Indian Tribe organized pursuant to Section 16 of
the Indian Reorganization Act of 1934 (25 U.S.C. § 476) as **Grantee**, any and all of its
right, title, and interest in and to tidelands associated with or adjacent to or within the
property legally described as follows:

TIDELANDS ONLY

Government Lot 2 in Section 20, Township 34 North, Range 2 East, W.M.

ALSO, Government Lots 5, 6, 7, 8 and 9 in Section 21, Township 34 North,
Range 2 East, W.M.

TOGETHER WITH a non-exclusive easement for ingress, egress and utilities
over the South 60 feet of Government Lot 2, Section 21, Township 34 North,
Range 2 East, W.M.

AND



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TIDELANDS ONLY

The South 410.32 feet of Government Lot 2 in Section 21, Township 34 North, Range 2 East, W.M.

EXCEPT the East 30 feet thereof for road.

All situate in the County of Skagit, State of Washington

The term "tidelands" as used herein means all lands adjacent to or surrounded in whole or in part by the property legally described above that are or were continually or intermittently submerged beneath waters subject to the ebb and flow of the tides and that lie between the line of mean high tide and the line of extreme low water, and include the bed of the saltwater lagoon surrounded in whole or in part by the South 410.32 feet of Government Lot 2 in Section 21, Township 34 North, Range 2 East, W.M. For purposes of this definition of "tidelands," the line of mean high tide is determined by taking the mean of all high tides, including spring tides and neap tides, over a complete tidal cycle of 18.6 years and is ambulatory, changing location in response to erosion and accretion as well as changes in tidal elevations. However, except as otherwise provided by applicable law, if the line of mean high tide is seaward of where it would be in the absence of a human-made assemblage of materials or other human-made alteration, then the landward boundary of the tidelands is where the line of mean high tide would be in the absence of such assemblage or alteration.

Dated this _____ day of _____, 2010.

STATE OF WASHINGTON

GOVERNOR

ATTEST:

SECRETARY OF STATE

APPROVED AS TO FORM:
ROB MCKENNA
Attorney General

By _____
James Schwartz
Assistant Attorney General



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