



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 12-39

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965;

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe;

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government;

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe;

WHEREAS, the Squaxin Island Tribe is hosting the Tribal Canoe Journey landing on July 29, 2012, and will be performing a Welcome Ceremony with an anticipated 100 or more canoes at the Cascade Pole Site (1503 Marine Drive, Olympia, Washington);

WHEREAS, the Squaxin Island Tribe wishes to enter into an Agreement, the purpose of which Agreement is to set forth the respective duties and responsibilities of the Squaxin Island Tribe and the Port of Olympia;

WHEREAS, the Parties have negotiated an Agreement between the port of Olympia and the Squaxin Island Tribe for Use of Port of Olympia Property for the Paddle to Squaxin 2012 (Attachment 1).

WHEREAS, the Tribe has agreed to a tailored waiver of sovereign immunity, to wit:

C. 3 The extent of the Tribe's indemnification and hold harmless obligations under this Section C (exclusive of attorneys' fees and costs) is coextensive with the limits of the Tribe's insurance coverage. Notwithstanding this limitation, under no circumstances shall the Port be liable for or otherwise responsible for death, injury or damages due to the Tribe's negligence or death, injury or damages for which the Tribe is otherwise liable or responsible.

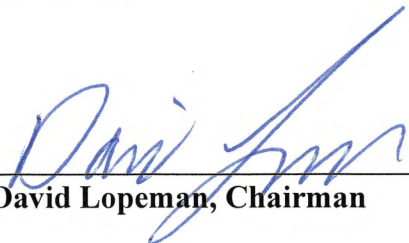
D.6 Waiver of Sovereign Immunity. For the purpose of enforcing obligations under this Agreement, the Tribe waives its inherent sovereign immunity from suit and consents to suit as provided herein. Through the signature of its authorized representative below, the Tribe certifies that this waiver of sovereign immunity has been made in accordance with applicable Tribal laws and policies regarding such waivers, and is effective and enforceable against the Tribe.

NOW THEREFORE BE IT RESOLVED, the Squaxin Island Tribal Council approves the Agreement between the Port of Olympia and the Squaxin Island Tribe for Use of Port of Olympia Property for Paddle to Squaxin 2012 made by and between the Squaxin Island Tribe ("Tribe"), a federally recognized Indian Tribe and the Port of Olympia;

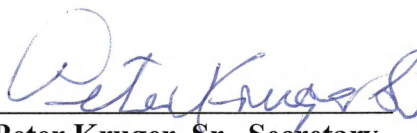
NOW THEREFORE BE IT FURTHER RESOLVED, that the Tribal Council hereby authorizes the Council Chairman and/or the Tribal Administrator, to execute the Agreement;

CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the phone poll of the Squaxin Island Tribal Council, held on June 5, 2012, at which time a quorum was present and was passed by a vote of 6 for and 0 against, with 0 abstentions.



David Lopeman, Chairman

Attested by: 

Peter Kruger, Sr., Secretary



Arnold Cooper, Vice Chairman



**AGREEMENT BETWEEN THE PORT OF OLYMPIA AND THE SQUAXIN ISLAND TRIBE
FOR USE OF PORT OF OLYMPIA PROPERTY FOR
PADDLE TO SQUAXIN 2012**

THIS AGREEMENT is between the Squaxin Island Tribe (the "Tribe") and the Port of Olympia (the "Port"), to govern the Tribe's use of Port property for the Paddle to Squaxin 2012 (the "Event"). The parties' respective roles in relation to the Event are further detailed in the joint Port-Tribe Event Coordination Plan (the "Coordination Plan"), the provisions of which are incorporated by reference herein.

The parties agree as follows:

