

Return address:



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Skagit County Auditor

7/8/2011 Page 1 of 9 3:27PM

Document Title:

Temporary Easement

Reference Number :

Grantor(s):

additional grantor names on page ____

1. Swinomish Indian Tribal Community
- 2.

Grantee(s):

additional grantee names on page ____

1. Skagit County
- 2.

Abbreviated legal description:

full legal on page(s) ____

Lot 1 SP 19-88

Assessor Parcel / Tax ID Number:

additional tax parcel number(s) on page ____

P67814

Recording Requested By And
When Recorded Mail To:

Skagit County
Public Works Department
Attn: Jan Flagan
1800 Continental Place
Mount Vernon, Washington 98273

SKAGIT COUNTY
Contract # C20110301
Page 1 of 8

TEMPORARY CONSTRUCTION EASEMENT

GUARDIAN NORTHWEST TITLE CO.

Grantor: 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)

Grantee: Skagit County, a political subdivision of the State of Washington.

Abbreviated
Legal

Description: (37.5000 ac) O/S #750175 1972: LT 1 S/P 19-88 AF#8810060030 BEING A PORTION OF PEAVEY'S AC PTN LTS 3 4 5 6 & 17

Assessor's Tax/

Parcel Number: P67814 (XrefID: 3966-001-006-0008)

The undersigned, the **Swinomish Indian Tribal Community**, a federally recognized Indian Tribe organized pursuant to section sixteen of the Indian Reorganization Act of 1934 ("Grantor" or "Tribe"), for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, hereby grants to **Skagit County**, a political subdivision of the State of Washington ("Grantee"), a temporary, non-exclusive construction easement and appurtenances thereto ("Temporary Easement"), as provided herein. Grantor and Grantee may be individually referred to herein as a "party", and may be collectively referred to herein as the "parties." The terms of this Temporary Easement are further provided as follows:

1. Nature and Location of Easement. The temporary construction easement hereby granted by Grantor shall allow Grantee's agents, employees, and contractors to access a portion of Grantor's Property as described in Exhibit "A" and depicted in Exhibit "B" for the purpose of constructing a habitat restoration and flood mitigation project (herein the "Project") on portions of Hansen and Red Creeks contained within the boundaries of Grantor's Property. Specific Project construction activities shall occur according to specifications on a set of engineering plans provided by Grantee and as approved in writing by the Grantor prior to the commencement of any Project construction activities. The Grantor's Property was (or shall be) purchased with grant funds provided by the Salmon Recovery Funding Board through the Washington State Recreation and Conservation Office (grant # 10-1285) and all construction



activities must comply with the terms of the grant agreement and the associated Deed of Right for conservation purposes on file with the State. The parties also recognize and agree that the parties shall mutually negotiate and execute a new interlocal agreement (herein the "interlocal agreement") regarding the Project prior to any Project work being conducted on Grantor's Property by Grantee, and the parties further agree that in the event of any inconsistency between the terms of such interlocal agreement, and the terms of this Temporary Easement, that the terms of such interlocal agreement shall prevail.

2. Use of Easement. After engineering plans for the Project are agreed to in writing by the Grantor, the Grantee, Grantee's employees, agents, and contractors, shall have the right, without notice, and at all times, to enter upon the Grantor's Property within the Temporary Easement area (as described and depicted in *Exhibit "A" and "B"*) for purposes of using the Temporary Easement for the Project. Grantor shall not have the right to exclude Grantee, Grantee's employees, agents, contractors, or other third parties from the Temporary Easement. Grantor shall not place, construct, or cause to be placed or constructed or maintained any building, structure, obstruction, and/or improvements within or upon the Temporary Easement (including, without limitation, fences, gates, foundations, rockeries, trees, bushes or other shrubbery) while the Temporary Easement is in effect, without written approval of the Grantee. Grantee shall access the Grantor's Property and construct the Project according to the engineering plans approved in writing by the Grantor.

3. Termination of Temporary Easement. This Temporary Easement shall expire and terminate at such time as the Grantee has completed the Project or activity necessitating the use of the Temporary Easement as described hereinabove. Completion of such Project or activity shall be made at the sole discretion of Grantee; provided, that in any event this Temporary Easement shall expire by its own terms and terminate in five (5) years from the date of mutual execution, whichever is sooner.

4. Venue. Subject to Section 9. (below), in the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Temporary Easement, it is agreed by the parties that the venue for any such legal action shall be in Skagit County, State of Washington.

