

ORIGINAL

COPY
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In Whatcom County Council Office,
311 Grand Ave.,
Bellingham, WA 98225

WHATCOM COUNTY
CONTRACT NO.
20111023

Tidelands Lease Agreement for Lummi Island Ferry Use at Gooseberry Point

This lease agreement is made on this 27th day of October, 2011 and entered into between the Lummi Nation, acting by and through its governing body, the Lummi Indian Business Council, (hereafter identified as "Lessor"); with approval by the United States Secretary of the Department of the Interior or his duly authorized representative within the Bureau of Indian Affairs; and Whatcom County, a municipal corporation and political subdivision of the State of Washington, (hereafter identified as "Lessee"), acting through its chief executive officer, the Whatcom County Executive, with approval of the County Council.

History: On February 14, 1963, the parties first executed a lease for the County's use of the tidelands held in trust by the United States for Lummi Nation and its members. The lease was also approved by the Secretary of the Department of the Interior through his designee at the Bureau of Indian Affairs as required by federal law for lands held in trust, and by its terms was a lease for 25 years. On May 12, 1988, the Lummi Nation and Whatcom County executed a new lease for a term of twenty-five years with a renewal option, with a beginning date of February 14, 1985, the provisions of which were directed by the 1982 consent decree for a civil rights lawsuit (*Lummi Indian Tribe v. Hallauer, et al.* Civ. No. C79-682R [W.D. Wash.]), for certain uplands and tidelands located on the Lummi Indian Reservation, the tidelands portion of which are held by the United States in trust for the Lummi Nation and its members. The purpose of the lease was to allow the County to use Lummi tidelands and Lummi Nation-owned uplands to continue operating the Lummi Island Ferry from Gooseberry Point.

The lease addressed use of tidelands held in trust by the United States for the Lummi Nation and its members, requiring approval by the Secretary of the Department of the Interior in order to have a valid lease. The Secretary never approved the tidelands portion of the lease. In spite of the absence of Secretarial approval, the parties carried out their promises and obligations under the 1988 lease for the initial 25 year term. The initial term provided in the agreement and consent decree was not approved by the Department of the Interior and expired on February 14, 2010. The Lummi Nation declined to further renew or extend under the terms of the 1988 lease that had not been approved by the Department of the Interior, and of the consent decree which itself stated that the terms were subject to approval by the "United States Bureau of Indian Affairs". Thereafter the parties negotiated new lease terms for both pertinent tidelands and uplands, the negotiated tidelands lease terms being contained herein.

Definitions:

"Agreement" as referred to herein means the content of this document, its attachments, and all amendments thereto, including any further implementation agreements.

“Framework Agreement” means the agreement signed by the parties that is designated as such and that contains various principles for constructing and interpreting the several agreements pertaining to the lease of the ferry landing area.

“Tidelands Lease” means the agreement signed by the Parties and the Secretary of the Department of the Interior or his authorized representative, governing the use of the tidelands at Gooseberry Point that are held in trust by the United States government.

“Uplands Lease” means the agreement signed by the Parties governing the use of lands owned by Lummi Nation within the staging area for the County ferry operation lying between the County road known as Haxton Way or Lummi View Drive and the tidelands south of that upland area.

“Parties” as used herein refers to the Lummi Nation, also designated herein as “Lessor”, and Whatcom County, also designated herein as “Lessee” and “County”.

“Secretary” means the Secretary of the Department of the Interior of the United States, or his or her authorized representative.

Lease Terms: This agreement is entered into pursuant to the provisions of existing law, pertains to land that is subject to restrictions on alienation by the Lummi Nation and thus is subject to regulation under the provisions of 25 CFR Section 162, as presently existing or hereafter amended.

In consideration for rents and covenants, and agreements hereinafter provided for, Lessor grants this lease to Lessee for the land and premises described as follows:

Lummi tribal tidelands fronting Lot 2, Section 3, Township 37 North, Range 1 East, Willamette Meridian, Whatcom County, Washington, as more fully described on the attached Exhibit A.