A. Conditions of Use:

1. The Tribe acknowledges that its use of Port properties is subject to the Port Management Agreement ("PMA") No. 20-080006 between the Port and the Washington Department of Natural Resources.
2. The Tribe shall comply with all applicable state, local and federal laws, including all applicable City of Olympia ordinances.
3. The Tribe assumes responsibility for all activities conducted, including, but not limited to: supervision and control to prevent injury or damage; ensuring conduct during the event complies with all applicable laws, regulations and ordinances; maintenance of premises during the Tribe's use; and coordination with Port staff.
4. The Tribe shall reimburse the Port for expenses the Port incurs beyond the sponsorship contribution amount approved by the Port Commission. The Tribe shall pay the Port \$5,000 as pre-payment towards these costs on or before July 16, 2012. If the Port incurs additional costs beyond the \$5,000 pre-payment, the Port shall invoice the Tribe within fourteen (14) days of incurring the costs. The Tribe shall reimburse the Port within thirty (30) days of receipt of an invoice from the Port. The costs reimbursable under this Paragraph are those that the Tribe and the Port have approved in advance through their designated representatives, Debbie Meisner and Jennie Foglia-Jones.
5. The Tribe shall provide the Port with a damage deposit of \$2,000 by July 16, 2012, which shall be used to cover damages the Port incurs as a result of the Tribe's use of Port property for the Event. The Tribe shall pay the Port for any damages costing more to repair than the damage deposit amount pursuant to the terms of Sections B and C below. If the Port incurs damages in an amount less than the \$2,000 damage deposit, it shall refund the balance of the deposit to the Tribe.
6. If the Tribe conducts any activities that involve serving food, the Tribe must comply with all applicable permit requirements and health and safety regulations related thereto including, but not limited to, Thurston County Health Department regulations.

7. The Tribe will provide certain equipment related to the event, as provided in the Coordination Plan. The Tribe is required to perform its own set up, take down and cleanup within forty-eight (48) hours of the conclusion of the event. Should the Tribe fail to do so within forty-eight (48) hours, the Port shall have the right to undertake any such action it deems necessary to accomplish such take down and clean up, and the Tribe shall pay the Port all costs related thereto
8. The Tribe agrees to remove all materials, supplies and equipment and refuse from Port property at the conclusion of the event. The Tribe shall remove all materials supplies, equipment and refuse from the Northpoint area of Port property by 5:00 p.m. August 1, 2012. Should the Tribe fail to do so, the Port shall have the right to undertake any such action it deems necessary to restore Port premises to their pre-event condition and the Tribe shall pay the Port all costs related to such custodial or grounds maintenance cleanup charges.
9. The Port will provide moorage for Tribal support boats between July 29, 2012 and August 6, 2012 free of charge. Owners or operators of Tribal support boats remaining moored at the Port after that date shall pay the customary rate for moorage at the Port beginning August 7, 2012.
10. Decorations may only be affixed to Port facility surfaces with a tying method (i.e. rope, duct tape, string, crepe paper, etc.). No nails, staples, or tacks may be used. Failure to comply will result in additional fees for cost of removal and repair.
11. Birdseed, rice, confetti, glitter, balloon release and similar items or materials may not be used on Port property.
12. Dogs, other pets and domestic animals must be kept on leash, no greater than eight feet in length and under control at all times while on Port property, and persons having ownership or control over said animals shall comply with all provisions of Olympia Municipal Code § 12.60.030, including obligations related to removal of fecal material.
13. If the Tribe or its guests damage Port property, the Tribe will be responsible for reimbursing the Port for the cost of repair or replacement.
14. The Port is not responsible for any damage or injury to members of any group or third party due to their presence on Port property, per the Hold Harmless provisions in Section C below.
15. Consumption of alcoholic beverages at the Event Site is prohibited.
16. The carrying of firearms or other dangerous weapons is prohibited unless the owner is in possession of and carrying a weapons permit or is a duly authorized Federal, State, local or Tribal law enforcement officer.
17. It is the responsibility of the Tribe to ensure that any amplification or sound systems do not result in exceedences of the maximum permitted noise level specified in the

Olympia Municipal Code, § 18.40.080 and WAC 173-60, "Maximum Environmental Noise Levels."

18. Pedestrian and vehicular access to Port property shall not be restricted or obstructed, except as specifically provided in the joint Port-Tribe Event Coordination Plan, a copy of which is attached hereto and incorporated into this Agreement as though fully set forth. Event participants shall comply with all traffic and parking regulations and restrictions. Parking is only allowed in parking lots or spaces or other designated areas, not on medians, sidewalks, grassy areas or fire lanes. VIOLATORS WILL BE TOWED. Overnight parking or camping is prohibited.
19. Security for the Event is not provided by the Port and is the responsibility of the Tribe.
20. The Tribe is responsible for informing its members, guests and attendees of Port policies and these conditions of use. In the event of any violations of applicable policies, regulations, guidelines, and/or conditions of use that result in damage to persons or properties, the Port may seek reimbursement or cost recovery from the Tribe pursuant to Section B below.
21. Insurance coverage of \$2,000,000 naming the Port, its officers, employees and agents as an additional insured is required. The Tribe shall provide a copy of a certificate of insurance or other evidence of coverage meeting this requirement to the Port no less than thirty (30) days prior to the Event. Said certificate and policy of insurance must be in a form acceptable to the Port and be underwritten by an insurer acceptable to the Port. The Port reserves the right to require a complete copy of the policy in lieu of a certificate of insurance
22. The Tribe has inspected the Port property that will be used for the Event, is familiar with and specifically acknowledges the special conditions associated with the Cascade Pole Site as more fully described in Section B, below, and accepts the condition of the property "AS IS."
23. The Port will provide volunteers and specific services for the event as provided in the joint Coordination Plan. Port services above and beyond that may be provided on a time and materials basis, as requested by the Tribe.