5. Entire Agreement. This Temporary Easement contains the entire agreement between the parties hereto and incorporates and supersedes all prior negotiations or agreements. It may not be modified or supplemented in any manner or form whatsoever, either by course of dealing or by parol or written evidence of prior agreements and negotiations, except upon the subsequent written agreement of the parties. Waiver or breach of any term or condition of this Temporary Easement shall not be considered a waiver of any prior or subsequent breach. This Temporary Easement shall only become effective upon recording with the Skagit County Auditor, and shall not be recorded by either party until (and unless) Grantor is (becomes) the legal owner of the Grantor's Property (as described herein).

6. Compliance With Laws And Terms Of Permits: Grantee shall comply with all applicable federal, state, and local laws, rules, permits, and regulations in carrying out any activities pursuant to this Temporary Easement.

7. Assignment: Unless otherwise expressly provided herein, no portion of or rights under this Temporary Easement may be assigned to any other individual, firm, company, and/or other entity without the express and prior written approval of the Grantor.



8. No Third Party Beneficiaries: Except as expressly provided in this Temporary Easement, this Temporary Easement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, the general public, property owners and residents in the vicinity of the property, or any other organization or entity, or any agent, contractor, subcontractor, consultant, employee, volunteer, or other representative of any party.

9. Dispute Resolution And Limited Waiver Of Sovereign Immunity

A. Applicable Law. This Temporary Easement including all matters of interpretation, validity and performance shall be governed and enforced in accordance with the laws of Washington State.

B. Mediation. Any controversy, claim or dispute, including claims and counterclaims by the parties concerning the making, formulation, validity, obligations and duties under and/or breach of this Temporary Easement and issues related to the existence, interpretation and enforceability of the mediation and arbitration provisions of this Temporary Easement, shall be subject to mandatory mediation. A competent mediator shall be chosen by agreement of the parties. If the parties are unable to agree on a mediator, either party may request that a judge, pursuant to Section D appoint a mediator. The Tribe reserves the right to revoke its limited waiver of sovereign immunity if Grantee fails to appear for mediation pursuant to this Section B.

C. Arbitration. If not resolved within fifteen (15) days after selection or appointment of a mediator (or such longer period as may be mutually agreed upon by the parties), any controversy, claim or dispute, including claims and counterclaims by the parties, concerning the making, formation, validity, obligations and duties under and/or breach of this Temporary Easement and issues related to the existence, interpretation and enforceability of the mediation and arbitration provisions of this Temporary Easement, but excluding issues regarding or related to the sovereign immunity of the Tribe, shall be adjudicated exclusively by binding arbitration conducted by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA then in effect. The arbitration shall take place in the administrative offices of Skagit County, or such other place as the parties may agree. One arbitrator and the expedited procedures of such rules shall be used and shall be neutral. The arbitrator shall have the power and authority to grant legal and equitable remedies in accordance with the provisions of this Temporary Easement. Under no circumstances shall the arbitrator make any determinations regarding the Tribe's sovereign immunity from uncontested suit. The arbitrator shall have the authority to authorize or require discovery of the kinds provided for by the Washington Rules of Civil Procedure. The decision of the arbitrator shall be final and binding. The costs of arbitration shall be borne equally by the parties unless the arbitrator rules otherwise.

D. Compelling and Enforcing Arbitration. Mediation and arbitration pursuant to Sections B, C, E, and F may be compelled and a decision of the arbitrator pursuant to Sections C or F may be enforced through appropriate judicial proceedings initiated in the United States District Court for the Western District of Washington ("Federal Court"). In the event that Federal Court lacks jurisdiction over that proceeding, a proceeding to judicially compel mediation or arbitration or seek judicial enforcement of the arbitration decision may be brought in state courts of competent jurisdiction with the State of Washington, or, at the election of Grantee, in the Tribal Court of the Swinomish Indian Tribal Community. In the event that such judicial



proceedings are initiated, the prevailing party (as defined by the laws of Washington) shall be entitled to an award by the court of reasonable attorneys' fees and costs.

E. Disputes Regarding or Related to Sovereign Immunity. Any dispute regarding or related in any way to the sovereign immunity of the Tribe shall be resolved in Federal Court (Western District of Washington). In the event that the Federal Court determines that it lacks jurisdiction over the proceeding, the dispute regarding the sovereign immunity of the Tribe may be resolved, at the sole election of Grantee, in the Tribal Court of the Swinomish Indian Tribal Community, or by binding arbitration before a retired Federal judge chosen by agreement of the parties. If the parties are unable to agree as to the appointment of a retired Federal judge to serve as arbitrator, either party may request the appointment of an arbitrator pursuant to Section C. If Grantee elects to have the dispute regarding or related to the Tribe's sovereign immunity resolved before a retired Federal judge, the judge shall have the authority to award costs and reasonable attorney's fees if s/he finds that either of the parties' arguments, if made in U.S. District Court would violate Federal Rule of Civil Procedure 11 (as in effect as of the date of execution of this Agreement).