This agreement addresses only the tidelands portion of the agreement between the parties, and the terms in this agreement apply only to the tidelands portion of the agreement. The terms of this agreement are to be supported by the Intergovernmental Framework Agreement which was executed on October 27, 2011 by the Lummi Nation and Whatcom County, the terms of which are incorporated by reference as if fully set forth herein, with the approvals given here fully extending to the substantive provisions thereof, as if they were contained and set forth herein, and an Uplands Lease Agreement executed on October 21, 2011.

1. Use of premises. It is agreed by Lessor and Lessee that the property herein described shall be used solely for the purpose of operating a public ferry landing

dock or slip for ferry service to Lummi Island. In using the leased premises it is expressly agreed that Lessee must:

- a. Comply with all applicable federal, state, and local laws, ordinances and regulations, including environmental requirements that are in force or which may hereafter be in force;
- b. Secure and keep up to date all necessary permits and licenses; and
- c. If and when Lummi Nation develops a marina at Gooseberry Point, the County shall modify the configuration of its dock, if and as necessary and consistent with technical feasibility. These actions of the County may include alteration of the waterward end of its dock as presently located for loading and unloading so as to accommodate a different angle of approach by the ferry..¹ The parties shall fully cooperate with each other in the construction phase(s) and in all permit processes that may be necessitated by application for and construction of dock renovation, reconfiguration and marina, with the goal of reducing environmental impact, reducing the need for environmental mitigation, and reducing costs to the parties. The costs associated with dock renovation, reconfiguration, redesign and any other type of modification of the dock shall be the full responsibility of the Lessee.

In the event the Lessee shall discontinue use of the leased premises for the purposes enumerated herein, with the exception of brief discontinuances due to weather or suspension of service due to operational issues promptly addressed (such as repairs, maintenance or construction), this lease shall terminate and the lease premises shall revert to Lessor, pursuant to the provisions of Section 10. Violations of Lease, below.

2. Term. The term encompassed by this lease shall be a total period of thirty-five years, with the commencement date being the date this document is fully executed between Lessor and Lessee, and signed by the Secretary of the Department of the Interior or his or her designee for purposes of lease approval. As provided in 25 U.S.C. §415 the first part of the term is twenty-five (25) years and will be immediately followed by a ten (10) year extension period. The approval and authorization for the entire thirty-five years is granted herein by both the Lummi Nation and the Secretary of the Department of the Interior through his designee within the Bureau of Indian Affairs. No further approvals shall be necessary in order for Lessee to derive the full benefit of this agreement and enforce this agreement under these terms during the period of renewal for ten years beyond the initial twenty-five year term. The term of this lease shall terminate on that same day of document execution during the year 2046. The period of this lease shall be identified as the "lease term."

¹ The parties are in agreement that the County's dock need not be moved from the space that it presently occupies but that if necessary to accommodate construction of a marina in the area of the current ferry approach to the dock, the waterward end of the dock where unloading and loading occurs would be re-oriented to accept a different angle of approach by ferry traffic so as to minimize interference with the siting of a marina.

3. Consideration for lease. Consideration for this lease reflects both the lease cost for the tidelands and mitigation, including traffic mitigation, for the community impacts of the ferry operations including impacts of the ferry operation at the usual and accustomed fishing places that support the Lummi Nation's tribal treaty rights to fish. This consideration is further recognized by the Lummi Nation and the U.S. government to be a fair annual rental amount, and shall consist of the following component:

Lessee covenants and agrees to pay \$200,000 per year, in U.S. Funds, or \$16,666.67 per month, adjusted throughout the lease term as outlined below, for monthly rent in advance on or before the 1st day of each and every month during the lease term. The payment amount stated here is a total amount which includes any applicable leasehold tax that may be imposed by the Lummi Nation in the future so that the amount owing, including any tax, shall not exceed the \$200,000 per year with appropriate adjustments for CPI. Payments will be submitted at Lessor's address set forth below. These lease payments are considered "direct payments" for the purposes of the Bureau of Indian Affairs accounting system called, Trust Assets Accounting Management System (TAAMS). Whatcom County will remit a TAAMS certification provided by the BIA and that will serve as proof of payment.