B. Cascade Pole Cleanup Site

1. The Tribe acknowledges that certain aspects of the Event will take place on the Cascade Pole Site (the "Site"), a Model Toxics Control Act ("MTCA") site the Port has been remediating and monitoring under an Agreed Order with the Department of Ecology ("Ecology") (Agreed Order No. DE 00TCPSR-735).
2. The remedial actions the Port has completed at the Site include: (a) in the intertidal sediments: sediment excavation, containment and capping under a 3 to 5 foot cap; and (b) on the uplands: capping of contaminated material under an asphalt cap; and capping

of contaminated material under layers of clean soil, fill and crushed gravel; installation, maintenance and monitoring of groundwater wells; and other institutional controls.

3. Under the Agreed Order, the Port is responsible for maintaining the integrity of these remedial actions, at the direction and under the supervision of Ecology.
4. Ecology and the Tribe have entered into a Memorandum of Understanding (the "MOU") that sets out Ecology's and the Tribe's agreements as to how those aspects of the Event that will take place on or near the Cascade Pole Site will be conducted so as to prevent impacts to the remedial actions the Port has conducted at the Site. The MOU also sets out the parties' agreements as to how Ecology and the Tribe will go about identifying and resolving any damage or other impacts to the Site that resulted from the Event.
5. In the event the Tribe fails to comply with the terms of the MOU, and such failure causes the Port to incur costs or other damages, the Tribe shall hold the Port harmless for any such damages pursuant to Section C below.

C. Hold Harmless

1. In consideration of the Port allowing the Tribe to use the Port property depicted on the attached map (attached as Exhibit A) for the Event, the Tribe agrees to defend, indemnify, and to hold harmless the Port, its employees, agents and invitees from and against any liability, claims, damages, losses, and expenses, including attorneys' fees, for injury to or death of any of the Port's employees, agents, or invitees, or for damage to, or destruction of, Port property, which may arise out of the Tribe's use of Port property. The Tribe shall also defend, indemnify and hold the Port harmless, as well as its employees, agents, and invitees from and against any claims, damages, losses, and expenses, including attorneys' fees, for injury to or death of any other persons and for damage to or destruction of any other property which arises from or is caused in whole or in part by any act or omission by the Tribe, its employees, agents, or anyone else for whose acts the Tribe is or may be liable.
2. These indemnification, hold harmless, and nonliability provisions do not apply to losses, damages, or injuries to the extent such losses, damages, or injuries are occasioned by the negligence of the Port, its employees or agents. Except to the extent of the Port's liability as set forth in this paragraph, the Port, its employees, agents and invitees shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage may be caused, sustained or alleged to be sustained by the Tribe or by others as a result of any condition (including existing or future defects in the property) or occurrence related in any way to the property and the areas adjacent thereto or related in any way to the Tribe's use of the property. The Tribe hereby releases the Port from all liability, claims, damages, losses and expenses as set forth in the previous sentence, and agrees to indemnify, defend and hold the Port harmless therefrom.
3. The extent of the Tribe's indemnification and hold harmless obligations under this Section C (exclusive of attorneys' fees and costs) is coextensive with the limits of the

Tribe's insurance coverage. Notwithstanding this limitation, under no circumstances shall the Port be liable for or otherwise responsible for death, injury or damages due to the Tribe's negligence or death, injury or damages for which the Tribe is otherwise liable or responsible.