F. Limited Waiver of Sovereign Immunity. Except as otherwise expressly provided in this Section F, nothing in this Temporary Easement is intended to be or shall constitute or be construed as a waiver, limitation or modification of the Tribe's sovereign immunity from unconsented suit. The Tribe hereby consents to submission, pursuant to Sections B, C, E, and F, of disputes arising under this Temporary Easement and hereby waives its sovereign immunity with regard to mediation pursuant to Section B, to arbitration pursuant to Section C, to lawsuits pursuant to Sections D solely seeking to compel such mediation or arbitration or seeking enforcement of an arbitration decision, and lawsuits pursuant to Section E solely seeking to resolve claims arising under this Temporary Easement regarding or related to the sovereign immunity of the Tribe. This limited waiver relates only to legal actions by Grantee seeking any relief or enforcement of rights authorized by this Temporary Easement and not to legal actions by any other person, corporation, partnership, or entity whatsoever. This limited waiver authorizes relief compelling the Tribe to take action expressly required by this Temporary Easement and/or awarding monetary damages against the Tribe for breach of this Temporary Easement. The Tribe does not waive, limit, or modify its sovereign immunity from uncontested suit except as expressly provided in this Section F. This limited waiver does not extend to proceedings in any other forum, regarding any other matter, or create any rights in any person who is not a party to the Temporary Easement. This limited waiver does not authorize punitive damages against either party. Upon execution of this Temporary Easement, and if requested, the Tribe will provide to Grantee a resolution from the governing body of the Tribe ratifying this Temporary Easement and this Limited Waiver of Sovereign Immunity.



GRANTOR:

DATED this 7th day of June, 2011.

The Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to section sixteen of the Indian Reorganization Act of 1934

By: Brian Cladoosby
Brian Cladoosby
Title: Chairman, Swinomish Indian Senate

Leasement
SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

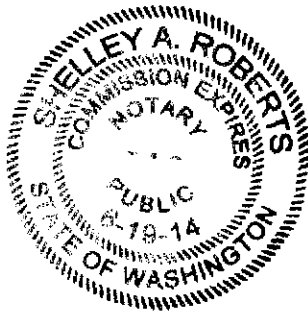
JUL 08 2011

Amount Paid \$
Skagit Co. Treasurer
By MF Deputy

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that Brian Cladoosby, as the Chairman of the Swinomish Indian Senate of the Swinomish Indian Tribal Community, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was duly authorized to execute this instrument and executed the forgoing instrument as his free and voluntary act for the uses and purposes herein mentioned.

DATED this 7th day of June, 2011.
(SEAL)



Shelley A. Roberts
Notary Public
Print name: Shelley A. Roberts
Residing at: Burlington
My appointment expires: 6-19-14



GRANTEE:

DATED this 27 day of June, 2011.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Ron Wesen
Ron Wesen, Chairman

Kenneth A. Dahlstedt
Kenneth A. Dahlstedt, Commissioner

Sharon D. Dillon
Sharon D. Dillon, Commissioner

Attest:

Amber Kloger, ASST.
Clerk of the Board

Recommended:

Henry J. Hask
Department Head

Approved as to form:

[Signature]
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Briele Kadrmas 6/21/2011
Risk Manager

Approved as to budget:

[Signature]
Budget & Finance Director



EXHIBIT "A"
LEGAL DESCRIPTION

Lot 1, Short Plat No. 19-88, approved September 9, 1988, recorded October 6, 1988 in Book 8 of Short Plats, page 72, under Auditor's File No. 8810060030 and being a portion of Lots 3 through 6, inclusive, and Lot 17, Tract 1, "PEAVEY'S ACREAGE, TRACTS NO. 1 & 2, SECTIONS 17, 20, 21, 22 & 28, TOWNSHIP 35 NORTH, RANGE 5 EAST, SKAGIT CO., WASH.", as per plat recorded in Volume 3 of Plats, page 37, records of Skagit County, Washington, EXCEPT road right-of-way as shown on the face of the Short Plat.

TOGETHER with that portion of unnamed road as described in Decree of Quiet Title filed September 7, 1993 under Skagit County Superior Court Cause No. 92-2-00374-3.

ALSO TOGETHER with an easement for ingress and egress over that portion of the unnamed road as described in Decree of Quiet Title filed September 7, 1993 under Skagit County Superior Court Cause No. 92-2-00374-3.

Situate in the County of Skagit, State of Washington

TOGETHER WITH AND SUBJECT TO easement, reservations, covenants and restrictions of record.



EXHIBIT "B"
PROPERTY MAP