4. Rent Adjustment. During the lease term, the consideration for the lease will adjust annually, effective January 1 of each year, beginning on January 1, 2011, using the following formulas based on the Consumer Price Index, using the CPI-U National Index with the index base period being 1982-1984 = 100.²

Step One: To be completed every year. Establish the CPI-U Annual Growth (CPI-U AG). The reference points for measuring the change in the CPI-U will be the following intervals:

December 2009 - December 2010 for lease year 2012;³
December 2010 – December 2011 for lease year 2013;
etc. to December 2043 – December 2044 for lease year 2046

CPI-U AG formula: December points (later year) – December points (earlier year) = Index Point Change. Divide Index Point Change by earlier year index amount. Here is the formula:

² The parties executed an interim agreement in early February 2010 under which they agreed to the County's continued use of the Gooseberry Point landing with annual consideration of \$200,000, effective February 15, 2010. The first CPI adjustment, effective January 1, 2011, is based upon the CPI-U index change from December 2008 to December 2009, a change of 2.7%. The reconciliation for 2011 necessitated by the 2011 CPI adjustment will occur with the last payment for the year, to be made by December 15, 2011. Thereafter, the due date for lease payments will be the first of each month as specified in Section 3, above.

³ The purpose of using the CPI change for the period two years before the current year is to allow the CPI change to be calculated and applied in the planning and budgeting process for the current year, which occurs during the year preceding the current year.

$$\text{CPI-U AG} = \left(\frac{(\text{CPI-U later year}) - (\text{CPI-U earlier year})}{(\text{CPI-U earlier year})} \right)$$

Step Two: To be completed annually. The annual payment will be calculated by taking the prior year's annual payment and adjusting that at the rate of the CPI-U AG for the pertinent preceding period (the period two years before the current year). Here is the formula:

$$\text{Annual Payment} = (1 + \text{CPI-U AG})^4 \times (\text{Prior year's payment})$$

5. Lummi Passage Upon the Ferry. During the term of the lease, Lessee shall grant free foot and non-commercial passenger vehicle passage upon and across the ferry operated by Lessee between Gooseberry Point and Lummi Island to those persons going to Lummi Island for legitimate tribal business who are either enrolled members of the Lummi Nation or employees thereof, and who also present appropriate identification issued by the Nation, including Lummi Indian Business Council Identification cards or current fishing cards/licenses as issued by the Lummi Nation.

6. Improvements. Any buildings, docks, or other structures or improvements placed upon the leased premises by Lessee shall become the property of Lessor upon the expiration or termination of this lease, subject however, to Lessee's right to take possession of, and remove any such improvement at its sole expense within 90 days after the expiration or termination of this lease. If Lessee elects to remove the improvements, it shall return the leased premises to Lessor in good condition and restore the surface of the ground, including areas underwater, to a pre-project condition.

7. Unlawful Conduct. Lessee agrees that it will not use or cause or allow to be used any part of the leased property for any unlawful conduct or purpose.

8. Subleases and Assignments. No sublease, assignment, or amendment of this lease may be made without written consent of the Parties and written approval of the Secretary or his or her authorized representative. This agreement is based on a government-to-government relationship between the Lummi Nation and Whatcom County for the provision of public access to Lummi Island. Any entity operating a ferry under contract for such service with the County shall not be precluded from doing so by this clause and no sublease, assignment, or amendment of this lease shall be necessary for that circumstance, provided that such party shall act consistently with the terms and conditions set forth herein.

⁴ For purposes of this formula, the CPI-U AG should be converted from a percentage by moving the decimal point two digits to the left before being added to 1, e.g., a 2.7% increase in CPI-U would yield a multiplier of 1.027.

9. Interest of Members of Congress. No Member of, or Delegate to Congress shall be admitted to share any or part of this contract or any benefit that may arise herefrom.