4. The provisions of this Section, C shall survive the expiration of this agreement.

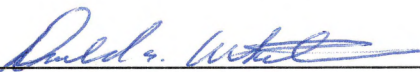
D. MISCELLANEOUS PROVISIONS

1. **Attorney Fees.** In any legal action or proceeding, including but not limited to arbitration, brought to enforce this Agreement, to declare the rights and duties under this Agreement, or to resolve a dispute, breach, or default in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, including expert witness fees, incurred in such action or proceeding, in addition to any other relief to which such party may be entitled.
2. **Amendment or Modification.** No amendment, modification, or change of this Agreement shall be valid unless made in writing and signed by the parties hereto.
3. **Integration.** This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter. Any and all other agreements, understandings, or representations with respect thereto are of no force or effect, with the exception of Addendums to this Agreement entered into pursuant to Section 4.
4. **Interpretation.** The provisions of this Agreement were negotiated by the parties hereto, each of whom was represented by legal counsel. Each party participated in the preparation of this Agreement and reviewed this Agreement. No particular provision shall be deemed to have been drafted by any particular party, and no question of interpretation shall be resolved by any rule of interpretation providing for interpretation against a drafting party.
5. **Applicable Law/Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action seeking to enforce the terms of this agreement shall be in a court of competent jurisdiction in Thurston County or the Federal District Court for the Western District of Washington at Tacoma.
6. **Waiver of Sovereign Immunity.** For the purpose of enforcing obligations under this Agreement, the Tribe waives its inherent sovereign immunity from suit and consents to suit as provided herein. Through the signature of its authorized representative below, the Tribe certifies that this waiver of sovereign immunity has been made in accordance with applicable Tribal laws and policies regarding such waivers, and is effective and enforceable against the Tribe.

7. **Severability.** If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this contract are declared severable.
8. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any prior agreements or understandings. Any modifications or amendments to this Agreement shall be in writing and shall be signed by each party.
10. **Signatures.** The parties affirm they have designated the persons below to have signature authority for the parties. By their signatures on this AGREEMENT, the parties agree to all of its terms and conditions.

This Agreement shall be in effect upon execution and shall terminate on **Monday, August 6, 2012.**

The Squaxin Island Tribe:

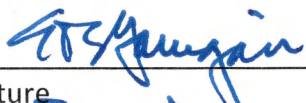


 Signature
 Tribal Administrator

 Title
 6/6/12

 Date

Port of Olympia:



 Signature
 Exec. Dir.

 Title
 6/11/12

 Date

RECEIVED

JUN 08 2012

WA State Department
of Ecology (SWRO)

**MEMORANDUM OF UNDERSTANDING
BETWEEN
SQUAXIN ISLAND TRIBE AND DEPARTMENT OF ECOLOGY**

This Memorandum of Understanding (MOU) is entered into by the Squaxin Island Tribe, a federally recognized Indian Tribe and the Department of Ecology, a Washington State agency.

RECITALS

- A. The Squaxin Island Tribe is hosting the Tribal Canoe Journey landing on July 29, 2012, and will be performing a Welcome Ceremony with an anticipated 100 or more canoes at the Cascade Pole Site (1503 Marine Drive, Olympia, Washington).
- B. The Cascade Pole Site is a hazardous waste cleanup site under the Model Toxics Control Act, currently undergoing remedial action under Agreed Order No. DE 00TCPSR-753 (Agreed Order). The Site includes: intertidal and sub-tidal areas (the sediment interim action area) with 2, 3 and 5 feet soil caps; a sediment containment cell with cap layers, from the bottom, of 12 inch minimum blast (WADOT), 4 inch surface top course csc (WSDOT) followed by 4 inch class B asphalt (total cap thickness of 20 inches); sloped area of the sediment containment cell with a bottom of geocell and 18 inch clean fill followed by top soil; and a walking trail with a minimum 12 inches clean soil on bottom followed by 4 inches of granular fill and 4 inches of crushed gravel. See attached Exhibit A.
- C. The Department of Ecology is the state agency tasked with oversight of hazardous waste cleanup sites under the Model Toxics Control Act, is a signatory to the Agreed Order and has a continuing oversight responsibility with respect to the Cascade Pole Site.
- D. The Welcome Ceremony will include approximately 15 canoes (at a time) beaching at the Cascade Pole Site in the capped sediment interim action area, a VIP seating section of approximately 180 people seated on the walking trail, and approximately 3,800 people seated on the asphalt capped sediment containment cell. See attached Exhibit B.
- E. The parties are concerned with protection of human health and the environment and wish to clarify what activities will take place and where they will take place at the Cascade Pole Site. The purposes of this MOU include ensuring that the integrity of the contaminant controls is not compromised and to delineate use and non-use areas.

