

AFTER RECORDING MAIL TO:  
Swinomish Indian Tribal Community  
Attn: Legal Department  
11404 Moorage Way  
La Conner, WA 98257

LAND TITLE OF SKAGIT COUNTY  
136299-5 + 129196-8c



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Skagit County Auditor

6/18/2010 Page 1 of 34 1:40PM

**Document Title(s):** RIGHT-OF-WAY AND ACCESS AGREEMENT

**Grantor(s):** UNITED STATES OF AMERICA FOR AND ON BEHALF OF THE  
SWINOMISH INDIAN TRIBAL COMMUNITY

**Grantee(s):** WASHINGTON STATE PARKS AND RECREATION COMMISSION

**Legal Description:** 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

**Assessor's Property Tax Parcel Account Number(s):** Tidelands adjacent to P20573,  
P20576 and P20603

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

JUN 18 2010

Amount Paid \$ 0  
By Skagit Co. Treasurer Deputy

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.<sup>3</sup> 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.

<sup>3</sup> 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



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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

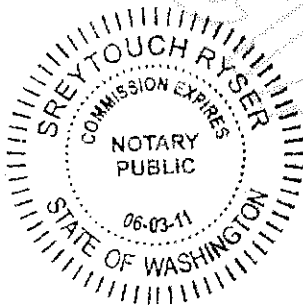
BEFORE ME, a Notary Public, in and for said County and State, on this 7th day of June, 2010, personally appeared Judy Johnson, and who acknowledged that s/he is and was at the time of signing the same Deputy Director of the Washington State Parks and Recreation Commission; and s/he personally acknowledged 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.

Sreytouch Rysier  
(Signature of Notary)

SREYTOUCH RYSIER  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of  
Washington, residing at Tempe, AZ

My appointment expires 10-3-11



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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 3<sup>rd</sup> 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.

Shelley A. Preston  
(Signature of Notary)

Shelley A. Preston  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of  
Washington, residing at Burlington  
My appointment expires 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 209 DM 8, 230 DM 1, 3 IAM 4, 4A, and pursuant to the provisions of the Act February 5, 1948 (62 Stat. 17, 25 U.S.C. 323-328) and

Date approved: 6/10/10 Title 25 CFR Part 169

Justin K. Joyce  
Officer in charge of Agency



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Skagit County Auditor

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 7th 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.<sup>1</sup>

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

<sup>1</sup> 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.



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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 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



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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 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



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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



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*  
Rex Derr, Director  
*Deputy Director*

Date: 6/17/10



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SWINOMISH INDIAN TRIBAL COMMUNITY

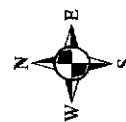
Brian Cladoosby  
M. Brian Cladoosby, Chairman

Date: 6-3-10



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## 27



0.1 Miles

Parcel B



 **Swinomish Indian Tribal Community**  
Office of Planning & Community Development  
Klickitat@pacific.net



# Exhibit 3 -- Easement Exhibit Map

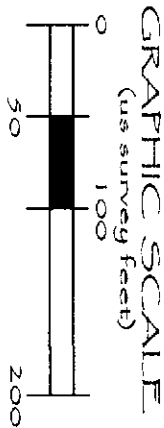
**PACIFIC SURVEY & ENGINEERING INC** EMAIL: pse@pseurvey.com  
1812 CORNWALL AVE, BELLINGHAM, WA 98225 PHONE: 671.7387 FAX: 671.4685 www.psesurvey.com



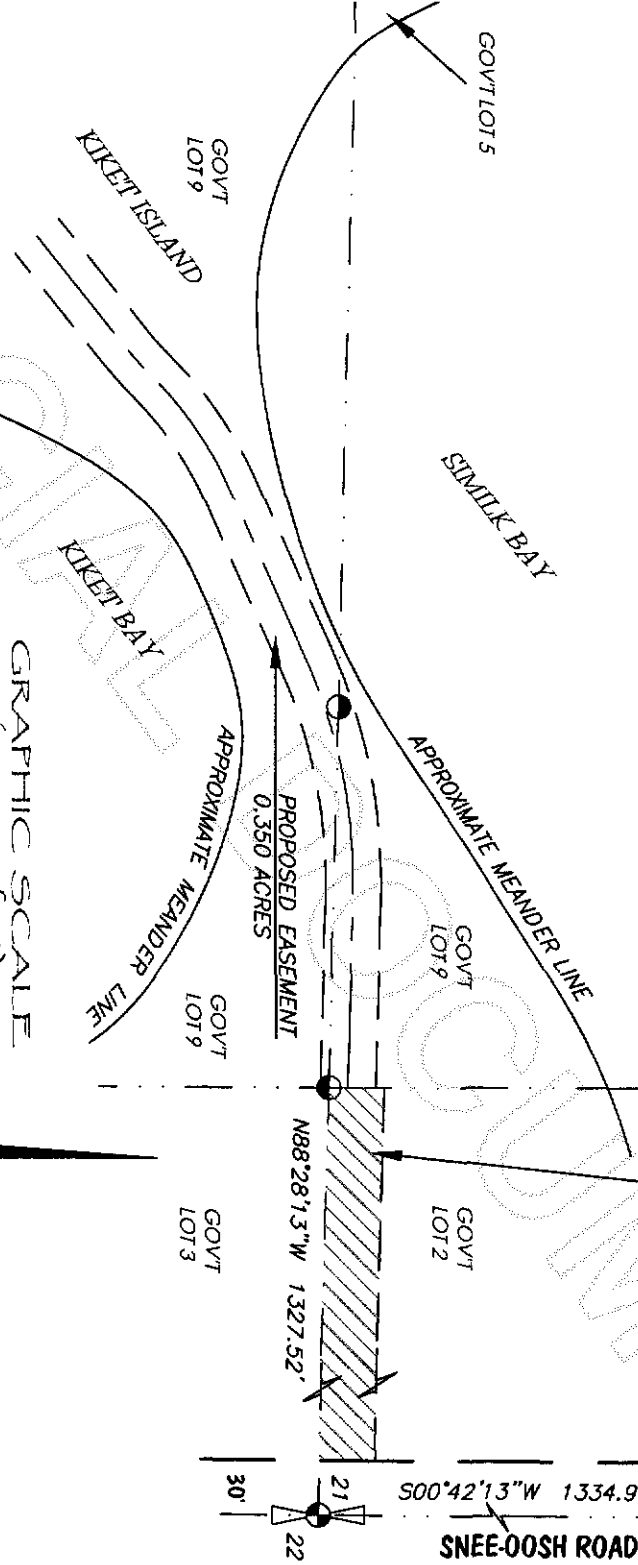
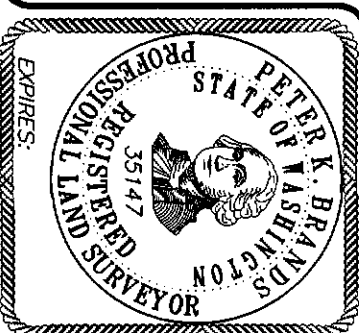
EAST 1/2, SECTION 21, TOWNSHIP 34 NORTH, RANGE 2 EAST, W.M.  
EASEMENT EXHIBIT

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 CHILSELED "X"
  - = FOUND 3 1/4" DIA. ALUMINUM CAP, LS #15640



DRAWN BY: BW 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@psurvey.com

Pacific Surveying & Engineering

www.psurvey.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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