10. Violations of Lease. Any violations of this lease may be acted upon in accordance with the Intergovernmental Framework Agreement and applicable provisions of law, including but not limited to the provisions of 25 CFR §162, as presently existing or hereafter modified, subject to and consistent with the provisions for dispute resolution contained in Section 13, below. Default and abandonment shall be violations of this lease.

- a. Notice of Violation, Default and Abandonment. Upon any occurrence of a violation, default or abandonment under this lease, Lessor shall provide written notice directed to Lessee and give Lessee 30 days to cure or correct the violation or default or to prove it has not abandoned the premises. At the end of the 30-day period, if the violation or default has not been corrected or Lessee has not proved that it has not abandoned the premises, Lessor shall be permitted to give written notice of termination of the lease to Lessee.
- b. Notice of Termination. If one or more violations or defaults described above are not cured to the satisfaction of Lessor within 30 days, Lessor reserves the right to terminate this agreement by giving written notice to Lessee as provided in Section 17 below. In the event of a termination under this provision, Lessee shall have 90 days from the date of termination, as specified in written notice to Lessee, to remove improvements in conformance with Section 6 of this Agreement.
- c. Waiver or acceptance. A waiver or acceptance by Lessor of any violation, default or abandonment under the terms of this agreement shall not operate as a release of Lessee's responsibility for any prior to subsequent violation or default. No assent, express or implied, to any breach of Lessee's duties or covenants shall be deemed a waiver or any other breach, either former or subsequent, of Lessee's duties and covenants.
- d. If the Lessee shall cease using the leased premises, it shall give prompt written notice of the same to Lessor. Lessor's remedy in that instance and for any violation leading to termination of the lease shall be its retaking possession of the premises that had been under lease to Lessee, in addition to collection of such rent established herein that remains owing for the period of use prior to vacation by Lessee, if there is any such delinquent rent. If Lessee exercises the option of termination, it shall leave the premises in reasonable order and good condition.

11. Hold Harmless/Indemnification. Lessee, its successors and assigns, will indemnify, protect, save, and hold harmless Lessor, its authorized agents, and

employees, and the U.S. government and its officers, agents, and employees from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of Lessee, its assigns, agents, contractors, licensees, invitees, and employees, arising out of or in connection with any acts or activities on the lease premises and authorized by this lease. Lessee further agrees to defend Lessor, its agents or employees, and the U.S. government and its officers, agents, and employees, in any litigation arising by reason of the acts or omissions of Lessee, its assigns, agents, contractors, licensees, invitees, and employees, including payment of any costs or attorneys' fees.

This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of Lessor or its authorized agents or employees or that of the U.S. government or its officers, agents, or employees; provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) Lessor, its agents or employees, and/or that of the U.S. government and its officers, agents, and employees, and (b) Lessee, its agents or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Lessee or Lessee's agents or employees.

12. Binding Contract. This lease agreement shall not become binding upon Lessee unless and until accepted and approved by Lessee and by the County Executive or his duly authorized representative. This lease agreement shall not become binding upon Lessor unless and until accepted and approved for Lessor by the Chairperson of the Lummi Nation or his duly appointed representative with approval from the Lummi Indian Business Council. Further, this lease agreement is not binding on either party unless and until approved by the Secretary of the Department of the Interior, or his duly appointed representative. The covenants and agreements herein shall extend to and be binding upon the heirs, successors, and assigns of the parties to this lease. All of Lessee's obligations under this lease are to the United States as well as to Lessor.

13. Dispute Resolution. All disputes between the Parties relating to or arising from this Tidelands Lease or any future agreement implementing any of the foregoing, shall be conducted as set forth herein:

- A. Any disagreement or dispute that arises between the Parties as to the interpretation, violation, or performance of any of the agreements to which this provision applies, or any rights or obligation arising thereunder, shall be resolved whenever possible by the Parties first meeting in person and conferring in a good faith attempt to resolve the dispute through negotiations. The Party initiating the resolution process shall serve on the other Party a written notice describing the dispute and invoking the dispute resolution process. The first meeting of the Parties shall occur not later than ten (10) days after receipt of

written notice describing the dispute, unless both Parties agree in writing to an extension of time.