AGREEMENT

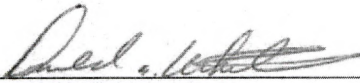
NOW THEREFORE, the parties agree that activities related to the landings on July 29, 2012 at the Cascade Pole Site will be carried out in accordance with the following terms:

1. The location of spectators for the Tribal Canoe Journey Welcome Ceremony are identified in Exhibit B. The parties will conduct a joint inspection of the event set-up at least 24 hours before the event to aid in accomplishing the purposes of this MOU.
2. No activity will take place in the sloped area of the sediment containment cell. The Squaxin Island Tribe will take reasonable precautions to keep participants and spectators from accessing the area identified on Exhibit A as the sloped area of the sediment containment cell, including but not limited to, by providing signage and security.
3. That portion of the Cascade Pole Site used for the Tribal Canoe Journey contains contaminated sediment and soil located under soil caps and an asphalt cap. The Squaxin Island Tribe shall not conduct any activity at the Site which may result in the release or exposure to the environment of the contaminated sediment and soil that is contained under the caps. This includes, but is not limited to, digging, piercing the surface with a rod, spike or similar item, or placement of any objects which deforms or stresses the surface.
4. The Department of Ecology will inspect the Cascade Pole Site within 36 hours after the event to determine if there has been any damage to the existing institutional controls at the Site. The Department of Ecology will document any issues at the Cascade Pole Site in writing and provide it to the Squaxin Island Tribe within 36 hours. The Department of Ecology expects that the Squaxin Island Tribe and the Department of Ecology will resolve all identified issues in a manner and within a timeframe agreed to by the Squaxin Island Tribe and the Department of Ecology.
5. The parties will coordinate regarding the Welcome Ceremony at the Cascade Pole Site through the points of contact listed below, except when circumstances require otherwise.

Squaxin Island Tribe: Debra Meisner
360-432-3849
dmeisner@squaxin.us

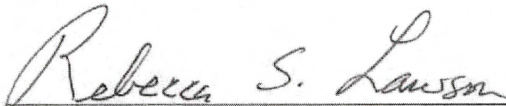
Department of Ecology: Rebecca Lawson 360-407-6241 rebecca.lawson@ecy.wa.gov
and James DeMay 360-407-6316 james.demay@ecy.wa.gov

6. The Squaxin Island Tribe and Department of Ecology reserve all rights, powers, and remedies now or hereafter existing in law or in equity, by statute, treaty or otherwise. Nothing in this Agreement is or shall be construed to be a waiver of any such rights or of the sovereign immunity of the Squaxin Island Tribe or the State of Washington. This Agreement is intended solely for the purpose of facilitating cooperation between the parties during the Tribal Canoe Journey landing event on July 29, 2012, and related activities and creates no rights in third parties or the right to judicial review.



Donald Whitener
Tribal Administrator
Squaxin Island Tribe

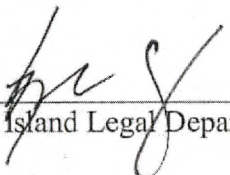
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Date



