

AFTER RECORDING MAIL TO:

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



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Skagit County Auditor

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LAND TITLE OF SKAGIT COUNTY

136,294-5E + 128,196-5E

**Document Title(s):** KIKET ISLAND CO-MANAGEMENT AGREEMENT

**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

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



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;



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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.<sup>2</sup> 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

<sup>2</sup> 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*  
Rex Derr, Director  
*Deputy Director*

Date: 6/2/10

**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



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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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**Schedule "A-1"**

**129196-S**

**DESCRIPTION:**

**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 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.

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 thereof for road.

Situate in the County of Skagit, State of Washington.



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