- B. If the dispute is not resolved to the satisfaction of the Parties within thirty (30) days after the first meeting as set out in this Section, then either Party may seek a resolution by arbitration in accordance with the procedures set forth herein. The Parties are required to participate in arbitration. Any claim, controversy or dispute subject to dispute resolution under this provision shall be submitted to binding arbitration conducted by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA then in effect. To the maximum extent applicable, the Federal Arbitration Act (Title IX of the United States Code) will govern such arbitration. No rule or provision which may be construed to broaden the Nation's limited waiver of sovereign immunity beyond that contained in this Agreement shall apply. Such arbitration shall be held in Bellingham or such other place as the Parties agree. The arbitrator shall be empowered to impose sanctions and take such other actions as he or she deems necessary to the same extent a judge could impose sanctions or take such other actions pursuant to the Federal Rules of Civil Procedure and applicable law. The mutual commitment by the Parties to resolve disputes through arbitration shall not prevent either Party from seeking injunctive relief to compel arbitration and/or maintain the status quo pending resolution of the arbitration proceeding, through application to the federal District Court for the Western District of Washington; provided, however, that in the event such federal court declines jurisdiction over such claim for injunctive relief, such relief may be sought in the courts of the State of Washington, provided, however, such relief is consistent with this Agreement and the Nation's limited waiver of sovereign immunity.
- C. The arbitration shall be heard by a single arbitrator determined by the Parties. If the Parties cannot agree on an arbitrator, then the American Arbitration Association shall appoint one. The arbitrator should be a retired federal judge, if available. If such a person is not available, the arbitrator must be a licensed attorney or retired judge with some knowledge of federal Indian law and real property transactions involving Indian trust lands. The arbitrator must be unbiased and neutral.
- D. The arbitration hearing shall be conducted within ninety (90) days after an arbitrator is appointed unless the parties agree in writing to an extension of this period. The arbitration provisions hereof shall be self-executing, and the decision of the arbitrator shall be final and binding upon the Parties, and without further appeal or any judicial confirmation, recourse, or other process other than for confirmation

and enforcement of the arbitration judgment, except as provided in 9 U.S.C. §10. The arbitration judgment shall be in writing and give reasons for the decision. Each side shall bear its own costs, attorney's fees, and one half of the costs and expenses of the arbitrator. Judgment on any arbitration award may be confirmed by and entered in the United States District Court for the Western District of Washington. In the event that the District Court determines that it lacks jurisdiction, the award may be confirmed by and entered in the courts of the State of Washington; provided, however, such award is consistent with this Agreement and the Nation's limited waiver of sovereign immunity. Appeal may be taken from a decision of such court regarding confirmation and/or enforcement of the decision in arbitration.

- E. No causes of action or claims in law or equity are cognizable against the County except actions against the County itself for specific performance or injunctive relief arising out of this Agreement, or any implementation agreement. Lummi Nation's remedy against the County in case of an uncured breach of the agreement(s) by the County shall be termination of the lease agreement(s) and vacation of the leased premises by the County. The Nation shall not bring any action arising from this Agreement, or any implementation agreement, against the County's council members, employees, agents or attorneys, except in official capacity for the sole purpose of effectuating on behalf of the County any and all court orders that may be issued pertaining to this agreement.

- F. The Nation hereby grants a limited waiver of its sovereign immunity from suit solely for actions brought by the County or its approved successor in interest (and no other person or entity) to enforce the terms of this Agreement, including an action to compel arbitration, specific performance and/or injunctive relief if warranted, consistent with the procedures for dispute resolution provided herein. This limited waiver is to be strictly and narrowly construed in favor of the Nation and may be enforced only under the conditions set forth herein. No causes of action or claims in law or equity are cognizable against the Nation except actions against the Nation itself for specific performance or injunctive relief arising out of this Agreement, including the Framework Agreement, the Uplands Lease, or any agreement implementing these agreements. In the event the County or its successors obtain a judgment or arbitration award as provided in this section and seeks to enforce such award, the Nation hereby agrees, if the federal district court declines to exercise jurisdiction, to submit to the jurisdiction of the state courts of Washington for the sole purpose of execution of the arbitration award of judgment. The Nation does not waive its sovereign immunity with respect to actions by third parties or