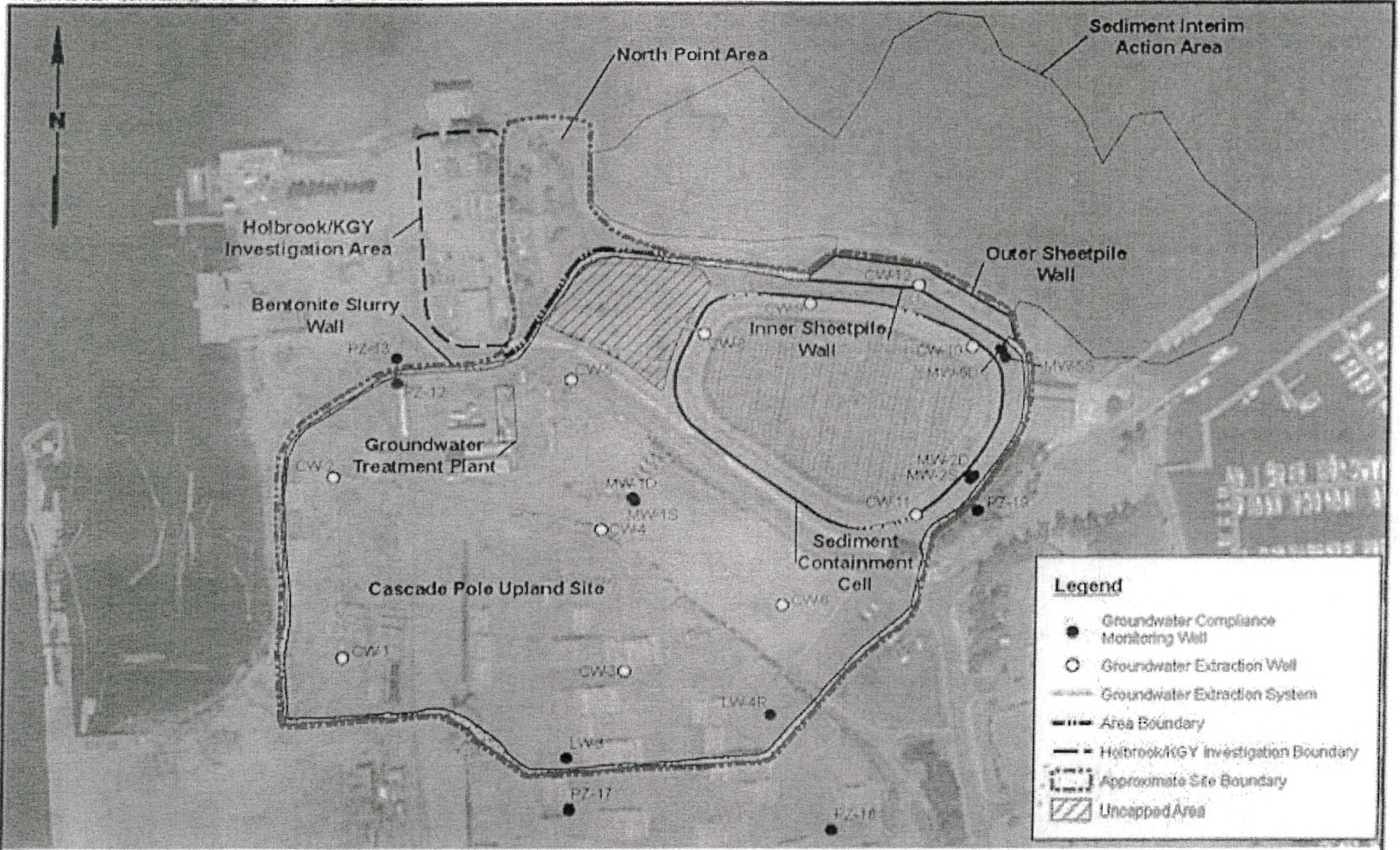
Rebecca S. Lawson, PE, LHG
SWRO Section Manager
Toxics Cleanup Program
Department of Ecology

6/11/12
Date

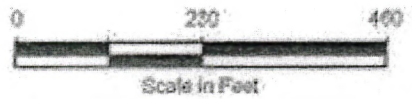
Approved as to form:



Squaxin Island Legal Department



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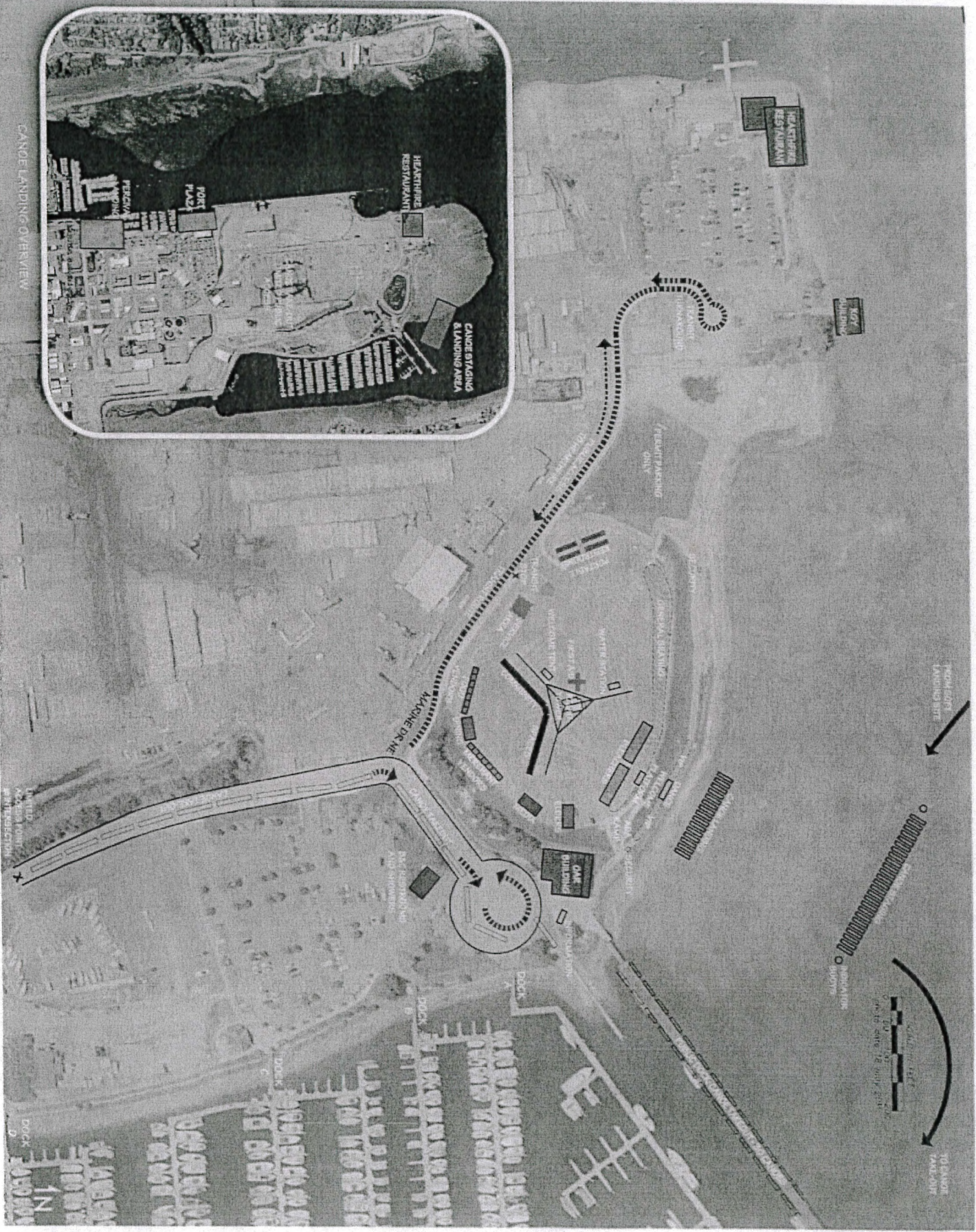
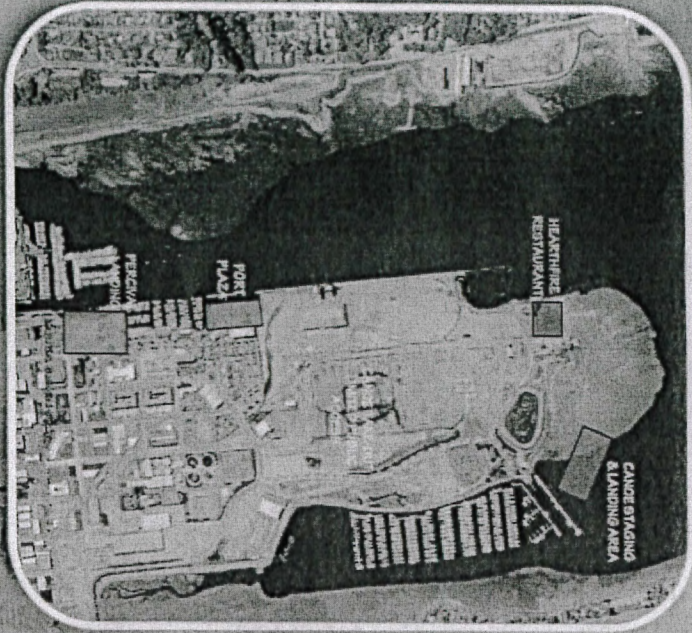


Cascade Pole Site
Olympia, Washington

Site Plan

Figure
A-2

Exhibit A



Revised: 5/25/2012
 MASTER PLAN -
 CANOE
 LANDING
 SCALE: 1" = 100'
 Project No. 11-124



**SQUAXIN ISLAND TRIBE
 2012 CANOE JOURNEY**

msg architects
 350 WEST 17TH STREET SUITE 200
 SEASIDE, WASHINGTON 98582
 360 462 4444
 www.msgarchitects.com

Exhibit B