disputes between the Nation and the County that do not arise out of this Agreement, the Framework Agreement, the Uplands Lease, any agreement implementing those agreements, or any amendments thereto. This limited waiver does not allow any actions to be brought against the tribal council, tribal officers, tribal attorneys, tribal employees, tribal agents, tribal members, or any other person or entity acting on behalf of the Nation, except in official capacity for the sole purpose of effectuating on behalf of Lessor any and all court orders that may be issued pertaining to this Agreement. The Nation's limited waiver of sovereign immunity shall be further evidenced by a resolution from the Lummi Nation Indian Business Council, which shall also waive any requirement for exhaustion of tribal remedies and jurisdiction in the Lummi Nation Tribal Court, to which resolution and waiver the Nation commits itself herein. In the event of a lawsuit involving this Agreement, venue shall be proper only in the U.S. Federal District Court for the Western District of Washington, except as provided in Section D, above. The Nation, by execution of this Agreement, acknowledges the jurisdiction of the courts of the United States in this matter.

- G. The Parties agree that any dispute resolution meetings or communications, arbitration proceedings, or agreements among the Parties settling or otherwise relating to any claims arising from or related to this Agreement or an implementation agreement shall be and remain confidential to the extent permitted by applicable law, except as otherwise mutually agreed by the Parties. The Parties recognize that the County is subject to Washington State's Open Meetings Act and Public Records Act, and both settlement agreements and arbitration outcomes are subject to public disclosure from the County to those making such requests.
- H. The Parties agree that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this Agreement or any implementation agreement, the Parties shall continue to possess the rights, duties, and obligations set forth in this Agreement, and the Parties shall continue their performance of the provisions of this Agreement.

14. Approval. This lease shall be valid and binding only after approval by the Secretary of the Department of the Interior or his duly authorized representative. Lessor covenants and agrees to present this lease promptly after execution by Lessor and Lessee to the Secretary or his duly authorized representative for approval, and to actively support and seek such approval. Failure to do so shall be deemed a breach of Lessor's duty herein, the foregoing requirement for Secretarial approval notwithstanding, and Lessee may seek enforcement of the

duty to present, support, and seek such approval with a remedy of specific performance by Lessor. The waiver of sovereign immunity by Lessor included in the Framework Agreement and incorporated in this agreement is intended to extend to this circumstance.

15. Modifications. This instrument contains all the agreements and conditions made between the parties with respect to the tidelands at the Gooseberry Point Ferry Terminal and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto.

16. Interpretation. This Agreement shall be governed and construed in accordance with the laws of the State of Washington, except where matters exclusively of federal law are concerned (such as the provisions regarding lease of restricted Indian lands), notwithstanding any choice of law provisions. This Agreement shall not be construed for or against any party based on drafting or preparation. Each Party has been represented by legal counsel of its choosing throughout the negotiation of this Agreement and the uplands and tidelands leases. Captions in this Agreement are included for convenience only and in no way define or limit the meaning or intent of any provision herein.

17. Notices. All notices required to be given under this lease shall be made in writing and shall be delivered or sent by certified mail addressed to the parties or their successors at the address listed below, unless a different address has been designated in writing and delivered to the other party.

For the Lummi Nation:

Lummi Nation Chairman
2616 Kwina Road
Bellingham, WA 98226
Telephone: 360-384-2140

For Whatcom County:

Whatcom County Executive
311 Grand Avenue, Suite 108
Bellingham, WA 98225
Telephone: 360-676-6717

18. Signatures.

APPROVED by the Lummi Indian Business Council Resolution # 2011 – 116,
July 26, 2011.

LUMMI NATION



Clifford Cultee, Chairman

Date October 27, 2011

Approved as to form


Mary M. Neil, Reservation Attorney

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss:

On this 27th day of October 2011, before me personally appeared Clifford Collee, to me known to be chair of the Lummi Indian Business Council, the federally-recognized Indian tribe that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Indian tribe, for the uses and purposes herein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the Lummi Indian Business Council.


IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



SUBSCRIBED AND SWORN to before me this 27 day of October, 2011.


Notary Public
My Commission Expires: 11/4/2013

ADOPTED by Whatcom County Council in an open public meeting on the 13th day of September, 2011.


Sam Crawford, Council Chair

Date 10/28/11

Attested by: 
Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY EXECUTIVE


Pete Kremen, County Executive

Date 11-15-11

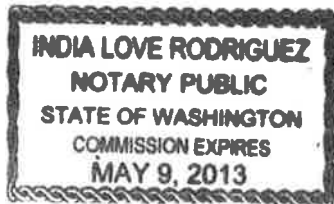
Approved as to form

Daniel L. Gibson 10/28/11
Daniel L. Gibson, Asst. Chief Civil Deputy Prosecuting Attorney

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss:

On this 15th day of November 2011, before me personally appeared Pete Kremen, to me known to be Executive of Whatcom County, the public body that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said public body, for the uses and purposes herein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the Whatcom County Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



SUBSCRIBED AND SWORN to before me this 15 day of November, 2011.
India Love Rodriguez,
Notary Public
My Commission Expires: 5-9-2013.

APPROVAL BY THE UNITED STATES. This lease, together with all provisions incorporated by reference therein, is approved by the United States Department of the Interior, Office of the Secretary of the Interior, pursuant to 209 DM 8, 230 DM 1, 3 IAM 4, 4A, and 25 CFR Part 162.

The undersigned attests to and warrants his/her authority to sign this agreement as the duly authorized designee of the Secretary of the Interior.

Date: 11/15/11

By: Judith N. Joseph
Regional Superintendent,
Bureau of Indian Affairs, for the
Secretary of the Interior, acting
delegated authority.

EXHIBIT A
LEGAL DESCRIPTION OF TIDELANDS SUBJECT TO LEASE

All of that portion of second class Lummi Nation Tidelands lying in front of Government Lot 2, Section 3, Township 37 north, Range 1 East of W.M., Whatcom County, Washington, abutting the following described parcel;

All that portion of Govt. Lot 4 in Section 34, Township 38 North, Range 1 East of W.M., and Govt. Lot 2 in Section 3. Township 37 North, Range 1 East of W.M., described as follows:

Commencing at the intersection of Finkbonner Road and Lummi Shore Road, County Road No. 652, marked by a brass plug monument; thence South $71^{\circ} 10'$ West 156.42 feet; thence South 31.70 feet to the southerly right-of-way line of Lummi Shore Road; thence South $71^{\circ} 10'$ West along said South right-of-way line 70.76 feet to the point of beginning; thence continuing along said southerly right-of-way line South $71^{\circ} 10'$ West a distance of 96.44 feet to a point of curvature; thence along the arc of a curve to the left having a radius of 63.53 feet, through a central angle of $47^{\circ} 15' 57''$ a distance of 52.41 feet; thence south $16^{\circ} 17' 27''$ East 332 feet more or less to the extreme low water line of Hale Passage; thence South $73^{\circ} 42' 33''$ West 75.00 feet to a point; thence North $16^{\circ} 17' 27''$ West 514.58 feet more or less to a point on the southerly right-of-way line of Haxton Way, County Road No. 783; thence South $70^{\circ} 35' 31''$ East along said Southerly right-of-way line 267.28 feet to the point of beginning.

Except any portion of the Bedlands of the State of Washington Granted in Amendment to Easement and Right of Way No. CR-3099 as further amended and described in Department Order dated May 14, 1986.⁵

⁵ In case of any discrepancy in ownership between the description of tidelands provided herein and the description of bedlands claimed to be granted by the State of Washington, this lease shall be deemed to cover all tidelands within the description above that are claimed by the Lummi Nation and/or the United States in trust for the Lummi Nation.